

**MINUTES**  
**AIR QUALITY ADVISORY COUNCIL**  
**October 14, 2015**  
**Department of Environmental Quality**  
**Multipurpose Room**  
**Oklahoma City, Oklahoma**

Official AQAC Approved  
at January 20, 2016 meeting

**Notice of Public Meeting** – The Air Quality Advisory Council (AQAC) convened for its Regular Meeting at 9:00 a.m. on October 14, 2015, in the Multipurpose Room of the Department of Environmental (DEQ), 707 N. Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the Office of Secretary of State on June 10, 2015. The agenda was posted at the DEQ twenty-four hours prior to the meeting. Also, Ms. Botchlet-Smith acted as Protocol Officer and convened the hearings by the AQAC 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 through 2-5-117. 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. Sharon Myers, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Montelle Clark

**DEQ STAFF PRESENT**

Eddie Terrill  
Beverly Botchlet-Smith  
Cheryl Bradley  
Laura Finley  
Jonathan Truong  
Brooks Kirlin  
Joyce Sheedy  
Nancy Marshment  
Quiana Fields  
Malcolm Zachariah  
Greg Cider  
Michelle Wynn  
Martha Penisten  
Lloyd Kirk  
Kent Stafford  
Ryan Biggerstaff  
Diana Henson

Randy Ward  
Leon Ashford  
Cooper Garbe  
Rick Groshong  
Crystal Stearns  
Carrie Schroeder  
Lindsay Ross  
Cecelia Kleman  
Louise Esjornson  
Jaklyn Garrett  
Chris Laley  
Mark Gibbs  
Curt Goeller  
Heather Lerch

**OTHERS PRESENT**

Ray Mullin, Court Reporter

**Approval of Minutes** – Ms. Myers called for a motion to approve the Minutes of the June 10, 2015 Regular Meeting. Mr. Butcher moved to approve and Ms. Lodes made the second.

*See transcript pages 3 - 4*

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

**Meeting Schedule for Calendar Year 2016** – Ms. Myers stated the proposed meeting scheduled dates are: January 20 in Oklahoma City, June 8 in Tulsa and October 12 in Oklahoma City. Mr. Haught moved to approve the proposed dates. Mr. Collins made the second.

*See transcript pages 4 – 5*

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

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

Mr. Cooper Garbe, Environmental Programs Specialist of the Air Quality Division (AQD), stated the Department is proposing to modify OAC 252:100-7, Permits for Minor Facilities, to add a new Permit By Rule (PBR) for emergency engine facilities. The PBR would simplify the permitting process for facilities whose only obligation to obtain a permit is due to the presence of an emergency engine that is subject to a federal standard. Also, the Department proposes to exempt schools and single family residences from the requirements to obtain a permit for an emergency engine. Following discussion by the Council and by the public, Ms. Myers called for a motion. Ms. Lodes moved to approve the rule and Mr. Butcher made the second.

*See transcript pages 8 – 32*

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

**OAC 252:100-5, Registration, Emission Inventory and Annual Operating Fees [AMENDED]**

Dr. Joyce Sheedy, Engineer Intern of the AQD, stated the Department is proposing to amend OAC 252:100-5, Registration, Emission Inventory and Annual Operating Fees, for consistency with the EPA Air Emission Reporting Requirements contained in Subpart A of 40 CFR Part 51. The Department proposes to revise 5-2.1 to require the submittal of an emission inventory by these facilities when required by the federal point source reporting thresholds. Hearing no discussion by the Council or the public, Ms. Myers called for a motion. Mr. Gamble moved to approve and Mr. Haught made the second.

*See transcript pages 32 – 36*

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

**OAC 252:100-9, Excess Emission Reporting Requirements [AMENDED]**

Mr. Brooks Kirlin, Professional Engineer of the AQD, stated the Department is proposing to amend OAC 252:100-9, Excess Emission Reporting Requirements, to comply with federal requirements for Startup, Shutdown and Malfunction (SSM) as published in the *Federal Register* by the EPA on June 12, 2015 (80 FR 33840), and to conform with the EPA’s restated and updated SSM policy applicable to SIPs. Following a lengthy discussion by the Council, DEQ staff and the public, Ms. Myers suggested that the Council take a break for the staff to restate the recommendation and collectively come up with a wording for the proposed rule.

The Council meeting reconvened. Following discussion, Mr. Kirlin stated the recommendation that the staff proposes expiration of the startup and shutdown mitigating provisions OAC 252:100-9(c) shall expire on November 22, 2018 or upon the effective date of federal approval of

the provisions of Subchapter 9 in the State Implementation Plan (SIP), whichever is later. Periods of excess emissions attributable to startup and shutdown that occur after expiration of OAC 252:100-9-8(c) shall be reported pursuant to the requirements of this chapter and will be considered under the Department's normal enforcement policies and rules. Hearing no further discussion, Ms. Myers called for a motion. Mr. Haught made a motion to accept the proposed changes to 252:100, Subchapter 9, Excess Emission Reporting Requirements as originally presented by staff prior to the October 14 AQAC meeting, effective with the changes that Mr. Kirlin read into the record. Mr. Butcher made the second.

*See transcript pages 36 – 133*

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

**OAC 252:100-2, Incorporation By Reference [AMENDED]**

**Appendix Q. Incorporation By Reference [REVOKED]**

**Appendix Q. Incorporation By Reference [NEW]**

Ms. Nancy Marshment, Environmental Programs Specialist of the AQD, stated the Department is proposing to update OAC 252:100, Appendix Q, Incorporation By Reference, to incorporate the latest changes to EPA regulations. In addition, the Department is proposing to update language in Subchapter 2, Incorporation By Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q. Hearing no discussion by the Council or the public, Ms. Myers called for a motion. Ms. Lodes moved to approve and Mr. Haught made the second.

*See transcript pages 133 – 136*

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

**Ms. Botchlet-Smith announced the conclusion of the hearing portion of the meeting.**

*See transcript page 136*

**Presentation – “What’s Up?” in Air Monitoring** – Mr. Kent Stafford, Environmental Programs Manager of the AQD, Monitoring Section gave a presentation and spoke on the Village Green Project, Near-Road Monitoring, Solar-Powered Monitoring Site and Ozone Update.

**Division Director's Report** – Mr. Eddie Terrill, Division Director of the AQD, provided an update on other Division activities.

**New Business** – None

**Adjournment** – The next scheduled meeting is on Wednesday, January 20, 2016 in Oklahoma City. Meeting adjourned at 1:00 p.m.

**Transcript and attendance sheet are attached as an official part of these Minutes.**

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">*****</p> <p style="text-align: center;">TRANSCRIPT OF PROCEEDINGS</p> <p style="text-align: center;">OF THE AIR QUALITY</p> <p style="text-align: center;">ADVISORY COUNCIL MEETING</p> <p style="text-align: center;">OCTOBER 14, 2015, AT 9:00 A.M.</p> <p style="text-align: center;">IN OKLAHOMA CITY, OKLAHOMA</p> <p style="text-align: center;">*****</p> <p style="text-align: center;">REPORTED BY: RAY MULLIN, CSR</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 MS. MYERS: Good morning. I would 2 like to call the meeting to order. Quiana, 3 would you call roll? 4 MS. FIELDS: Mr. Butcher? 5 MR. BUTCHER: Here. 6 MS. FIELDS: Mr. Clark is absent. 7 Mr. Collins? 8 MR. COLLINS: Here. 9 MS. FIELDS: Mr. Gamble? 10 MR. GAMBLE: Here. 11 MS. FIELDS: Mr. Haught? 12 MR. HAUGHT: Here. 13 MS. FIELDS: Ms Lodes? 14 MS. LODES: Here. 15 MS. FIELDS: Mr. Lynch? 16 MR. LYNCH: Here. 17 MS. FIELDS: Ms. Myers? 18 MS. MYERS: Here. 19 MS. FIELDS: We have a quorum. 20 MS. MYERS: Okay. The next item on 21 the agenda is approval of the minutes. Council 22 members, do we have any discussion or comments? 23 No comments. 24 MR. BUTCHER: I make a motion that 25 we accept the minutes.</p>	<p>3</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">MEMBERS OF THE COUNCIL</p> <p>1 Sharon Myers 2 Gerald Butcher 3 Montelle Clark 4 Gary Collins 5 David Gamble 6 Jim Haught 7 Laura Lodes 8 Robert Lynch 9 10 Beverly-Butchlet-Smith 11 Eddie Terrill 12 Cheryl Bradley 13 Laura Finley 14 Brooks Kirlin 15 Cooper Garbe 16 Phillip Fielder 17 Joyce Sheedy 18 Nancy Marshment 19 Quiana Fields 20 21 22 23 24 25</p>	<p>2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 MS. LODES: I second the motion. 2 MS. MYERS: We have a motion and a 3 second. Quiana, will you call roll? 4 MS. FIELDS: Mr. Butcher? 5 MR. BUTCHER: Yes. 6 MS. FIELDS: Mr. Collins? 7 MR. COLLINS: Yes. 8 MS. FIELDS: Mr. Gamble? 9 MR. GAMBLE: Yes. 10 MS. FIELDS: Mr. Haught? 11 MR. HAUGHT: Yes. 12 MS. FIELDS: Ms. Lodes? 13 MS. LODES: Yes. 14 MS. FIELDS: Mr. Lynch? 15 MR. LYNCH: Yes. 16 MS. FIELDS: Ms. Myers? 17 MS. MYERS: Yes. 18 MS. FIELDS: Motion passed. 19 MS. MYERS: Okay. The next item on 20 the agenda is the meeting schedule for calendar 21 year 2016 – which is where? 22 The dates selected are Wednesday, 23 January 20th in Oklahoma City, Wednesday, June 24 8th in Tulsa, Wednesday, October 12th in 25 Oklahoma City.</p>	<p>4</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p>5</p> <p>1 Any discussions by counsel members?                  2 Any recommendations?                  3 MR. HAUGHT: I move that we accept                  4 the proposed meeting dates for 2016.                  5 MS. MYERS: We have a motion. Do we                  6 have a second?                  7 MR. COLLINS: I'll second.                  8 MS. MYERS: Motion and a second.                  9 Would you call the role, please?                  10 MS. FIELDS: Mr. Butcher?                  11 MR. BUTCHER: Yes.                  12 MS. FIELDS: Mr. Collins?                  13 MR. COLLINS: Yes.                  14 MS. FIELDS: Mr. Gamble?                  15 MR. GAMBLE: Yes.                  16 MS. FIELDS: Mr. Haught?                  17 MR. HAUGHT: Yes.                  18 MS. FIELDS: Ms. Lodes?                  19 MS. LODES: Yes.                  20 MS. FIELDS: Mr. Lynch?                  21 MR. LYNCH: Yes.                  22 MS. FIELDS: Ms. Myers?                  23 MS. MYERS: Yes.                  24 MS. FIELDS: Motion passed.                  25 MS. MYERS: Beverly, it's all yours,</p>	<p>7</p> <p>1 Administrative Procedures Act and Title 40 of                  2 the Code of Federal Regulations, Part 51, as                  3 well as the Authority of Title 27 A of the                  4 Oklahoma Statutes, Section 2-2-201 and Sections                  5 2-5-101 through 2-5-117.                  6 Notice of the October 14th, 2015,                  7 hearing was advertised in the Oklahoma Register                  8 for the purpose of receiving comments pertaining                  9 to the proposed OAC Title 252 Chapter 100 rule                  10 as listed on the agenda, and will be entered                  11 into each record along with the Oklahoma                  12 Register filing.                  13 Notice of the meeting was filed with                  14 the Oklahoma Secretary of State on June 12th,                  15 2000 – I'm sorry, June 10th, 2015. The agenda                  16 was duly posted 24 hours prior to the meeting                  17 here at the DEQ.                  18 If you wish to make a statement it's                  19 very important for you to complete the form at                  20 the registration table, and you will be called                  21 upon at the appropriate time.                  22 Audience members, please come to our                  23 podium for your comments, and please state your                  24 name prior to making your comments.                  25 At this time we'll proceed with</p>
<p>6</p> <p>1 if you can figure out how to turn your thing on.                  2 MS. BOTCHLET-SMITH: Good morning.                  3 I'm Beverly Botchlet-Smith. Is it working? Can                  4 you hear me?                  5 MS. LODES: Turn off Sharon's -- or                  6 Sharon's.                  7 MS. BOTCHLET-SMITH: My light's on.                  8 MS. LODES: Punch it on. Just hit                  9 it once and it ought to be ready.                  10 MS. BOTCHLET-SMITH: Thank you.                  11 MS. LODES: Beverly's just doesn't                  12 work.                  13 MS. BOTCHLET-SMITH: My light will                  14 not stay on.                  15 MR. TERRILL: Do you want to use                  16 this one?                  17 MS. BOTCHLET-SMITH: Okay. Now can                  18 you hear me?                  19 All right. Okay. Good morning. I'm                  20 Beverly Botchlet-Smith. I'm the assistant                  21 director of the Air Quality Division, and as                  22 such I'll serve as protocol officer for today's                  23 hearing.                  24 The hearings will be convened by the Air                  25 Quality Council in compliance with the Oklahoma</p>	<p>8</p> <p>1 what's marked as Agenda No. -- Agenda Item No. 5                  2 A on the hearing agenda. That is OAC 252.100-7,                  3 permits for minor facilities.                  4 Mr. Cooper Garbe of our staff will                  5 give the presentation.                  6 MR. GARBE: Thank you, Beverly.                  7 Madam Chair, members of council,                  8 ladies and gentleman. Good morning. I'm Cooper                  9 Garbe, and I'll present the Department's                  10 proposed revision to Subchapter 7, permits for                  11 minor facilities.                  12 This proposal was carried over from                  13 the previous Council meeting in June. After                  14 receiving a large number of air quality permit                  15 applications for facilities with only an                  16 emergency generator, DEQ staff sought to                  17 streamline the permit process by creating a new                  18 permit by rule.                  19 As we prepared to present this new                  20 PBR, as we call them, at the June meeting, staff                  21 was given some information regarding how wide                  22 spread these units are used. The Department                  23 requested the proposal be carried over while we                  24 worked to characterize this source category.                  25 Today the Department is again</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">9</p> <p>1 proposing the permit by rule, as it was                  2 presented in June. Additionally, the Department                  3 proposes to exempt single family residences and                  4 primary and secondary schools from the                  5 requirement to obtain an air quality permit for                  6 an emergency engine.                  7 Jeff Robinson with EPA's Region IV                  8 commented on our approved State implementation                  9 plan regarding permit exempt and de minimis                  10 categories, which were not in the scope of this                  11 rule making.                  12 The Department believes this to be                  13 the best method of regulating these sources, and                  14 respectfully requests the council recommend this                  15 proposal for permit adoption.                  16 MS. MYERS: At this time we will                  17 take comments, questions from the Council.                  18 MS. LODES: I was just looking at                  19 the -- I was looking at EPA's comments. I guess                  20 we don't have any concerns about EPA's comments                  21 on this one?                  22 MR. GARBE: EPA's comments were only                  23 regarding the State implementation plan --                  24 MS. LODES: Right.                  25 MR. GARBE: -- and not this</p>	<p style="text-align: right;">11</p> <p>1 MS. LODES: Okay. I guess I had                  2 forgotten it had -- but those had never been                  3 approved in the SIP. I knew permit exempt was                  4 still hanging out there.                  5 So what is -- how old is our                  6 approved SIP, because that's the 2002 submittal?                  7 MS. SHEEDY: It's -- it's number is                  8 1.4.1 --                  9 MS. BOTCHLET-SMITH: Joyce, can you                  10 identify yourself?                  11 MS. SHEEDY: Yes, Joyce Sheedy with                  12 the DEQ. The number on the approved SIP for                  13 minor source permitting is 1.4.1, which was when                  14 we were in the Health Department.                  15 So our approved minor source SIP is                  16 very old and very out of date.                  17 MS. MYERS: What -- what year was                  18 that?                  19 MS. SHEEDY: Let me see. It would                  20 have predated the 1990 Clean Air Act, wouldn't                  21 it, because we had a couple -- we've had three                  22 reorganizations of the rules since then.                  23 MS. BRADLEY: Correct. I -- Cheryl                  24 Bradley, Air Quality Division. It's my                  25 understanding -- or my recollection is either</p>
<p style="text-align: right;">10</p> <p>1 particular rulemaking action. They commented on                  2 the definition of permit exempt and de minimis,                  3 which we're not addressing in this particular                  4 rulemaking.                  5 MS. LODES: True. Not really,                  6 though. So how far behind are they on approving                  7 this deal? I thought de minimis had been in                  8 long before the permit exempt.                  9 I was trying to look that up, but                  10 I'm not that fast on my phone.                  11 MR. TERRILL: I'll let Cheryl --                  12 this is kind of an aggravating point.                  13 MS. LODES: Well, the permit exempt                  14 I know was, what, 10 years ago that we did that                  15 one? The de minimis, I thought, was even                  16 further out than that.                  17 MR. TERRILL: Correct.                  18 MS. BRADLEY: You are, in fact,                  19 correct. This is Cheryl Bradley, Air Quality                  20 Division. We are still awaiting action on a                  21 submittal from 2002, and in that submittal we                  22 created the de minimis permit by rule provision.                  23 MS. LODES: Oh, the original permit                  24 by rule provision?                  25 MR. BRADLEY: Right.</p>	<p style="text-align: right;">12</p> <p>1 1984 or 1987, approximately, for the last                  2 approval.                  3 MS. LODES: For Subchapter 7 or -- I                  4 guess some parts of our rules have actually                  5 approved a little more promptly.                  6 MS. BRADLEY: Yes. It primarily                  7 depends upon who is tasked with taking the                  8 action. We have had more responsive action from                  9 the planning group than we have the permitting                  10 group.                  11 None of the Subchapter 7 rules have                  12 been acted upon.                  13 MS. LODES: I mean, I would think                  14 people have retired since then, so we should                  15 have gotten somebody new. That's a long time                  16 ago.                  17 MS. BRADLEY: We have not. We have                  18 had -- for continuity of assignment, we have had                  19 the same person involved since approximately                  20 2003.                  21 MS. LODES: Okay. So that's -- I                  22 guess this is Guy Donald?                  23 MS. BRADLEY: No, no. Guy Donaldson                  24 is actually the manager of the planning group.                  25 MS. LODES: Okay.</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">13</p> <p>1 MS. BRADLEY: Jeff Robinson is the                  2 permitting manager. The person who has been                  3 responsible for the review, though, is a                  4 staffer --                  5 MS. LODES: Oh, okay.                  6 MS. BRADLEY: -- that works for Mr.                  7 Robinson.                  8 MS. LODES: But that's since from                  9 2002, and this has been sitting out there since                  10 '87.                  11 MS. BRADLEY: Correct.                  12 MS. LODES: Okay.                  13 MR. TERRILL: Laura, this is a                  14 nation wide problem and EPA periodically                  15 recognizes it. They're -- they're on a schedule                  16 -- and I say they.                  17 The EPA, across all the ten regions,                  18 are on a schedule that has been monitored by                  19 headquarters to get these backlogs done. I                  20 think ours are on a two-year schedule,                  21 approximately.                  22 MS. BRADLEY: Approximately. The --                  23 the original schedule was approximately four                  24 years out. They triaged based off the -- the                  25 actions based upon EPA's priority system.</p>	<p style="text-align: right;">15</p> <p>1 MS. LODES: That's fine. I just was                  2 surprised when I saw -- because -- okay. Thank                  3 you.                  4 MS. BOTCHLET-SMITH: Other questions                  5 from the Council?                  6 MR. HAUGHT: I've got a question, or                  7 I just need some help with some clarification.                  8 We've -- we've got -- one of the                  9 additions for primary and secondary schools and                  10 single family residences are exempted from                  11 permitting requirements.                  12 Is that -- you know, and -- and we                  13 talk about the -- and they talk about the -- the                  14 things that -- that were just discussed that                  15 Laura brought up, but are individual residences                  16 permit exempt, or are they just exempt -- for me                  17 there's a distinct -- can we -- do we -- do we                  18 distinguish between permit exempt and exempt                  19 from permitting, because to -- to be a facility                  20 is a -- you know, the definition is of a permit                  21 exempt facility, and to meet the definition of                  22 facility you have to have an SIC code, just --                  23 and so --                  24 MR. GARBE: Yes, sir.                  25 MR. HAUGHT: -- if they don't meet</p>
<p style="text-align: right;">14</p> <p>1 That doesn't necessarily coincide                  2 with what we feel is a priority, and the major                  3 source permitting rules always go to the front                  4 of the --                  5 MS. LODES: Correct.                  6 MS. BRADLEY: -- line, which makes                  7 sense.                  8 MS. LODES: It makes sense.                  9 MS. BRADLEY: But -- and also allows                  10 them to take subsequent actions. I mean, it --                  11 it meets some of their needs because of the                  12 litigation.                  13 The minor source permitting rules                  14 has been a lower priority and have been back                  15 bumpered for years.                  16 MS. LODES: Okay.                  17 MS. BRADLEY: And, primarily, the --                  18 we're waiting on EPA's action on that original                  19 2002 submittal. They had indicated they had                  20 some questions about -- or concerns about our                  21 public participation process for minor source                  22 new sources.                  23 We have been waiting on a                  24 clarification of that position, and have been                  25 for some time.</p>	<p style="text-align: right;">16</p> <p>1 that requirement is -- is this even necessary?                  2 Are they even a facility subject to                  3 the -- subject to the rule?                  4 MR. GARBE: There are some SIC codes                  5 out there for certain residential action. So                  6 there could be a possibility that some                  7 residences would actually fall under an SIC                  8 code, which is why we went this route.                  9 MR. HAUGHT: Okay. So if we say                  10 they're exempt from permitting, are we say -- is                  11 that different than being permit exempt?                  12 MR. GARBE: If they're exempt from                  13 permitting --                  14 MR. HAUGHT: Well, what I'm trying                  15 to get to is do the same clouds that hang over                  16 permit exempt status hang -- is it going to hang                  17 over residences that are exempt from permitting?                  18 MS. LODES: Oh, that's a good                  19 question.                  20 MS. BOTCHLET-SMITH: Can I just --                  21 I've got a signal from the back just a moment                  22 ago that they're having trouble hearing us in                  23 the back, so -- and also for our court reporter,                  24 if you'll pull you're mics up a little bit                  25 before we talk maybe that will help them out.</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">17</p> <p>1 We've got a full house. Thank you.</p> <p>2 MR. GARBE: In regards to the permit</p> <p>3 exempt versus just being exempt from permitting,</p> <p>4 we did not want to particularly address the</p> <p>5 permit exempt definition at this moment.</p> <p>6 We carved out a section in 100-7-2</p> <p>7 about the requirement to obtain a permit, and</p> <p>8 that's where the actual regulation for them</p> <p>9 falls under -- outside of the definition that</p> <p>10 categorizes permit exempt de minimis, and that's</p> <p>11 where we added the -- the residential and</p> <p>12 primary and secondary schools, as well.</p> <p>13 In all reality, permit exempt and</p> <p>14 being exempt from a permit should come down to</p> <p>15 the same thing.</p> <p>16 MR. HAUGHT: So in -- yeah. So I</p> <p>17 guess the question is, on -- in the EPA</p> <p>18 response, or their -- their comments, they end</p> <p>19 -- they end their comments on this section with</p> <p>20 we're concerned that any activity exempt under</p> <p>21 these provisions are being addressed without SIP</p> <p>22 approval.</p> <p>23 That's the same -- same cloud that's</p> <p>24 hanging over all of those that are now called</p> <p>25 permit exempt facilities. So residences are</p>	<p style="text-align: right;">19</p> <p>1 But it will -- you're right, it will</p> <p>2 have the same cloud, if you will, but I don't</p> <p>3 know a way around that. EPA did -- we just have</p> <p>4 a fundamental disagreement about this part of</p> <p>5 our rule.</p> <p>6 MR. HAUGHT: And I understand that.</p> <p>7 I just was wondering if there is some -- some</p> <p>8 question. Is there some notice that needs to go</p> <p>9 out with residential emergency generators that</p> <p>10 says this potential -- I mean, I don't know</p> <p>11 which households are subject to SIC</p> <p>12 classifications or not, and is there some kind</p> <p>13 of outreach that needs to be done that people</p> <p>14 should be put on notice that potentially could</p> <p>15 be subject to permitting, or that they are</p> <p>16 exempted from permitting?</p> <p>17 MS. LODES: Well, I guess there's</p> <p>18 going to be my question. If our SIP is that</p> <p>19 old, is the approved SIP actually stable in the</p> <p>20 language that gets everybody into permitting</p> <p>21 about the NSPS and NESHAP source, has to obtain</p> <p>22 a permit?</p> <p>23 If we went all the way back to the</p> <p>24 '87 version that's actually approved does it</p> <p>25 have the requirement for an NSPS and NESHAP?</p>
<p style="text-align: right;">18</p> <p>1 going to be in -- in the same thing, pending SIP</p> <p>2 approval this is the best we can do at this</p> <p>3 time.</p> <p>4 MR. GARBE: Yes.</p> <p>5 MR. TERRILL: That's correct, and --</p> <p>6 and if you remember the discussion we had with</p> <p>7 the EPA back when we proposed the permit exempt</p> <p>8 opportunity, if you will, they raised the same</p> <p>9 concerns then.</p> <p>10 They don't like it. They believe</p> <p>11 it's something we shouldn't have done, but they</p> <p>12 couldn't articulate what environmental harm or</p> <p>13 what environmental benefit would be had by</p> <p>14 permitting these sources, so moved ahead.</p> <p>15 We knew full well at some point</p> <p>16 we'll have to deal with this with EPA and</p> <p>17 they'll either approve it or disapprove it, but</p> <p>18 they've kicked the can down the road this long,</p> <p>19 and I suspect they'll kick the can down, because</p> <p>20 they don't want to confront this issue, either,</p> <p>21 if they can avoid it, because they don't really</p> <p>22 have a good argument as to what environmental</p> <p>23 benefit could be had by permitting sources that</p> <p>24 you wouldn't really require to do anything,</p> <p>25 anyway.</p>	<p style="text-align: right;">20</p> <p>1 MR. TERRILL: Yeah, Cheryl is</p> <p>2 nodding yes.</p> <p>3 MS. LODES: It does. I was going to</p> <p>4 say, can we get an out by the fact that they</p> <p>5 haven't bothered to approve all of this gap</p> <p>6 we've had in the middle?</p> <p>7 MR. TERRILL: Laura, if you start</p> <p>8 going down that road you're going to mightily</p> <p>9 confuse the issue, because you can have various</p> <p>10 permeations of what's been approved and what</p> <p>11 hasn't been approved.</p> <p>12 That's the reason that -- well, our</p> <p>13 position has always been, and I don't see how it</p> <p>14 could be any different without creating a huge</p> <p>15 amount of confusion.</p> <p>16 Once we go through the rulemaking</p> <p>17 process, and it goes through the legislative</p> <p>18 process, and it becomes part of our rules,</p> <p>19 that's the way we treat it, whether EPA approves</p> <p>20 it as part of our SIP or not.</p> <p>21 If we didn't do that I don't know</p> <p>22 how we could function. I mean, you could go</p> <p>23 back and say this has been approved, this hasn't</p> <p>24 been approved.</p> <p>25 I share your -- believe me, I more</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">21</p> <p>1 than share you're frustration about this issue,                  2 but until EPA acts on all the backlog we're --                  3 we're going to have this, and we believe that                  4 there are some things that they could do,                  5 For instance, we -- we've proposed                  6 in the past that if they participate like they                  7 are in this rulemaking there's no reason why                  8 this shouldn't become effective within 60 days                  9 after it appears -- after it goes final for us.                  10 There's no reason for them not to                  11 approve that automatically. They participate in                  12 the process, but that wouldn't change -- we                  13 proposed that.                  14 We went all the way to DC and you                  15 would have thought we had asked for their first                  16 born, because they just don't want to let go of                  17 that.                  18 But that's part of the overall                  19 fundamental changes that need to happen with the                  20 Clean Air Act and with EPA's position on a lot                  21 of things, and it's not going to get any better                  22 until they figure out a way to streamline their                  23 own process, because they don't have enough                  24 staff to -- to deal with these issues.                  25 They just don't, and -- but they're</p>	<p style="text-align: right;">23</p> <p>1 questions from the Council?                  2 Okay. I have one comment from the                  3 public that I've been notified of. This is Mr.                  4 Ron Bare.                  5 MR. BLAIR: Good morning Chair,                  6 Good morning Council. It's Rodney Blair.                  7 MS. BOTCHLET-SMITH: Oh, sorry.                  8 MR. BLAIR: You're fine. The                  9 question I have is going to be, if we're looking                  10 at exempt from schools and residents, what are                  11 we going to define on the timeframe?                  12 I mean, if we've got a generator                  13 that's running half an hour a week, 26 hours,                  14 that's pretty good, but what if they're running                  15 them three hours a week?                  16 MR. GARBE: If I can take that one.                  17 The question was if they run three hours a week                  18 versus if they run --                  19 MR. BLAIR: Half an hour a week.                  20 MR. GARBE: -- half an hour a week.                  21 In our definition of emergency, to                  22 qualify as an emergency engine you can only run                  23 in -- and instances of emergency or for                  24 maintenance. I don't know that -- how many                  25 emergency generators are running three hours a</p>
<p style="text-align: right;">22</p> <p>1 not willing to make the fundamental changes that                  2 would help, and until they are willing to do                  3 that we're going to have this problem.                  4 MS. LODES: Okay,                  5 MS. MYERS: I've got a question for                  6 you. It's referring to emergency engines at                  7 residential and school facilities, specifically                  8 calls out primary and secondary schools.                  9 How does that impact vo-techs,                  10 universities --                  11 MR. GARBE: We've had universities                  12 that have come in and gotten permits for some of                  13 these engines already. So we left it at that.                  14 MS. LODES: Sharon, some of the                  15 universities, because they've got the big                  16 boilers and heaters, just because of the size of                  17 their facilities, they've got pretty good                  18 permits. Some of them even have Title V sites.                  19 So I don't know that the                  20 universities -- I did think about the daycares,                  21 and some of the facilities like that. I don't                  22 know how many of those would have a backup unit,                  23 but --                  24 MS. MYERS: Right. Okay.                  25 MS. BOTCHLET-SMITH: Any other</p>	<p style="text-align: right;">24</p> <p>1 week for maintenance operations.                  2 Do you know if these are emergency                  3 situations, or is this load control?                  4 MR. BLAIR: Well, just in my own                  5 example, I take over the postal facilities here                  6 in Oklahoma, so I had to get everyone                  7 streamlined on what they were running their                  8 generators at, and how many time per week.                  9 So I got them all from whatever they                  10 were across the Oklahoma State down to half an                  11 hour a week to bring them down to 26 hours, but                  12 I did have facilities that were running them                  13 half an hour. I had other facilities that ran                  14 them three hours a week. There was no guidance                  15 on them.                  16 So I just want to make sure that                  17 everybody is on the same track, because we could                  18 have the same problem with the schools.                  19 MR. COLLINS: And they were                  20 operating -- they were operating those for that                  21 duration due to a test or --                  22 MR. BLAIR: Just to make sure that                  23 they ran in case of an emergency, and they would                  24 want to run them, and some facilities would run                  25 them for, you know, two and a half, three hours</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">25</p> <p>1 a week versus half an hour.                  2 Nobody – there's no really                  3 regulation on it, as to how are going to go and                  4 check these to make sure that they're running                  5 half an hour a week versus three hours a week.                  6 MS. LODES: I think – and make sure                  7 I understand this right. The only obligation to                  8 get a permit under our rules is if you're                  9 subject to an NSPS or NESHAP source, you emit                  10 more than five tons, you're not a de minimis, or                  11 you're really above 40 actual for permanent                  12 exempt.                  13 So to me, if it's only three hours a                  14 week, and it's not an NSPS engine, and that's                  15 less than 40, they fall under our permanent                  16 exempt category; right?                  17 Is that where they would fall?                  18 MR. GARBE: Yes, if they weren't                  19 also between an NSPS or NESHAP, then most likely                  20 cases and scenarios they would fall under                  21 permanent exempt or --                  22 MS. LODES: They would fall under --                  23 because then they're in a --                  24 MR. GARBE: Yes.                  25 MR. LODES: -- was it I, or</p>	<p style="text-align: right;">27</p> <p>1 exempt. They would have --                  2 MR. GARBE: They would have to be --                  3 THE REPORTER: Can I get -- one at a                  4 time. I cannot get you both talking at the same                  5 time.                  6 MR. GARBE: Yes, they would have to                  7 file for the permit by rule, or another permit                  8 scenario.                  9 MS. LODES: Okay.                  10 MR. BLAIR: That's all I had. Thank                  11 you guys.                  12 MS. BOTCHLET-SMITH: Thank you. Do                  13 we have any other questions or comments from the                  14 public? If you would raise your hand.                  15 Okay. Seeing none, one more chance                  16 for the Council, if you've thought of something                  17 else.                  18 MR. HAUGHT: I don't know if it's                  19 something else, but I guess my concern, and --                  20 and this didn't really pop into my head until I                  21 read the EPA comment letter this morning.                  22 I don't recall specifically                  23 excluding residences from our rules previously.                  24 So my concern is if we say residence --                  25 individual residences are permit exempt -- are</p>
<p style="text-align: right;">26</p> <p>1 whatever? They're -- less than 500 hours a year                  2 qualifies them as a de minimis source; correct?                  3 MR. GARBE: Yes.                  4 MS. LODES: So what we're objecting                  5 to here, really, is just those units that would                  6 be subject to an NSPS or NESHAP maintenance                  7 requirements, and then -- well, actually,                  8 they're not subject to that if they're emergency                  9 and residential, because that actually had an                  10 exemption for them. Am I right?                  11 Yes. So, really, it's just the NSPS                  12 units that would potentially be affected by this                  13 rule, which would be your ones after 2008, and                  14 then installed at residences or some -- but I                  15 don't think one at a postal center would be                  16 permit exempted here, because they're not at a                  17 school or a residence --                  18 MR. GARBE: If they were subject to                  19 a --                  20 MS. LODES: -- and they would have                  21 to be in a permit exempt category.                  22 MR. GARBE: Yes, if they were                  23 subject to an NSPS or NESHAP at a postal                  24 facility that would be -- not be within --                  25 MS. LODES: They would not be permit</p>	<p style="text-align: right;">28</p> <p>1 exempt from permitting, and that equates to a                  2 defined permit exempt facility, and at some                  3 point down the road EPA doesn't approve the SIP,                  4 then is that -- does that all of a sudden pull                  5 them into you're not permit exempt any more, now                  6 you have to have a permit?                  7 Can I -- I think the whole thing is                  8 do you have an SIC code, because you have to                  9 meet that standard first, and I guess I'm not                  10 clear on -- on that, whether that -- what that                  11 would pull in.                  12 MS. LODES: I think they're covered                  13 -- and, Cheryl, you guys correct me if I'm                  14 wrong.                  15 Residential stuff would be under                  16 Appendix H for de minimis, which goes back to                  17 the whole EPA comment, if they don't like our                  18 whole de minimis category -- because when I look                  19 in Appendix H, we have a whole section for                  20 residential for heaters, boilers fireplaces.                  21 MR. HAUGHT: Yeah, but -- but you're                  22 talking about specifically some engines that                  23 there are federal rules for. So this -- this                  24 goes out of that, what's -- what's normally been                  25 considered standard emissions for a residence.</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">29</p> <p>1           So I -- I just want to make sure we 2 don't unintentionally pull residences into 3 something that -- that could have consequences 4 down the road, and if -- if they don't have an 5 SIC code, they're not facilities, then I think 6 that drops them out. 7           You know, if they don't have an SIC 8 code, they're not a facility, do we have 9 jurisdiction to do this anyway, or do they just 10 fall -- is there even -- is it even necessary to 11 do this? 12          MR. TERRILL: Well, if I remember 13 right, we did this at the request of the 14 Council. I mean, this was something that was 15 raised -- and we agreed. 16          We think that to make -- make sure 17 that they were -- we were clear that the 18 residential emergency generators would not be 19 required to have a permit, that we would try to 20 clarify that. 21          This whole area is going to continue 22 to be muddy relative to permit exempt and -- and 23 all the other categories that could fall within 24 that. 25          To be honest with you, I'm not</p>	<p style="text-align: right;">31</p> <p>1 applications, and just to make it very clear we 2 -- we didn't take that route. 3          We wanted to very clearly make it 4 that residences were not subject to any permit 5 for emergency engines, just in case those SICs 6 were not clear to people. 7          MS. BOTCHLET-SMITH: Any other 8 questions, comments? 9          MS. MYERS: If there are no further 10 questions or comments from the public or from 11 the Council, I'll entertain a motion. 12          MS. LODES: Staff recommendation was 13 that we approve this rule. I move that we 14 approve it. 15          MS. MYERS: Okay. 16          MR. BUTCHER: I'll second that. 17          MS. MYERS: Qulana? 18          MS. FIELDS: Mr. Butcher? 19          MR. BUTCHER: Yes. 20          MS. FIELDS: Mr. Collins? 21          MR. COLLINS: Yes. 22          MS. FIELDS: Mr. Gamble? 23          MR. GAMBLE: Yes. 24          MS. FIELDS: Mr. Haught? 25          MR. HAUGHT: Yes.</p>
<p style="text-align: right;">30</p> <p>1 concerned about this. I suspect at some point, 2 in the next five years or so, we'll have to 3 cross that road with EPA, but there's so many 4 other things that are much more important 5 relative to environmental protection and public 6 health that are under the exempt rule, and EPA's 7 concerns about that, that we'll resolve it, and 8 we -- we're not going to go back and require 9 some things beyond what we've always -- we've 10 always required relative to permitting, and I -- 11 I just don't feel the concern that we're going 12 to jeopardize residential areas relative to what 13 they might have to have in the future. 14          I understand what you're saying. I 15 just think, as a practical matter, we just have 16 a fundamental disagreement about this, that I 17 believe that if you push -- if we had to we 18 could defend that, and we would vigorously, and 19 we would end up coming to some sort of 20 resolution that wouldn't involve residential 21 homes. 22          MR. GARBE: In regards to the SIC 23 code that you've looked at, that was a route 24 that I looked into, and, as I mentioned, the SIC 25 codes do have a couple of residential</p>	<p style="text-align: right;">32</p> <p>1          MS. FIELDS: Ms. Lodes? 2          MS. LODES: Yes. 3          MS. FIELDS: Mr. Lynch? 4          MR. LYNCH: Yes. 5          MS. FIELDS: Ms. Myers? 6          MS. MYERS: Yes. 7          MS. FIELDS: Motion passed. 8          MS. BOTCHLET-SMITH: The next item 9 on the agenda is OAC 252.100-5, registration, 10 emissions inventory and annual operating fees. 11 Dr. Joyce Sheedy will do the -- give the staff 12 presentation today. 13          MS. SHEEDY: I am Joyce Sheedy with 14 the air quality division, as you probably know. 15 Madam Chair, members of the Council, ladies and 16 gentlemen, the department is proposing to amend 17 OAC 252.100-5, registration, emission inventory 18 and annual operating fees. 19          This is the second time this 20 proposal has been presented at the Council. At 21 the June 10, 2015, hearing it was continued 22 until this meeting. 23          Paragraph 3 of subsection 2.1(a) of 24 Subchapter 5 exempts de minimis facilities and 25 permit exempt facilities for -- from the</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">33</p> <p>1 requirement to submit and annual emission 2 inventory.</p> <p>3       Anyway, in the February 19th, 2015, 4 "Federal Register", EPA amended the federal 5 emission inventory reporting thresholds 6 contained in Table 1 of Appendix A of Subpart A 7 of 40 CFR 51. The thresholds for reporting 8 emissions of lead from stationary sources was 9 reduced to .5 ton per year at that time.</p> <p>10       This amended threshold for lead is 11 lower than the thresholds for the de minimis 12 facility category and the permit exempt 13 facilities category as defined in 7-1.1 of 14 Subchapter 7 for minor source permitting.</p> <p>15       Currently lead is the only pollutant 16 listed on that table that has an emission 17 reporting threshold that is below the upper 18 limits of the permit exempt facilities and the 19 de minimis facility threshold.</p> <p>20       So although Section 5-2.1 currently 21 exempts de minimis facilities and permit exempt 22 facilities from the requirement to submit an 23 annual emission inventory, the Department 24 believes that all facilities that emit .5 tons 25 or more of lead per year are already submitting</p>	<p style="text-align: right;">35</p> <p>1 from Region IV on October 8, 2015, supporting 2 the proposed revision to Subchapter 5.</p> <p>3       So the staff is requesting the 4 Council to recommend the proposed amendment to 5 this rule to the Environmental Quality Board for 6 adoption as a permanent rule.</p> <p>7       Thank you.</p> <p>8       MS. BOTCHLET-SMITH: At this time we 9 will take questions from the Council.</p> <p>10       Okay. I don't see any questions at 11 this time. I have one comment registered from 12 the public, who is indicating he is declining to 13 comment.</p> <p>14       Is there anyone else from the public 15 that would like to make a statement or ask a 16 question regarding this rule?</p> <p>17       Seeing none, Council?</p> <p>18       MS. MYERS: We're to the point where 19 I can entertain a motion.</p> <p>20       MR. GAMBLE: I move that we approve 21 the proposed rule changes and –</p> <p>22       MR. HAUGHT: I'll second it.</p> <p>23       MS. MYERS: Quiana.</p> <p>24       Ms. FIELDS: Mr. Butcher?</p> <p>25       MR. BUTCHER: Yes.</p>
<p style="text-align: right;">34</p> <p>1 emission inventories due to other requirements. 2       But to make the language in 3 252:100-5-2.1(a)(3) consistent with the current 4 federal emissions inventory reporting 5 thresholds, the Department proposes to add the 6 following language to the last sentence of 7 Paragraph 5-2.1-(a)(3), unless annual emissions 8 from the facility exceed any of the emission 9 thresholds listed in Table 1 in Appendix A to 10 Subpart A of 40 CFR Part 51. In that event, the 11 emission inventory shall be submitted according 12 to the schedule contained in that table, which 13 is incorporated by reference in Appendix Q to 14 OAC 252:100.</p> <p>15       The revision proposed today differs 16 from the one we proposed at the June meeting by 17 the addition at the end of that sentence of, 18 which is incorporated by reference in appendix Q 19 to OAC 252:100. This is not a substantive 20 change. We routinely incorporate federal 21 regulation in Appendix Q.</p> <p>22       The Department is also proposing at 23 this Council meeting to update Appendix Q to 24 include this table. The notice was published in 25 September 1, 2015. We have received comments</p>	<p style="text-align: right;">36</p> <p>1       MS. FIELDS: Mr. Collins?</p> <p>2       MR. COLLINS: Yes.</p> <p>3       MS. FIELDS: Mr. Gamble?</p> <p>4       MR. GAMBLE: Yes.</p> <p>5       MS. FIELDS: Mr. Haught?</p> <p>6       MR. HAUGHT: Yes.</p> <p>7       MS. FIELDS: Ms. Lodes?</p> <p>8       MS. LODES: Yes.</p> <p>9       MS. FIELDS: Mr. Lynch?</p> <p>10       MR. LYNCH: Yes.</p> <p>11       MS. FIELDS: Ms. Myers?</p> <p>12       MS. MYERS: Yes.</p> <p>13       MS. FIELDS: Motion passed.</p> <p>14       MS. BOTCHLET-SMITH: The next item 15 on the agenda is 5 C. This is OAC 252:100-9, 16 Excess Emission Reporting. Mr. Brooks Kirlin 17 will give the staff presentation.</p> <p>18       MR. KIRLIN: Good morning, Madam 19 Chair, members of the Council, ladies and 20 gentlemen. I'm Brooks Kirlin, an engineer in 21 the Air Quality Division Rules and Planning 22 Section.</p> <p>23       Today the Department is proposing to 24 amend Subchapter 9, excess emissions reporting 25 requirements, in particularly the portions that</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">37</p> <p>1 refer to an affirmative defense provided for                  2 instances of excess emissions that result from                  3 startup/shutdown or malfunction, or SSM.                  4       As you may know, the US                  5 Environmental Protection Agency finalized a                  6 national SSM SIP call on June 12th, 2015, which                  7 includes Oklahoma. The action also disapproved                  8 the 1994 version of Subchapter 9 that is in                  9 Oklahoma's existing SIP, which was previously                  10 approved in 1999 by EPA.                  11       The SIP call was part of EPA's final                  12 action on a petition for rulemaking filed by the                  13 Sierra Club, and was redirected, in a sense, by                  14 an April of 2014 decision by the DC Circuit                  15 Court of Appeals.                  16       The SIP call requires each of the 36                  17 affected states to amend rule provisions that                  18 apply to excess emissions during these periods                  19 of startup, shutdown and malfunction, and submit                  20 a corrective SIP revision by November 22 of                  21 2016.                  22       Considering the steps involved for                  23 Oklahoma, there's not a lot of leeway in the                  24 schedule if we are to meet that particular                  25 deadline.</p>	<p style="text-align: right;">39</p> <p>1 version.                  2       Substantive changes were made to                  3 Subchapter 9 effective June of 2001, and were                  4 submitted to EPA as part of the big SIP                  5 submittal in February of 2002.                  6       EPA did not take action on                  7 Subchapter 9 in their December of 2008 approval                  8 of the big SIP package. DEQ began a formal                  9 process in December of 2006 to bring the excess                  10 emission reporting requirements up to date with                  11 DEQ's SSM policy that was in effect at that                  12 time.                  13       The process brought discussions and                  14 proposals before numerous council meetings and                  15 informal work group meetings. These changes                  16 were approved and became effective July 1st of                  17 2009.                  18       DEQ submitted Subchapter 9 for EPA                  19 review as a SIP revision, in its present form,                  20 in July of 2010, and withdrew, at the same time,                  21 the 2001 version from that February 2002 SIP                  22 submittal.                  23       EPA Region IV proposed three actions                  24 on the submittal on September 6th of 2013 to                  25 approve Sections 9-1.1., which is applicability,</p>
<p style="text-align: right;">38</p> <p>1       The fortunate side is that we                  2 believe the changes to the language of                  3 Subchapter 9 that we have proposed should                  4 satisfy the SIP call, while generally allowing                  5 Air Quality to continue its current applied                  6 policy in dealing with SSM.                  7       EPA's SIP call, however, will also                  8 require Air Quality and industry to continue our                  9 path of dealing more directly and practically                  10 with startup and shutdown emissions through                  11 permitting.                  12       Just for a bit of context, Oklahoma                  13 has had excess emissions reporting requirements                  14 since 1972. The most current rule in the SIP                  15 was the version -- was the version effective May                  16 26, 1994, that was recodified from the Health                  17 Department to DEQ.                  18       EPA approved the rule in -- into the                  19 SIP in November of 1999, and this is the                  20 version, actually, that EPA disapproved with the                  21 SIP call action this past June.                  22       The last prior version of Subchapter                  23 9 listed in the -- in the approved SIP is the                  24 1989 Health Department revision, which is not                  25 likely substantively different from the 1994 DEQ</p>	<p style="text-align: right;">40</p> <p>1 9-2 definitions and 9-7(a) through 7(e), which                  2 are the reporting requirements.                  3       Also, they -- the second action was                  4 limited approval and limited disapproval of                  5 sections 9-1, which was purpose, and 9-8, which                  6 covered the affirmative defenses, and third, a                  7 SIP call to correct disapproved portions.                  8       In that proposal, that proposed                  9 action, EPA's specific objections were under the                  10 purpose section that it was not limited to                  11 excess emission during unplanned events, and                  12 9-8(a), the affirmative defenses, the general                  13 section, would also create affirmative defense                  14 for planned events, and 9-8(c), which is                  15 affirmative defenses for excess emissions during                  16 startup and shutdown, would establish criteria                  17 or affirmative defense or planned activity --                  18 planned events.                  19       Region IV's intent was that the                  20 proposed action, if finalized, would make                  21 Oklahoma's inclusion in the federal -- or the                  22 February 2013 proposed national SIP call moot.                  23 However, EPA's reading of the subsequent DC                  24 Circuit decision broadened the objections, and                  25 apparently changed their view.</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">41</p> <p>1 To avoid a separate, accelerated  2 timeline for Oklahoma, Region VI requested and  3 DEQ agreed, to withdrawal of Oklahoma's July  4 2010 subchapter 9 SIP submittal.  5 That brings us to the EPA's June  6 2015 final action, which covered several issue  7 areas, along with the disapproval of various  8 State SIPs and issuing the corresponding SIP  9 call.  10 The EPA clarified, restated and  11 revised its SIP guidance concerning clean air  12 act requirements for treatment of excess  13 emissions that occur during periods of SSM. The  14 preamble identified several specific SSM  15 national issues or concerns.  16 Some SIPs specifically exempt units  17 from emissions limitation during periods of  18 startup, shutdown and malfunction, or state that  19 SSM excess emissions aren't violations.  20 EPA believes that the recent DC  21 Circuit decision held that affirmative defense  22 provisions cannot be applicable to violations of  23 Clean Air Act requirements, even if the  24 violation resulted from malfunctions.  25 Concerns over affirmative defense in</p>	<p style="text-align: right;">43</p> <p>1 to clarify their understanding of the basic  2 change necessary.  3 If you'll allow me I'll go through  4 the changes section by section. In the purpose  5 section, which is Section 9.1 – 9-1 we proposed  6 to shift the problematic affirmative defense  7 term to mitigating factors, or mitigation.  8 We've also tried to express more  9 explicitly that these mitigating factors would  10 continue to be taken into account if the  11 Department is considering administrative  12 penalties for an instance of excess emission,  13 but not preclude other appropriate actions.  14 The purpose section also serves as a  15 good reminder that the Subchapter 9 – that  16 Subchapter 9 sets out reporting requirements  17 that apply to an excess emissions event, that is  18 as opposed to setting permit requirements or  19 limits.  20 The changes to the applicability and  21 definition section, Sections 1.1 and – 9-1.1  22 and 9-2 respectively. They go together. EPA  23 expressed concern that our definition of excess  24 emissions excludes fugitive VOC emissions that  25 are covered by a leak detection and repair</p>
<p style="text-align: right;">42</p> <p>1 SIPs include automatic exemptions, removing  2 agency discretion, and possibly – possible  3 preclusion of actions by EPA and citizens under  4 Clean Air Act Sections 113 and 304 respectively.  5 Regarding the startup and shutdown  6 emissions, EPA's interpretation is that Section  7 -- is that under the Clean Air Act emission  8 limitations must be continuous, and all excess  9 emissions are violations.  10 However, EPA's updated SSM guidance  11 would permit alternative emission limits during  12 startup and shutdown, so long as they are -- and  13 this is actually a quote from EPA – properly  14 developed, narrowly tailored, federally  15 enforceable, and consistent with federal Clean  16 Air Act requirements.  17 EPA has expressed that the  18 alternative emission limits may not exceed an  19 applicable limit in the SIP, and that an  20 alternative limit may be in the form of a work  21 practice standard, if that's appropriate.  22 With these issues in mind, staff has  23 made the changes needed to satisfy the  24 requirements of the SIP call. We've had  25 preliminary discussions with EPA Region VI staff</p>	<p style="text-align: right;">44</p> <p>1 program, or LDAR.  2 We have moved the sentence to the  3 applicability section to clarify that any of  4 these emissions should be reported as required  5 by the LDAR that – program that applies.  6 So that's kind of so much for the  7 preliminaries, and on to Section 9-8, which is a  8 big focus. First, of course, we're changing the  9 section title from Affirmative defense to  10 mitigation.  11 We proposed to remove the last  12 sentence of the general subsection, which mainly  13 echoes part of the purpose section. The  14 existing language of the first sentence in  15 Subsection 9-8(a) satisfies one of EPA's  16 national concerns, in that it clearly states  17 that all periods of excess emissions are  18 violations, whether they merit any enforcement  19 action or not.  20 Subsection (b) gives the mitigating  21 factors for malfunctions that would continue in  22 effect.  23 Again, we've tried to clarify that  24 this section deals with factors that DEQ will  25 consider in applying its enforcement policy in</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">45</p> <p>1 administrative proceedings that could result in  2 a penalty. It doesn't deal with civil or other  3 court actions or action by EPA or citizens.  4 Subsection (c) deals with startup  5 and shutdown emissions. As with malfunctions,  6 we've proposed to shift terminology to  7 mitigating factors, and clarify that they would  8 continue in use for DEQ administrative actions  9 as appropriate. The proposal also more directly  10 addresses the situation where there are expected  11 increased emissions during startup and shutdown.  12 The department has encouraged  13 facilities to estimate startup and shutdown  14 emissions, and make sure they are taken into  15 account in the facility's permitted limits.  16 This would remove much of the startup and  17 shutdown emissions from the realm of excess  18 emissions reporting.  19 One of the chief operations --  20 objections in the SSM litigation was certain  21 states' approach that exempted facilities from  22 emission limitations during startup and  23 shutdown.  24 Under the Federal Clean Air Act, as  25 I stated before, emissions limitations must be</p>	<p style="text-align: right;">47</p> <p>1 adding a new paragraph, 9-8(e), to sunset the  2 rules portion -- the portion of the startup and  3 shutdown subsection, and move it into the  4 division's enforcement policy.  5 The date included in the proposal is  6 -- is two years after the deadline for submittal  7 of a corrective SIP, and that's the date by  8 which EPA would legally be required to either  9 approve the SIP revisions or issue a federal  10 implementation plan.  11 Notice of the proposed rule changes  12 was published in the Oklahoma Register on  13 September 1st, 2015. We received written  14 comments from three parties during the comment  15 period, which have been included in your folder.  16 Mr. Guy Donaldson, Chief of Region  17 VI's air planning section, provided both general  18 and specific comments in support of the proposed  19 changes.  20 Comment No. 6 was a request on that  21 -- in that letter was a request that DEQ include  22 confirmation in the record that Subsections  23 9-8(b) and (c) do not affect the State's ability  24 to seek penalties in court for excess emissions  25 violations and, second, that if a facility</p>
<p style="text-align: right;">46</p> <p>1 continuous, although they may be -- have  2 different levels for different operating  3 scenarios.  4 If justified, a work practice  5 standard or a higher numerical limit could apply  6 during startup and shutdown within the limits of  7 any applicable SIP requirements.  8 To further this objective, staff has  9 proposed adding informational language noting  10 that emissions in compliance with such  11 limitations would not be considered excess  12 emissions.  13 We've also recommended a new  14 paragraph, 9-8(c)(9), to add as a mitigating  15 factor a good-faith effort to deal effectively  16 with expected startup and shutdown emissions.  17 Subsection (d) and (e) would be modified to  18 replace affirmative defense with mitigation or  19 mitigating factors, and emphasize that the  20 provisions apply to DEQ administrative actions.  21 Because of a certain level of  22 discomfort EPA has expressed over keeping the,  23 you know, startup and shutdown mitigating  24 factors in our rules, rather than simply in an  25 agency enforcement policy, we've recommended</p>	<p style="text-align: right;">48</p> <p>1 establishes that it meets all the mitigating  2 factors in Section 9-8, DEQ could still decide  3 that it was appropriate to assess an  4 administrative penalty, and we can -- we would  5 confirm both assertions.  6 We -- we also received comments from  7 Usha Tumer, director of corporate environmental  8 of OG&amp;E, and Mr. Don Shandy, attorney for Crowe  9 &amp; Dunlevy. Both commenters recommended changes  10 to the proposal.  11 Our -- to briefly summarize, our  12 understanding of the concerns, they would prefer  13 that the affirmative defense and other  14 provisions remain as they currently exist until  15 EPA approves the changes as SIP provisions,  16 rather than including a date for the startup and  17 shutdown provisions to shift from rules to DEQ's  18 enforcement policy, and both requested an off  19 ramp, in a sense, in the event that a court were  20 to stay or vacate the rule or the SIP call.  21 Secondly, they prefer a simpler and  22 less burdensome method for including alternative  23 emission limits for startup and shutdown in  24 permits, and to omit the term federally  25 enforceable, and third, mitigating factors, they</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">49</p> <p>1 felt should not be limited to administrative  2 penalty assessments.  3 I'll just -- briefly, just kind of a  4 statement, and, obviously, they'll have the  5 opportunity to state it in their words better.  6 I believe our general response would  7 be that in -- in our discussions is factoring in  8 the in depth discussions and comments -- the  9 comment responses in the SIP call federal --  10 federal register notice, along with Region VI's  11 specific comments and along with Air Quality  12 permitting rules, staff believes it -- it likely  13 would not be possible to make the  14 recommendations -- the recommended changes and  15 still stay within the purpose and stated scope  16 of the proposed action.  17 So one other item, Mr. Shandy also  18 suggested a specific change to a proposed new  19 subsection 9-8-(c)(9) regarding alternative  20 limits in permits.  21 He recommended that both of the  22 Subchapter 8 rule references be included in that  23 paragraph as they were in the -- the proposed  24 language for 9-8(c), and I believe staff concurs  25 with that and would suggest the same for the --</p>	<p style="text-align: right;">51</p> <p>1 MS. LODES: February 19th --  2 MR. COLLINS: -- in order to have  3 time to meet that SIP call requirement date.  4 Is that what we're hearing?  5 MR. KIRLIN: Yes, our understanding.  6 MS. BOTCHLET-SMITH: Questions from  7 the Council.  8 MS. LODES: I do have some. One of  9 them is -- and I guess I'll start with what I  10 consider the easy one. At the end of it all,  11 where we have the date about the expiration of  12 startup/shutdown mitigating provisions expire on  13 November 22nd, 2018.  14 I understand our theory there is  15 that's the dates that the EPA is required to  16 approve our SIP, but as we noted earlier, I  17 think at the beginning, they approved our SIP in  18 '99, and that's what they came back and FIP'd us  19 on, so the version they've got, quote, approved  20 is the '94 version of our SIP, or '89 version of  21 our SIP?  22 MS. MYERS: A long time ago.  23 MS. LODES: A long time ago.  24 So I don't have a lot of faith, even  25 if they're, quote, legally obligated, because</p>
<p style="text-align: right;">50</p> <p>1 the Subchapter 7 rule references, make those  2 match.  3 Is there -- staff asks that the  4 Council recommend the proposed rules to the  5 environmental quality board for approval as  6 permanent rule changes.  7 Entertain questions. Thanks.  8 MR. COLLINS: Brooks, can you just  9 -- can you run those dates again, that -- that  10 you mentioned earlier in the presentations, the  11 deadlines and -- can you remind us of those,  12 please?  13 MR. KIRLIN: The SIP call gave the  14 agency the -- basically stated November 22nd,  15 2016, as the date they stated for corrective SIP  16 to be submitted, and then our understanding --  17 our reading of it is they -- they would have a  18 maximum of two years to find -- either approve  19 our SIP or find that it was substantially  20 inadequate or, you know, failure to submit and  21 then to actually issue a federal implementation  22 plan.  23 MR. COLLINS: And so in order to  24 meet that date this has to go to the board --  25 the next DEQ board --</p>	<p style="text-align: right;">52</p> <p>1 they don't seem to have the same opinion of  2 legally obligated as the rest of us.  3 Can we make that date, shall expire  4 within two years or three years of approval --  5 EPA approval of the SIP, and that gives us time  6 to see what they're actually going to do?  7 I say this, because we had a lot of  8 issues in Texas with the -- the problem that --  9 with the whole process they went through to get  10 their excess emission rules revised, and how we  11 got startup and shutdown in the Texas  12 permitting, and there was a lot of  13 ramifications, because we basically ended up  14 with a date, as in they had problems with the  15 EPA, so you basically got thrown off a cliff,  16 because there was a gap in there.  17 I would like to avoid a gap. If  18 they don't approve our SIP, then what do we do  19 in two years? We have got a hard, fast date  20 here and it doesn't match up.  21 So is there an issue with putting  22 shall expire within two years of EPA's approval  23 of the SIP, or three years of approval of the  24 SIP?  25 That gives permitting time to</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">53</p> <p>1 implement the permitting process. It stages it  2 in. It gives everybody time to act.  3 MR. KIRLIN: I'm not -- we're not  4 sure that -- we're concerned with -- like I  5 said, we put this in -- I don't -- I don't know  6 that there would be a --  7 MS. BRADLEY: Cheryl Bradley, Air  8 Quality Division. It's our understanding EPA  9 may not be able to approve it, if it's in effect  10 at the time they do their action, or -- or on or  11 about the time they -- they are to act.  12 The idea of having any mitigating  13 factors for startup and shutdown is the  14 question, and their recommendation to us was  15 take it all out, but that did not seem to be  16 fair to facilities.  17 We're -- we're caught in the middle  18 here. EPA headquarters may not approve an  19 approval of our action if the startup/shutdown  20 mitigating factors extend after they take the  21 official action on our approval.  22 That's my understanding.  23 MR. TERRILL: Laura, let me give you  24 a little bit of context here. As you know, we  25 spent a lot of time, a number of years ago,</p>	<p style="text-align: right;">55</p> <p>1 the event that we make these changes.  2 Part of what we have to do when we  3 evaluate next steps, and pros and cons about  4 whether or not we want to disagree with EPA, is  5 that we have to think about whether or not this  6 is worth us pushing back, and what are the  7 ramifications if we push back.  8 Is it easier for the -- for us and  9 for what we believe to be in the best interest  10 of the regulating community if we make changes  11 that EPA wants, if it really doesn't make that  12 much difference, or make any difference in how  13 we're actually implementing the rule or  14 requirement, or is it worth us, you know, taking  15 a hard line on it and sending it back?  16 We elected to try to -- to fix EPA's  17 concerns, because, at the end of the day, we  18 believe that what we've done here really doesn't  19 change how -- well, it doesn't change at all on  20 how we've been implementing startup/shutdown for  21 the last, say, six or seven years.  22 So we're very much comfortable just  23 saying we'll take what we've submitted down  24 there and let them FIP us if they don't believe  25 that what we've submitted is correct.</p>
<p style="text-align: right;">54</p> <p>1 through a committee process to revise our  2 startup/shutdown rules.  3 We even went so far as to get an  4 approval from the head of air enforcement at  5 headquarters, that, yes, we had done what they  6 had asked us to do, and they felt like that what  7 we had done was an exemplary action that other  8 states across the country should emulate, as far  9 as addressing this issuing, and that's what we  10 submitted to -- to Region VI for approval.  11 They were ready to approve our SIP,  12 as it was submitted, when the litigation came  13 and they lost some court decisions, and it got  14 hung up in that, and the -- the SIP call that  15 they actually based this on is not even on what  16 we submitted years -- a few years ago. It was  17 based on our original SSM proposal that we  18 revised.  19 So we're comfortable with what we  20 submitted to them originally. We believe that  21 that -- even though it contains the alternate  22 affirmative defense language, that's just a  23 wording. That's just -- that terminology.  24 It really doesn't affect what we  25 sent down there, or what we would actually do in</p>	<p style="text-align: right;">56</p> <p>1 But having said that, that draws  2 unwanted attention, I think, and it creates  3 unnecessary problems. So what we tried to do is  4 address EPA's concerns and not change how we  5 actually implement our rule, and that's what  6 we've tried to do here.  7 So if we're going to make  8 adjustments to what we're recommending, we're  9 probably going to need to take it back and --  10 and have some discussions with EPA, because I  11 don't want to send something down there -- if  12 we're going to have a disagreement with EPA, I  13 want to have it over what we submitted  14 originally.  15 I don't want to have it over  16 something that we've tried to change here to fix  17 the concerns they had, and I'm perfectly fine  18 with doing that. I'm -- I'm happy with what we  19 sent down there to begin with.  20 To me, affirmative defense is just  21 words. It really doesn't change how we're doing  22 -- implementing this rule, but if we want to  23 consider some of these changes that have been  24 proposed, we're really going to have to think  25 through that and have some discussions with EPA</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">57</p> <p>1 so we don't get this disagreement with what  2 we're submitting as part of a revision.  3 MS. LODES: Then could we put they  4 shall expire on -- upon EPA approval of the SIP,  5 and they're 26 years out from approving the SIP  6 then we're 26 years out on it.  7 I guess that's -- I mean, part of me  8 says they haven't acted in 26 years, why are we  9 putting -- why are we putting the burden on us?  10 Why don't we put the burden on them to act on  11 it?  12 MR. TERRILL: Well, if that's the  13 case, then why wouldn't we just say we're happy  14 with what we submitted down there and take our  15 chances on the FIP?  16 That's -- that's my point. We tried  17 to change this rule so that it would satisfy  18 their requirement so we would not be FIP'd, and  19 that's what we've done here, and that includes  20 the dates we've got.  21 The date -- the date is just  22 artificial, anyway. What we tried to do is  23 provide a target for folks who wanted to permit  24 these emissions to get it done, because we've  25 got sources that said they were going to do that</p>	<p style="text-align: right;">59</p> <p>1 think going above that, or adding something onto  2 a time period after that -- after they've  3 approved the SIP would be a problem -- would be  4 problematic.  5 MR. TERRILL: Okay.  6 MS. LODES: Okay. We've seen EPA  7 slide on too many dates, so I say we put it on  8 them.  9 MS. BRADLEY: And I think that Eddie  10 was saying, as far as the date, was a better way  11 of communicating an expected timeline, let's say  12 the shortest timeline to the public.  13 In the end we may end up with that  14 date, or a date subsequent to that, but in  15 providing an opportunity for the public to  16 review it and see our estimation, this is the  17 earliest you need to get it done.  18 That better serves the potentially  19 impacted facilities, rather than a floating  20 date, which may not have raised their awareness  21 to the same degree.  22 MR. TERRILL: Thank you, Cheryl.  23 MS. LODES: I guess one of the other  24 questions on it was -- it's about how we do the  25 -- about the alternative emission limits and</p>
<p style="text-align: right;">58</p> <p>1 eight years ago, and they still haven't done it,  2 There's no requirement for them to  3 do it now. I mean, just because the -- the --  4 the -- this expires on November 22nd, all that  5 really does is come out of our rule and go into  6 our policy, which EPA would prefer it be there,  7 anyway.  8 So it really doesn't do anything  9 other than provide a target for folks who want  10 to permit these emissions and make them part of  11 their permit to do that, and if they don't,  12 that's fine, they don't have to.  13 So I guess -- Cheryl, I guess we're  14 concerned if we do that EPA is not going to be  15 able to approve the -- the rule if we -- if we  16 add what Laura has suggested.  17 MS. LODES: Just do, I mean, as I  18 say, upon approval of the SIP, what's wrong --  19 how is that different than putting this date in  20 here?  21 MS. BRADLEY: I -- I think that it  22 might be satisfactory to say upon approval of  23 the SIP.  24 MR. TERRILL: Okay.  25 MS. BRADLEY: Or the revision, but I</p>	<p style="text-align: right;">60</p> <p>1 obtaining those.  2 I know Don's comments were about any  3 permit process seeking to include emissions  4 shall be processed as a Tier I and doesn't  5 constitute a modification or a PSD, or  6 permitting source performance standard.  7 I do want to understand how we're  8 going to get these into our permit where we're  9 having to go back through and there's a lot --  10 again, a lot of discussion when we went through  11 this process in Texas, and how do we do this.  12 These emissions have always existed,  13 and we don't want to sit there and say, oh,  14 well, now you're adding them into a permit, so  15 it's a 50 ton increase in your permit limit so  16 that's PSD, when, in reality, these current  17 emissions have always existed, they've always  18 been reported in your emissions inventory.  19 They've always been there.  20 So I do want to understand how we're  21 going to get these into the -- what is our  22 protection there for getting them into the  23 permit without somebody saying, well, you've now  24 got to go through full blown PSD review and PSD  25 modeling and the rest of it, because we're not</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">61</p> <p>1 talking about new emissions. They've always  2 been there, these are existing facilities.  3 MR. KIRLIN: In our discussions I'm  4 not sure exactly what the -- we resolved some of  5 the issues on the permitting position, but, I  6 mean, that's -- because this rule doesn't really  7 -- I mean, this won't control the permitting  8 process.  9 It's -- I think it would be --  10 depend on the situation, what would be the  11 requirements, but the -- if the -- I guess, if  12 the emission limit -- or if the emissions have  13 been accounted for -- I mean, they would need to  14 be accounted appropriately. Permitting.  15 MR. FIELDER: Phillip Fielder,  16 permitting section manager. The way we've  17 addressed those in permitting is that under PSD  18 policy those are considered a relaxation in a  19 limit for an existing piece of equipment, and  20 so, yeah, it could trigger modeling, it could  21 trigger BACT.  22 We've done that previously on  23 sources that have come into -- addressed  24 startup/shutdown emissions, and so for those  25 types of sources, yeah, it -- it -- it could</p>	<p style="text-align: right;">63</p> <p>1 a -- it's emission unit level type of addition,  2 and so you typically already have an EUG  3 grouping by source, and, yeah, this could result  4 in some units within an EUG that -- that might  5 have similar applicable limits that might result  6 in us splitting those out, but that's just  7 administrative stuff that can be handled.  8 The issue is does that particular  9 emission unit, within that group, have an  10 excess, or a startup/shutdown issue, and if it  11 does then we'll add that.  12 But typically what would happen is  13 it would just be an -- an additional emission  14 limit type underneath that emission unit, as a  15 separate category of an emission limit type.  16 MR. COLLINS: So have there been any  17 kind of discussions, when you've done that in  18 the past, about concern or risk of liability?  19 You know, we've said in the past  20 that -- that -- that agencies didn't have the  21 authority to restrict emergency emission or  22 malfunction emissions, and by setting that limit  23 and saying, Okay. You are allowed to emit this  24 level during an SSM event, that brings on some  25 kind of additional liability, or have you guys</p>
<p style="text-align: right;">62</p> <p>1 cause that for most of -- for sources that are  2 not PSD.  3 There are no thresholds like that.  4 It's simply going in there and addressing the  5 startup and shutdown that's been requested, and  6 getting them in an enforceable type of  7 condition.  8 So that's how we've done that. Most  9 of the time it's usually been a PSD type of  10 source or issue. So it is a relaxation under  11 the rule.  12 So some sources have been able to  13 address short-term startup/shutdown without  14 exceeding their ton per year number. So that  15 has been an avenue we've taken where it's just  16 been a modeling type of exercise, but it's kind  17 of case by case for PSD sources.  18 MR. COLLINS: So, Phillip, when you  19 guys have done that in the past have you added  20 that SSM category to each EUG, or are you doing  21 that separate as a separate EUG and saying this  22 EUG is for SSM emissions, and then -- then  23 grouping those, summing those, or how are you  24 doing that in the permit?  25 MR. FIELDER: No, in the permit it's</p>	<p style="text-align: right;">64</p> <p>1 talked about that at all?  2 MR. FIELDER: That's above me, but I  3 think that's partly the whole purpose of -- or  4 EPA's position on setting SSMs, and -- and the  5 way the -- the mitigating factors or the  6 affirmative defense traditionally was applied.  7 So there wasn't an extra level on --  8 on the -- if you're meaning if you actually  9 exceed those levels, but I believe the  10 compliance section still has a -- a -- a  11 procedure for dealing with what was the root  12 cause of you exceeding whatever an SSM limit  13 was.  14 So I can't explain that or tell you  15 the details, but I think there's similar steps,  16 whether it's in your permit or not, related to  17 how that's dealt with.  18 MR. COLLINS: Well, I remember it  19 was very restrictive on the definition of -- you  20 know, in order to meet the malfunction criteria,  21 that was pretty restrictive.  22 I mean, it had to be, you know,  23 certain events didn't qualify if you -- if you  24 -- if you could have foreseen the malfunction it  25 didn't qualify, and those --</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

65

1 MR. FIELDER: You could get back to  
 2 the root cause, which the root cause of –  
 3 right.  
 4 MS. BRADLEY: And in this case we're  
 5 malfunction – we're not asking for the  
 6 permitting of malfunctions, only startup and  
 7 shutdown.  
 8 MS. LODES: That's one question I  
 9 have, why –  
 10 MR. FIELDER: But we're not  
 11 excluding it. I -- I don't think this rule  
 12 would exclude it, with -- just like currently,  
 13 if you have malfunctions that is a known event  
 14 recurring, and you believe you have methods of  
 15 complying with that, that we could set an  
 16 enforceable condition in the permit.  
 17 It's an acceptable process, but just  
 18 like the startup/shutdown, currently we're not  
 19 mandating it in most cases.  
 20 MR. COLLINS: Say that again,  
 21 Cheryl. What did you say?  
 22 MS. BRADLEY: Startup and shutdown  
 23 are treated as part of normal operation, and to  
 24 -- as such could be permitted with an  
 25 appropriate limit.

66

1 Malfunction, due to its nature,  
 2 unforeseeable – malfunction does not lend  
 3 itself to permitting, so, therefore, our focus  
 4 is to permit startup and shutdown.  
 5 Now, Phillip said if you have a  
 6 pattern of operation, and you have certain  
 7 events that may happen, perhaps the permitting  
 8 process could take that into consideration, but  
 9 the -- from the permitting aspect we're -- we're  
 10 looking at permitting of startup and shutdown.  
 11 MR. COLLINS: Okay. That makes  
 12 sense.  
 13 MR. FIELDER: Yeah, startup and  
 14 shutdown is difficult in itself, and then you  
 15 start talking about malfunction -- the thought  
 16 process.  
 17 It's even more difficult to  
 18 identify. It's more difficult to -- to put  
 19 parameters on -- on permitting and things, but  
 20 -- I won't say it couldn't be done, and it -- it  
 21 may be done in other states to a certain level,  
 22 but --  
 23 MS. MYERS: Phillip, I've got a  
 24 question.  
 25 MR. FIELDER: Yeah.

67

1 MS. MYERS: The elephant in the  
 2 room, opacity, because that's -- that's  
 3 emissions. You can't always foresee opacity  
 4 events, you can't really predict, during a  
 5 startup or a shutdown, what goes from one you  
 6 can see, and how are you going to measure and  
 7 quantify it?  
 8 MR. FIELDER: Yeah, and opacity  
 9 hasn't -- we really haven't addressed opacity  
 10 related to the startup/shutdown, and -- and part  
 11 of the -- part of the -- this process is  
 12 quantification, although -- I think Brooks had  
 13 mentioned that EPA even says that if it is  
 14 excess emissions it doesn't have to be  
 15 quantifiable, it could be a work practice or  
 16 something like that related to -- to exceeding  
 17 our rule that --  
 18 MS. MYERS: Well, then --  
 19 MR. FIELDER: You could -- you could  
 20 use --  
 21 MS. MYERS: When you get back into  
 22 the technological limitations --  
 23 MR. FIELDER: Yeah.  
 24 MS. MYERS: -- we've had those for  
 25 years, and are they reasonable cause of excess

68

1 emissions. You are limited by the technology  
 2 and what you can do during a startup, whether it  
 3 be a generating unit or a cement kiln, or some  
 4 other industrial process.  
 5 There are limitations that come with  
 6 the technology that you can't just go out and  
 7 flip a switch and fix it.  
 8 MS. BRADLEY: Correct.  
 9 MR. FIELDER: And that's -- that's  
 10 supposed to be the process itself, identifying  
 11 those limitations and putting those alternative  
 12 limits in there, because you have identified  
 13 those limitations, and we've come to an  
 14 agreement on what a reasonable opacity excess  
 15 is.  
 16 MS. BRADLEY: Correct. And we have  
 17 a rule provision in the opacity rule that  
 18 stipulates the process, and I think it's been a  
 19 number of years since we actually approved a  
 20 technology based opacity limit for certain  
 21 events.  
 22 But there is a provision, and as  
 23 Phillip mentioned, it's presenting the evidence  
 24 to support a deviation for a defined time period  
 25 or operating scenario that would be appropriate,

69

1 and -- and we could do that for opacity,  
 2 MR. COLLINS: Brooks, I'm curious,  
 3 did Don Shandy -- did he give us any narrative,  
 4 or am I just missing it?  
 5 I mean, I see where he marked up the  
 6 -- the proposed rule but did he --  
 7 MS. FINLEY: No, he didn't, that's  
 8 all -- this is Laura Finley from legal. He  
 9 didn't. That was all he provided was the  
 10 changes to the -- so what he did was remove our  
 11 strike outs and underlines and did abstract  
 12 changes on -- like rewrote what we had proposed,  
 13 and then did changes on -- like rewrote what we  
 14 had proposed and then did changes on top of  
 15 that.  
 16 MR. COLLINS: But you -- you've  
 17 talked to him, verbally, you know what --  
 18 MS. FINLEY: Yes.  
 19 MR. COLLINS: -- because somebody  
 20 read those -- what his intentions were by these  
 21 changes?  
 22 I was a little bit confused when he  
 23 went through Don's comments, he kind of went  
 24 fast, what he was really trying to -- you know,  
 25 what he was really proposing to modify and why.

70

1 MS. LODES: I -- I think some of it  
 2 is -- and that's where I was also going to ask  
 3 Phillip about this.  
 4 I know part of his comment on the  
 5 PSD, from reading through it, is -- you know,  
 6 Phillip, you said it's a relaxation of a PSD  
 7 requirement, but if you have an existing PSD  
 8 major source, that's never been through PSD  
 9 review, how are you relaxing a PSD requirement,  
 10 because they don't have a requirement under PSD?  
 11 MR. COLLINS: Exactly.  
 12 MR. FIELDER: No, that's correct.  
 13 What I was referring to is -- is the worst case  
 14 where you have a -- a piece of equipment that  
 15 went through PSD review, or one that avoided PSD  
 16 at some point -- I mean, went through the  
 17 review, but didn't trigger, that also is a  
 18 relaxation.  
 19 But, yeah, if you have a  
 20 grandfathered piece of equipment that's out,  
 21 that's been operating and never did anything  
 22 that -- that required to do an analysis, either  
 23 PSD analysis from which you determined the  
 24 project or -- or changing the method did not  
 25 trigger, then I agree.

71

1 MS. LODES: So if we were to add,  
 2 say, 60 tons of startup/shutdown emissions into  
 3 our permit, for this existing PSD major source  
 4 -- because they've never gone through PSD, that  
 5 60 ton increase, could that be done as a Tier I,  
 6 or does that -- since they've always been there  
 7 -- I can show them my EI, that we've always had  
 8 them, and now we're actually adding a limit that  
 9 we've never had before.  
 10 Is this a Tier I or a Tier II?  
 11 MR. FIELDER: Yeah, I mean it's --  
 12 you know, Tier I versus Tier II as well as me.  
 13 There's a lot of factors that come into that,  
 14 but based on -- for example, say a grandfathered  
 15 source -- maybe it's not a good example, because  
 16 you're not going to have, typically, limits in  
 17 there, but --  
 18 MS. LODES: Right,  
 19 MR. FIELDER: -- but you could have  
 20 -- you could still be grandfathered after our  
 21 '72 Rule, such that it has limits. I mean, it's  
 22 still considered grandfathered for the PSD rule  
 23 purpose --  
 24 MR. COLLINS: Right.  
 25 MS. LODES: Right.

72

1 MR. FIELDER: -- and you want to put  
 2 those in there.  
 3 Most likely, Tier I, you're not  
 4 taking a limit to avoid anything, it's just a  
 5 new limit for which you're describing a new  
 6 operational scenario that you -- you want to  
 7 have added, but I would say, in general, yes,  
 8 that sounds like a Tier I.  
 9 MS. BOTCHLET-SMITH: I need to  
 10 interrupt for just a moment. I -- I think our  
 11 court reporter is having a little bit of  
 12 difficulty because we're having a spirited  
 13 discussion here, and when one person is talking  
 14 we need to let that person speak before we  
 15 interject, even if we're agreeing with them,  
 16 because it makes it very difficult for him.  
 17 MS. LODES: So we've got -- so we've  
 18 got -- so one of my questions was about that,  
 19 and then an elephant in the room that I really  
 20 think we've left out is we say startup/shutdown.  
 21 What about maintenance?  
 22 We haven't addressed maintenance in  
 23 this rule at all. Do we -- you not care about  
 24 maintenance in our excess emission rules?  
 25 MR. FIELDER: I -- I treat

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">73</p> <p>1 maintenance very similar that I do                  2 startup/shutdown. I mean, it is a -- not all                  3 maintenance events result in potential                  4 additional category of emissions.                  5 A lot of your maintenance -- when                  6 you do maintenance event, really the emissions                  7 that occur are a result of you shutting down                  8 that unit. It's not the maintenance event                  9 itself. It may be driven by that, so, again, I                  10 think it's a category that's left up to the                  11 facility.                  12 I mean, the intent is that you                  13 permit an emissions that is -- that you can                  14 define. It's an operational scenario that                  15 you're aware of that -- that can result in                  16 emissions that -- that isn't addressed in -- or                  17 result in excess emissions, so that's the                  18 purpose.                  19 So, to me, anyway, a maintenance                  20 event could or could not be included in this as                  21 a separate category, or in part of your                  22 startup/shutdown expected emissions.                  23 MR. COLLINS: Laura, you were                  24 talking about the maintenance of an air                  25 pollution control division, correct, so not</p>	<p style="text-align: right;">75</p> <p>1 MR. FIELDER: I'm not sure that                  2 we've delved into that part of it. It seems a                  3 pretty minute type level of review.                  4 Again, I just go back to if -- if --                  5 this is probably part of our enforcement. If                  6 the facility thinks they need to report it, and                  7 it's part of the -- the compliance group's                  8 review, and they -- they look at this level and                  9 say that is -- it's explained, then I don't know                  10 if I have a good answer for that side of it, but                  11 I know how to permit it if it's identified and                  12 they want to -- for the most part I know how to                  13 permit it if -- if it's a maintenance activity                  14 that they know is going to occur and they can                  15 quantify it and that type of thing, but --                  16 MS. LODES: I guess another question                  17 I have about permitting it is do -- you know, we                  18 -- we traditionally have to look at permitting                  19 something as though it happens all the time, but                  20 startup and shutdown events don't happen all the                  21 time.                  22 So if we come in and a say, well,                  23 I'm really only going to do 40 startups and                  24 shutdowns a year, and is somebody going to say                  25 I'm taking a limit to avoid Tier II review</p>
<p style="text-align: right;">74</p> <p>1 necessarily maintenance of a facility, but                  2 shutting -- taking the air pollution device off                  3 line to perform maintenance.                  4 Is that what --                  5 MS. LODES: Either one. And Texas,                  6 when we went through this, we went after -- I                  7 remember in one of the meetings -- and Usha was                  8 probably sitting there at the same time I was.                  9 They started asking us to quantify                  10 cans of WD-40 and what the VOC emissions were                  11 off those. So -- so when I asked that they -- I                  12 mean they literally went after things on that                  13 level.                  14 I mean, I don't know that we want to                  15 go there, but I also want to make sure that                  16 we're okay. So that's why I sit there and ask                  17 for maintenance, because they made us look at                  18 things like repainting your tank -- outside of                  19 your storage tank, as well as if you're doing                  20 maintenance on a pollution control device, and a                  21 whole spectrum of stuff that we maybe have just                  22 traditionally considered trivial activities and                  23 things like that.                  24 So what -- I guess that's why I want                  25 to understand where we are with this.</p>	<p style="text-align: right;">76</p> <p>1 because I said only 40 in there instead of 100,                  2 or 365 and did one everyday?                  3 I mean, how are we going to handle                  4 -- and I think that's some of what Don's intent                  5 was of putting in there, hey, we're looking at                  6 this as though it -- as reality, not it happens                  7 all the time.                  8 MR. FIELDER: I think -- I think the                  9 -- the -- if we're really worried if Tier II                  10 Tier I -- I know that's -- that's a concern for                  11 some, but -- but I don't think it should drive,                  12 you know, how we make a decisions here.                  13 The -- what it would get down to if                  14 -- if, really, someone was concerned with a Tier                  15 I or Tier II or that it's 40 or 39, yeah, we                  16 could get into discussion about what is the                  17 potential of your startup/shutdown emissions,                  18 get into an industry review and all these --                  19 this type of industry does it this many times                  20 for this many hours, or your potential is this,                  21 look, you're taking a limit below that, so                  22 you're taking a limit. It's Tier II.                  23 We could get into those discussions                  24 if we need to, but it's Tier II versus Tier I, I                  25 don't know if it's that critical, but, yeah, you</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">77</p> <p>1 – that would – that could happen, I'm not  2 denying that, but that could result in a Tier II  3 review as result of that conclusion.  4 MS. BRADLEY: I would like to  5 address the issue of maintenance. The  6 reason maintenance is not addressed in this  7 rule, maintenance was specifically prohibited  8 from being included in an affirmative action –  9 or an affirmative defense under the original  10 policy, and Brooks early on in the presentation  11 said, remember, this is a rule for reporting  12 excess emissions, and if you have an excess  13 emission this is the information you need to  14 submit or to assert if a penalty may be assessed  15 for that excess emission.  16 We're not dealing with permitting of  17 maintenance activities where we have included a  18 -- a sunset, an expiration for the  19 startup/shutdown mitigating factors provision,  20 but it's really no change in the way we do  21 business.  22 We'll still handle it under  23 enforcement discretion, whether we go with the  24 discrete date or we tie it specifically to the  25 date that EPA approves our SIP.</p>	<p style="text-align: right;">79</p> <p>1 startup and shutdown emission, and then you're  2 also adjusting the annual ton per year limit, as  3 well?  4 Somebody is just determining how  5 many of those events – I know Laura kind of  6 alluded to this earlier. They just say, Okay.  7 we have this – we think we'll have this many  8 events, and they use the short-term limit to  9 determine what the ton per year value will be?  10 Is that how you're currently doing  11 that?  12 MR. FIELDER: Correct. If --  13 MR. COLLINS: Okay.  14 MR. FIELDER: If the -- if the  15 short-term amount cannot be accommodated -- we've  16 had some reopenings where the -- it just  17 happened to be the way the facility operated.  18 They were able to accommodate adding  19 some short-term -- slight adjustments to their  20 short-term, and they could accommodate it in  21 their current long-term, and when we didn't have  22 some -- I mean, I don't want to get off on a  23 tangent, so maybe I won't go down that path,  24 because I've had several scenarios where we've  25 dealt with this.</p>
<p style="text-align: right;">78</p> <p>1 But the permitting is complicated.  2 We're not going to be able to give you a blanket  3 answer that's going to fit every situation,  4 because it is a case by case issue, and the  5 permitting rules have been used, and will  6 continue to be used to address the permitting  7 for startup and shutdown, because we've been  8 doing it, it's just now the spotlight's on this  9 because of the -- the SIP call.  10 But, as Eddie said, our -- our new  11 reason for doing this is to satisfy the SIP  12 requirement or the SIP call, and have as little  13 true impact on the way we do business,  14 day-to-day, as possible, and we're finding --  15 we're accommodating in some respects, and we are  16 holding onto what we felt was an unbroken rule  17 in the first place or -- unbroken meaning it --  18 didn't -- it wasn't flawed.  19 MR. COLLINS: I have one more  20 question on permitting. Sorry to drag the  21 permitting thing out, but just -- just to  22 clarify what you've been doing, you've been  23 setting numerical short-term limits, I'm  24 assuming, so you -- you determine what that  25 short-term limit needs to be to cover that</p>	<p style="text-align: right;">80</p> <p>1 So, yes, that's how we -- how we've  2 dealt with that when --  3 MR. COLLINS: Okay.  4 MR. FIELDER: -- when those are  5 proposed.  6 MR. COLLINS: Thank you.  7 MS. BOTCHLET-SMITH: Any other  8 questions from the Council?  9 MR. HAUGHT: I want to just go a  10 little -- a little different direction, just ask  11 the legal staff.  12 Throughout Don's comments, in  13 several places, they struck references where --  14 tried to get where -- where this would exclude,  15 not just administrative penalties -- this is  16 initiated the State -- but civil penalties and  17 any reference to federal.  18 Can we legally do that? Is that --  19 is there any basis for saying that -- that --  20 that we adopt a State rule that would negate  21 whatever -- I guess, whatever actions those  22 other bodies might have?  23 MS. FINLEY: No, we can't, and  24 that's part of the reason for the SIP call. We  25 can't purport to abrogate a civil -- or a</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">81</p> <p>1 court's jurisdiction or a court's ability to                  2 assess a penalty, and it's violation of – of                  3 the Clean Air Act, in Sections 304 and 113.                  4         This – we can only control what we                  5 can do here at the agency. So that is – and                  6 that's why we made those changes in the first                  7 place. That's why we put in only for                  8 administrative penalties and struck out all                  9 references to civil.                  10         That is specifically what this SIP                  11 call, you know, is speaking to. So, no, legally                  12 we can't make those changes.                  13         MS. BOTCHLET-SMITH: Okay. We have                  14 one notice of comment from the public, Ms. Usha                  15 Turner.                  16         MS. TURNER: Good morning. I'm                  17 carrying all of my scribbles with me from                  18 listening to the debate, spirited it was.                  19         Good morning. My name is Usha                  20 Turner. I'm the director of environmental for                  21 OG&amp;E, and thank you for allowing me to be here                  22 today.                  23         You know, I first wanted to say that                  24 this is clearly an issue that we have been up                  25 and down on, and in and out of SIP approval for</p>	<p style="text-align: right;">83</p> <p>1 emissions have to occur – have to change from                  2 where they are today, from an affirmative                  3 defenses to something else, then making sure                  4 that we create that bridge and not creating a                  5 gap, as various people have – have described.                  6         The solution of hinging it to EPA                  7 approval, certainly something we support, and if                  8 it's helpful there is actually a citation that                  9 we use in our comments, which is page 860 of the                  10 final SIP call, where EPA spends a column and a                  11 half talking about where they don't expect us to                  12 make these changes in the permits overnight.                  13         I mean, they understand that                  14 something like this takes time. So I'll refer                  15 you to that, and I've got a copy here if anyone                  16 would like to see it with my scribbles on it.                  17         So that bridge is important to us.                  18 To make sure that we don't create a gap in                  19 authorization of our excess emissions our                  20 facilities – all of our facilities, by way of                  21 both coal fired and gas fired, are subject to                  22 these rules.                  23         So the majority – and why we focus                  24 on (c) is the majority of our excess emissions                  25 are actually created by startups and shutdowns</p>
<p style="text-align: right;">82</p> <p>1 many years, and so I appreciate the effort the                  2 staff has taken to try and respond to EPA's SIP                  3 call in a way that is trying to be mindful of                  4 various interests.                  5         We did submit comments, which should                  6 be in your – your packet, and Brooks did a good                  7 job of summarizing our concerns.                  8         So I do want to say that we                  9 understand the need for the rule changes, and we                  10 certainly respect that need and the timeline                  11 that you're own being that EPA requires you to                  12 send in that SIP revision in November.                  13         We also know that the very SIP call                  14 that went final in June is under 15 separate                  15 lawsuits, including one by the State of                  16 Oklahoma, which is still in process, and I'm not                  17 sure where that comes from.                  18         So understanding the need for the                  19 rule changes and the state of litigation of this                  20 rule, our concerns really focus on some things                  21 that were mentioned already, and I'll narrow it,                  22 really, to the Subpart (c), specifically, but,                  23 generally, what we're seeking in any changes to                  24 this rule is for us to create a bridge,                  25 understanding that the authorizations for excess</p>	<p style="text-align: right;">84</p> <p>1 and driven by what we call by design technology                  2 limitations.                  3         So, in other words, these are                  4 emissions that are inherent in the process of                  5 starting up and shutting down, where the                  6 facilities have to come to certain operating                  7 state, by the way of temperatures, before those                  8 emission controls kick in.                  9         So this affects us, both gas                  10 facilities, as well as our coal facilities, and                  11 I speak for the utilities, not for anyone else                  12 that may be similarly affected, although I'm                  13 sure there are concerns.                  14         So, again, I just – you know, I                  15 want to emphasize that our changes focus around                  16 the need to see that bridge in authorizations.                  17         The off ramp is something that we                  18 also support, given the litigation. If this                  19 rule were not to withstand legal review, then I                  20 think it behooves us to make sure that we're not                  21 making changes that aren't federally driven, if                  22 the rule does not, in fact, stand.                  23         Let me just look at my notes real                  24 quick.                  25         I think the discussion around the</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">85</p> <p>1 PSD triggers is obviously something that we are  2 concerned of, only in that we agree these aren't  3 new emissions.  4 We also, hypothetically, think of if  5 we have a facility that, by modeling, and, you  6 know, creates a concern that is not reflected in  7 the ambient monitoring network around the State  8 today.  9 So I think we all know that Oklahoma  10 is in attainment with every NAAQS in every  11 county. So today the ambient NAAQS monitoring  12 system is not showing exceedances of the max.  13 The facilities that we're all  14 talking about here today have been operating for  15 decades. What we're trying to do in this --  16 I'll call it an academic exercise, and that's  17 not meant to minimize or trivialize the  18 exercise, but it is, hypothetically, coming in  19 and putting in limits that EPA contends should  20 have been there when the permits were issued. In  21 some cases these permits were issued even before  22 the SIP program existed.  23 So there is a concern here of  24 creating a -- a modeling concern, where the  25 actual concern doesn't exist, and because some</p>	<p style="text-align: right;">87</p> <p>1 MS. BOTCHLET-SMITH: Oh, for Usha.  2 I'm sorry. Go ahead.  3 MR. COLLINS: You're not going to  4 get out that easy.  5 Do you have any facilities right now  6 in your fleet, let's say that -- where you've  7 attempted to do any SSM permitting for -- prior  8 to -- to this effort.  9 MS. TURNER: As I stand here, I can  10 think of one facility that does have SSM limits  11 in it, and for the rest of them --  12 MR. COLLINS: And were you able to  13 manage that -- that process when you did that  14 for that facility?  15 MS. TURNER: That I would have to  16 speak to someone who was part of the permitting  17 of our -- of our facility at the time. It's a  18 relatively new facility.  19 So I know that states -- various  20 states started moving to startup and shutdown  21 requirements inclusion in permits here in the  22 last, I don't know, several years.  23 So the facilities that were built  24 after certain a time, it's probably typical that  25 they would have, as part of a new permit, SSM</p>
<p style="text-align: right;">86</p> <p>1 of our emissions are technology based, if you  2 were to trigger BACT it doesn't help the excess  3 emissions.  4 In some cases BACT technology still  5 has the excess emissions issue that brought us  6 to the BACT review in the first place.  7 So these are the -- when we think  8 down the road as to the permitting mechanisms  9 that we will go down for startup and shutdowns,  10 these are some of the things that we think  11 through today, such that when we get to this  12 point, hopefully we can manage through it in a  13 practical manner.  14 So that is really all I wanted to  15 say. Our comments are in the record. I really  16 did want to express appreciation to the staff  17 and everyone who's worked on this draft rule.  18 They have answered all of our calls, and we're  19 grateful.  20 MS. BOTCHLET-SMITH: Thank you. Do  21 we have anyone else from the public that wanted  22 to comment, or have a question on this rule  23 today?  24 MR. COLLINS: Beverly, I have a  25 question for Usha.</p>	<p style="text-align: right;">88</p> <p>1 included.  2 I think going back to the PSD  3 concerns, trying to apply new PSD standards to  4 an existing facility with existing emissions is  5 where we sort of, you know, have a --  6 MR. COLLINS: Okay.  7 MS. TURNER: -- question and issue.  8 MR. COLLINS: Okay. Thank you.  9 MS. TURNER: Thank you.  10 MS. BOTCHLET-SMITH: Okay. Now, is  11 there anyone else from the public that would  12 like to comment?  13 Seeing no hands, if the Council has  14 any other questions this would be the time to  15 ask them.  16 MR. HAUGHT: I've got a quick  17 question. In Don Shandy's comments there was a  18 -- the very last they added a Paragraph (f) --  19 Subparagraph (f), and it references -- I guess  20 it's -- I'm sorry. He adds (g). It was (f) in  21 the other version. He adds the paragraph --  22 Subparagraph (g).  23 It references EPA's SSM SIP calls,  24 and then has a citation there. Do we know -- is  25 that citation correct? Do we have any idea if</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">89</p> <p>1 that's an accurate citation?  2 The reason I'm asking that is  3 because in listening to comments I think I'm  4 considering a motion to adopt some language that  5 would -- to the staff's Paragraph (f) --  6 Subparagraph (f) that would have those  7 provisions for if startup and shutdown expire,  8 either on -- on the later date, either November  9 22nd, 2018, or the approval of the State's SIP  10 plan, so that we didn't get caught short, and  11 for some -- you know, the earth starts spinning  12 the other direction and they approve the SIP  13 earlier than 2018 -- not that that's likely to  14 happen, but so we didn't get caught there, have  15 that be a date certain, that that's the earliest  16 that those would expire, or to address those  17 concerns, that -- that this doesn't ever get  18 approved, that may not -- and we may be  19 introducing a -- a requirement that's not -- not  20 necessary.  21 MS. MYERS: In reading through his  22 additional Paragraph (g), I think that covers  23 it, because, basically, it makes reference to  24 the -- the shall take effect only upon the  25 approval of EPA's State implementation plan</p>	<p style="text-align: right;">91</p> <p>1 come back and propose something ourselves,  2 because I believe that's what we owe to the  3 public. So I am a little reluctant.  4 I agree with what Jim's saying. If  5 -- if EPA were to lose this whole idea of excess  6 emissions, and their ability to regulate those,  7 I think we owe that to our citizens to come back  8 and propose something similar to what we've got  9 now, that would be a State only rule, and we  10 would do that, but I'm not comfortable just  11 saying that we're not -- if EPA loses that we're  12 not going to have anything in place to protect  13 the public.  14 So that's my concern. I just think  15 that it sends the wrong message to anybody else  16 that looks at what we're doing. Of course, it  17 would be, obviously, the Council's and the  18 board's and the legislature's decision if we  19 were to do something like that.  20 But I -- I don't see how we cannot  21 propose to do something like that in the event  22 that EPA were to lose this whole thing. I don't  23 think that's going to happen, but it could.  24 you know, you -- you never know.  25 But if we're going to propose to --</p>
<p style="text-align: right;">90</p> <p>1 that's in existence.  2 So if they were to get in gear and  3 approve it earlier than that that would cover  4 it.  5 MR. HAUGHT: Yeah, I understand. It  6 just -- that -- this Paragraph (g) goes to some  7 other things, and I think if for some reason  8 that rule's invalidated, we as a -- or whatever  9 the Council may be at that time could initiate  10 an action to change that rule, if it would no  11 longer be effective.  12 MR. TERRILL: We might want to take  13 a short break so we make sure we get this  14 language exactly right. I don't think we're  15 comfortable with some of the suggestions that  16 were made in (f), that Don made.  17 I'm not comfortable with the -- I  18 guess the off ramp provision. I don't know what  19 EPA would think about that, but I -- but I can  20 tell you that, to me the -- the excess emission  21 and the -- the whole notion that sources can  22 have unpermitted emissions, or unaccounted for  23 emissions, to me goes fundamentally to the  24 public mission that we have, and if EPA were to  25 lose on that whole idea, I can tell you that we</p>	<p style="text-align: right;">92</p> <p>1 Cheryl, I'll leave that to you. Do you think we  2 -- we could do this -- while the Council is here  3 do we need to take a short break and make sure  4 that we know exactly the language that we want  5 to use to modify the November 22nd, 2018, date?  6 MS. BRADLEY: Yes, I think we could  7 take a short break and --  8 MR. HAUGHT: And work with Jim and  9 -- and --  10 MR. BUTCHER: Could I ask a  11 question?  12 MR. HAUGHT: Sure.  13 MR. BUTCHER: It seems like the  14 staff is against most of what Don is proposing,  15 and we're focused now on one thing today. Would  16 it be possible to spend a little more time on  17 this?  18 I know we've had two months, and --  19 and maybe that's plenty of time, but this is  20 significant enough. With this new integrated  21 market that electric utilities in -- I'm wearing  22 my utility hat now.  23 If this inhibits startup and  24 shutdown of the unit, reliability of the grid  25 becomes the question. I think it's worth</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">93</p> <p>1 spending a little extra time and not taking 10  2 minutes to rewrite this just for the day.  3        Could we consider having another  4 meeting?  5        MR. TERRILL: Sure, we could do  6 that. I mean, the only reason that we would try  7 to get this done today is that if we missed our  8 deadline to get it to the board in February,  9 then we're going to miss our deadline to get it  10 to EPA before they -- they FIP us.  11        But, no, that's certainly something  12 that the Council could do is ask to hold this  13 over. I'm not sure exactly what it is, Gerald,  14 that we're going to be addressing that -- how  15 would we look at this rule any differently if we  16 were to take that time?  17        So I don't -- that's certainly your  18 call. We don't mind doing that. We're just  19 doing it for the sake of the Council's time  20 relative to having to come in earlier than that  21 January date of our next meeting and getting  22 this done so that we make sure we get it to the  23 board.  24        So it's -- it's your call.  25        MR. BUTCHER: I -- I don't want to</p>	<p style="text-align: right;">95</p> <p>1        So I'm -- I'm not saying you're  2 concern's not valid, it's just not -- we can't  3 address it within the scope of this rule. I  4 mean, that's a permitted issue that we'll have  5 to deal with.  6        Does that make sense?  7        MR. COLLINS: Gerald, I -- I  8 understand. I -- I think the -- the alternative  9 is that you end up having excess emissions that  10 are violations, right, because currently, the  11 way the rule is written, you can have an excess  12 emission, you report it, you follow the excess  13 emission -- the Subchapter 9 requirements and  14 you're exempt from that being considered a -- an  15 enforceable violation.  16        You still exceeded your emission  17 limit, correct? Am I wrong -- am I wrong on  18 that?  19        MS. FINLEY: It's always a  20 violation. Any excess emission is always a --  21        MR. COLLINS: Okay.  22        MS. FINLEY: -- violation. If -- if  23 -- under that scenario, if you've permitted your  24 startup and shutdown, and then you have -- then  25 you still go over that limit with a startup or a</p>
<p style="text-align: right;">94</p> <p>1 have a meeting just to have a meeting, but Mr.  2 Collins raised the question that had me  3 concerned. We have some new units, like OG&amp;E  4 has, that have been permitted with startup and  5 shutdown.  6        What happens is the integrated  7 market wants to run those units more than we can  8 run them. Now, if everybody had -- every unit  9 has a new startup and shutdown limit in it we're  10 not -- we may not be able to run some units  11 across the grid, and there's a big concern  12 there.  13        So I'm willing to come back for a  14 meeting next month, or whenever is necessary.  15        MR. TERRILL: Well, what are we  16 going to address, because we're not telling you  17 you have to permit these emissions? You don't  18 have to.  19        I mean, you can continue to operate  20 like you've always done and -- and go through  21 this process. So if we're -- if we're going to  22 come back and address this permitting issue  23 that's not going to get at this, because this is  24 not a permitting rule. This is an excess  25 emission malfunction rule.</p>	<p style="text-align: right;">96</p> <p>1 shutdown, then you have an excess emission,  2 that's still a violation, but we still have, in  3 our enforcement policy, those mitigating  4 considerations that we will take into affect.  5        What you can possibly get out of  6 then is that penalty -- is being subject to a  7 penalty, but --  8        MR. COLLINS: Okay. I  9 misunderstood.  10        MS. FINLEY: -- there's still going  11 to be violations. There will still be excess  12 emissions if they're above the limit.  13        MR. COLLINS: I misunderstood that.  14 So it's the mitigating circumstances that then  15 determine whether you are exempt from penalty  16 from --  17        MS. FINLEY: Correct.  18        MR. COLLINS: -- enforcement action  19 that results in penalty. Okay.  20        MS. FINLEY: Correct. We can't --  21 we can't say -- and our rule, as it stands right  22 now, still doesn't say that an excess emission  23 is exempt from being a violation. It's always  24 been a violation.  25        That's one of the first things that</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">97</p> <p>1 we say in Subchapter 9 is any excess emission is                  2 considered a violation.                  3 MR. GAMBLE: So there isn't anything                  4 that says that if you do all these things, if                  5 you get this preponderance of information,                  6 what not, that you will be exempt, it's just                  7 you'll -- we will give you this information and                  8 you will take it into consideration --                  9 MS. FINLEY: When assessing --                  10 MR. GAMBLE: -- is that right?                  11 MS. FINLEY: -- a penalty, yes.                  12 MR. GAMBLE: So there isn't any                  13 exemption?                  14 MS. FINLEY: No.                  15 MR. COLLINS: You know, I mean given                  16 that information, it seems that this is an                  17 improvement, at least from that perspective, for                  18 those sites that can actually include these                  19 emissions in -- in permitting. That would be an                  20 improvement.                  21 MR. TERRILL: And that option has                  22 always been there. In fact, if you go back and                  23 look at the discussion that we had at the time                  24 we passed that rule, we asked sources if they                  25 felt like they could come in and quantify those</p>	<p style="text-align: right;">99</p> <p>1 during startup and shutdown, including but not                  2 limited to limits that indicate they apply                  3 during startup and shutdown and limits that                  4 explicitly indicate at all times or without                  5 exception.                  6 That's where you have prohibited                  7 relief, and I think this is the little -- (d) 2                  8 is the reason people have not been permitting                  9 startup and shutdown.                  10 I think that's where it's all gotten                  11 back to, and Don's revision did not address -- I                  12 don't think he came back and actually addressed                  13 that, either, under the prohibited relief, but                  14 that's really where -- I think that's been the                  15 whole limiting factor for the permitting them,                  16 because what happens then, if I permit 50, and I                  17 have 60, I no longer get this relief, the                  18 affirmative defense option, or now mitigating                  19 factors that we had up before.                  20 So I think that's really been our                  21 problem, and in the whole sticking part with all                  22 of this is the one part that we haven't                  23 addressed, is this (d) 2?                  24 Could we take out (d) 2?                  25 MR. TERRILL: Not today we're not.</p>
<p style="text-align: right;">98</p> <p>1 to get their permits.                  2 That's the reason we put this date                  3 in here, is because all -- we had a lot of                  4 sources that said they were going to do it, and                  5 none of them ever did, and -- but you don't have                  6 to.                  7 If you feel like, for whatever,                  8 reason, you don't want to do that, then don't                  9 permit them, but we wanted to give at least some                  10 kind of a notice or a date certain so folks at                  11 least have a target if they wanted to do that,                  12 but if they don't want to permit them they don't                  13 have to.                  14 MS. LODES: I -- I think the reason                  15 that there's been the problem with the                  16 permitting, and the whole center of the                  17 question, if you say permitted 50 startups and                  18 shutdowns, and you have 60, is actually in (d),                  19 and that is where it says prohibited relief, and                  20 it comes down to why people haven't taken it is                  21 really (d) 2, these limits are permits that have                  22 been set taking into account potential emissions                  23 during startup/shutdown limits, but not limited                  24 to -- these limits are permit limits that have                  25 been set taking into account potential emission</p>	<p style="text-align: right;">100</p> <p>1 I mean, if that's something you want to propose                  2 for us to come back, like Gerald said, and take                  3 a look at it, I guess we can, but we're not                  4 going to do that at today's meeting, because I                  5 think that fundamentally changes the rule the                  6 way it is written, and they way it was sent to                  7 EPA.                  8 MS. LODES: Okay.                  9 MR. HAUGHT: I think the way I read                  10 that is if you permitted the 50, those 50                  11 wouldn't be excess emissions, and it would just                  12 be the 10. I don't know that categorically                  13 excluding -- it would say that none of your                  14 startup and shutdowns, it would only be above                  15 what was permitted, is the way I would read                  16 that.                  17 MR. TERRILL: And I think that's how                  18 we read it, too. I may be wrong about that, but                  19 I believe that's correct.                  20 MS. LODES: Okay. And that's --                  21 MS. FINLEY: Because it does                  22 indicate limits that indicate they apply at all                  23 times. Well, your permit limits right now apply                  24 at all times. That's -- that's the case, and                  25 then if you have excess emissions you can still</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

101	<p>1 come in and get relief.</p> <p>2 MS. LODES: So -- so if we permitted</p> <p>3 50 startup and shutdowns, and we have 60, those</p> <p>4 extra 10 would not be prohibitive relief under</p> <p>5 this (d) 2?</p> <p>6 MR. TERRILL: I don't think so. No,</p> <p>7 that was never our intent. The -- the whole</p> <p>8 purpose of permitting them is -- obviously is to</p> <p>9 cut down on the paperwork that you all have to</p> <p>10 follow this rule.</p> <p>11 So that would be 50 times that you</p> <p>12 didn't have to do this, and 10 times you would.</p> <p>13 So it's less burdensome on you all, less</p> <p>14 burdensome on us, and it gives the public some</p> <p>15 comfort, I guess, that the -- that the bulk of</p> <p>16 the emissions are part of the permits that have</p> <p>17 been evaluated that are protecting the public</p> <p>18 health.</p> <p>19 So we would -- even if you filed --</p> <p>20 50 might not be enough, but that's where you</p> <p>21 could stay in and be comfortable that you could</p> <p>22 live with those permits.</p> <p>23 We would encourage you to do that,</p> <p>24 because that's 50 excess emission reports that</p> <p>25 you don't have to file. It's better for you and</p>	103
102	<p>1 better for us, too.</p> <p>2 I mean, we'll take the 10 and</p> <p>3 evaluate those just like we did the 50 before</p> <p>4 that. That's the -- that was the intent of</p> <p>5 that, the --</p> <p>6 MS. LODES: I think that's been --</p> <p>7 MR. TERRILL: -- way we've done it.</p> <p>8 MS. LODES: -- been the fundamental</p> <p>9 confusion with this rule, for all these years,</p> <p>10 has been if I go in and permit 50, and I have</p> <p>11 60, am I now not going to get any relief over</p> <p>12 the 10.</p> <p>13 MR. TERRILL: We welcome the permit</p> <p>14 applications to take care of those 50.</p> <p>15 MS. BRADLEY: The provision was</p> <p>16 included because EPA did not want us to -- to</p> <p>17 take into consideration a -- in the limit</p> <p>18 startup and shutdown, and then also pad it again</p> <p>19 under affirmative defense.</p> <p>20 There are some NSPS that take</p> <p>21 startup and shutdown into consideration in the</p> <p>22 30-day rolling average, and the origin of the</p> <p>23 requirement is more simplistic than the</p> <p>24 circumstance we're discussing now, and that's</p> <p>25 why it was included, and to my knowledge is --</p>	104
	<p>1 has been essential in EPA's ability to approve</p> <p>2 what we're doing in -- and how to look at</p> <p>3 penalties, but main -- mainly it was to keep</p> <p>4 from double counting.</p> <p>5 MS. FINLEY: That's how I read it.</p> <p>6 I just -- like Jim said, this prohibitive relief</p> <p>7 for those 50 that you did permit. We're not</p> <p>8 going to give you a break on those 50, because</p> <p>9 they were subject to -- because they were due to</p> <p>10 startup and shutdown, because you permitted</p> <p>11 them.</p> <p>12 So that is for any that are over</p> <p>13 that, because I think that's --</p> <p>14 MS. LODES: Well, because they've</p> <p>15 got a permit limit they're not excess, but if</p> <p>16 you go in and exceed that limit -- say you have</p> <p>17 a permit and it says, you know, EUG 1 has a</p> <p>18 startup/shutdown limit of 100 tons, but because</p> <p>19 you have more startups you now have 110. You</p> <p>20 now have 10 tons of excess emissions.</p> <p>21 The way the SIP limits, or the</p> <p>22 permit limits have been set, taking into account</p> <p>23 those emissions, then it almost reads as though</p> <p>24 you don't -- you don't get the affirmative</p> <p>25 defense of the 10 extra times, or whatever it.</p>	

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">105</p> <p>1 circumstances will move from being in our rule  2 – which we felt like that was to the benefit of  3 the regulated community to have those  4 requirements in our rule like they have been for  5 the last several years.  6       Those will just move out into our  7 policy, and so we would revise our policy to  8 reflect these mitigating circumstances at that  9 time.  10       So we could have done that. That's  11 what EPA wanted us to do initially, was take  12 those out all together and put them in our  13 policy, make them part of our discretionary  14 policy.  15       I felt like that it was not  16 appropriate, because we felt like it's been in  17 there so long that it should continue at least  18 to give folks the opportunity to permit those  19 emissions that wanted to, and a timeframe of  20 transition, if you will, so that people who were  21 used to seeing that in the rule, it would still  22 be there for a period of time.  23       But again, nothing changes about the  24 way we've done this if Council approved changes  25 to our excess emission malfunction rule seven or</p>	<p style="text-align: right;">107</p> <p>1 requirements from our rule into our policy. It  2 really doesn't change anything.  3       It's – again, it's just a date to  4 provide sources a target who want to get their  5 emissions permitted, so they just go ahead and  6 do it, but we -- we could have just as easily  7 left that out, because it really doesn't change  8 anything.  9       We would encourage sources, just  10 like we did a number of years ago, to get these  11 emissions permitted, but if they don't want to,  12 or if they decide on -- in 2019 they want to get  13 them permitted, come in and get them permitted.  14       I mean, it's just a date so that  15 folks would have the idea that we need to get  16 this done, it's on the radar to get it done, or  17 they don't.  18       So it's just our – it truly is an  19 artificial date that we felt like that could –  20 because, like I said, EPA wanted this stuff to  21 come out anyway, so it gives them an opportunity  22 to get them permitted and people to see this  23 before it moves completely out of the rule  24 itself into our policy.  25       MR. HAUGHT: So this – that section</p>
<p style="text-align: right;">106</p> <p>1 eight years ago, or however long ago it's been,  2 Nothing changed.  3       MR. HAUGHT: I have a question about  4 the date, and I think the need for addressing  5 the later – later of the two, but this November  6 22nd, 2018, implies that – that permit changes  7 would have to be in effect at that time so those  8 weren't excess emission.  9       Is that feasible to do for -- for  10 the agency to -- I don't know what type of  11 workload is expected for that, but is that a --  12 is that reasonable date, giving the facilities a  13 reasonable amount of time to look for their  14 facility, quantify it, develop applications and  15 go through the process?  16       Would we be setting a date that may  17 not have a lot of chance? I mean --  18       MR. TERRILL: Well, even if we  19 don't, I mean we'll continue to work on it, but  20 when we talked about this, and what would be a  21 reasonable time, and given what we think would  22 be the number, we think that's a reasonable time  23 for us to be able process them.  24       But even if they're not in, again  25 all this does is -- it will move the mitigating</p>	<p style="text-align: right;">108</p> <p>1 that's – that's cited in – in (f), that would  2 expire on that date, after that date there's no  3 fundamental change.  4       You still see this, really, as a --  5 it's going to be business as usual?  6       MR. TERRILL: Absolutely.  7       MR. HAUGHT: It will be somewhere  8 else. This really is just a -- a penalty  9 assessment -- administrative penalty assessment  10 change that EPA is requesting to -- to kind of  11 get -- I guess categorically get away -- do away  12 with affirmative defense?  13       Mr. Terrill: Actually, it's  14 just changing affirmative defense to mitigating  15 circumstance. I mean, it's just -- it's just a  16 semantics change, and, again, we -- we evaluated  17 whether or not it was worthwhile for us just to  18 say, you know, we -- we don't see what's wrong  19 with affirmative defense.  20       It's just a term. We could have  21 just said we like our rule the way it is. We  22 like affirmative defense. It's not going to  23 change how we evaluate these emissions -- these  24 excess emissions. We're not going to change our  25 rule.</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">109</p> <p>1 But because EPA felt like that it                  2 did warrant outside groups looking at this                  3 thinking that there was something -- there's a                  4 stigma that affirmative defense is this                  5 inherently evil product, and -- and, really,                  6 it's just -- and so it was just -- we thought it                  7 was just easier, rather than fighting that, just                  8 change it to mitigating circumstances.                  9 But absolutely nothing changes from the                  10 way we've administered this policy since you all                  11 approved the changes eight years ago. Nothing.                  12 It's exactly the way it's always been, and it                  13 will continue that way.                  14 MS. BOTCHLET-SMITH: Would the                  15 Council like staff to restate their                  16 recommendations?                  17 MS. LODES: Or maybe we take a                  18 ten-minute break to discuss that wording and                  19 digest this, since it is now 11:00?                  20 MS. BOTCHLET-SMITH: I'm sure the                  21 court reporter would covet the break.                  22 MR. COLLINS: Beverly, I'm not -- I                  23 guess one thing I'm not clear on is the -- the                  24 comments from OG&amp;E and Don Shandy.                  25 I'm not clear on what -- what we're</p>	<p style="text-align: right;">111</p> <p>1 the conclusion of our break. Brooks, if you                  2 will continue your presentation.                  3 MR. KIRLIN: Yes. The staff has,                  4 you know, discussed and would propose that --                  5 or, basically, our recommendation would be --                  6 would be to recommend the proposal as written,                  7 with the exceptions I'll go over.                  8 The first in 100 -- OAC                  9 252:100-9-8(f), which is the final paragraph                  10 that -- since this is a -- this is a new                  11 subsection, this is -- would be the final                  12 reading.                  13 You can see the changes in red are                  14 the changes from what we had proposed. So it                  15 would now read (f), expiration of startup and                  16 shutdown mitigating provisions. OAC                  17 252:100-9-8(c) shall expire on November 22nd,                  18 2018, or upon the effective date of federal                  19 approval of the provisions of Subchapter 9,                  20 whichever is later.                  21 Periods of excess emissions                  22 attributable to startup and shutdown that occur                  23 after expiration of OAC 252:100-9-8(c) shall be                  24 reported pursuant to the requirements of this                  25 chapter, and will be considered under the</p>
<p style="text-align: right;">110</p> <p>1 accepting and not accepting. Is the only item                  2 we're accepting is Don's revision that he's                  3 proposing to --                  4 MS. BOTCHLET-SMITH: I think --                  5 MR. COLLINS: -- the sunset?                  6 MS. BOTCHLET-SMITH: I broke my own                  7 rule, talked on top of him.                  8 I think that's something that could                  9 be clarified when the staff -- when Brooks                  10 restates the recommendations, and if, during                  11 this break, y'all collectively agree that you're                  12 going to wordsmith the document a bit, then that                  13 could be included at that time, or in your --                  14 MS. MYERS: I suggest that we take                  15 about a -- what? How long do you need? Twenty                  16 minutes? Thirty minutes? Fifteen?                  17 MR. TERRILL: Let's -- 15. Let's do                  18 15.                  19 MS. MYERS: All right. So it's                  20 seven after 11:00 right now. Let's reconvene at                  21 -- let's just do it at 11:30.                  22 (Short Break)                  23 MS. MYERS: We're back in                  24 session.                  25 MS. BOTCHLET-SMITH: Okay. That's</p>	<p style="text-align: right;">112</p> <p>1 Department's normal enforcement policies and                  2 rules.                  3 There's a couple of additional                  4 changes that we would recommend. If you'll look                  5 on -- at Subsection (c) of the same section,                  6 under the alternative emission limits and                  7 mitigating factors for excess emissions during                  8 startup and shutdown, the -- I'm not sure. Is                  9 that the second sentence?                  10 There's a sentence that starts in --                  11 in this -- in the proposed language. I didn't                  12 pull it up, because it's similar. Emissions in                  13 compliance with any such provision shall not be                  14 considered excess emissions for State                  15 enforcement purposes.                  16 We would recommend the change that                  17 that drop the last phrase for State enforcement                  18 purposes, because it's unnecessary, and it might                  19 be confusing and it would -- we just -- you                  20 know, and we think -- we think it would be                  21 better for industry and everyone if that last                  22 phrase was deleted, and we'll -- hold on just a                  23 second. I need to flip a page.                  24 In that same paragraph that we just                  25 discussed, the first sentence is a federally</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">113</p> <p>1 enforceable alternative emission limit or means                  2 of compliance may develop for inclusion                  3 facilities permit for periods of startup and                  4 shutdown under – and we list several rule                  5 references.                  6 We -- also, down –                  7 MS. BRADLEY: (c) 9.                  8 MR. KIRLIN: Thank you. (c) 9,                  9 Paragraph (c) 9 we also list similar references,                  10 and it was suggested that – one of Mr. Shandy's                  11 suggestions that we make that consistent, and so                  12 we would suggest that the three rule references                  13 in the first paragraph, and then the three – or                  14 the two in (c) 9 would be replaced by, like I                  15 said, this -- these actually four references,                  16 just to clarify, so it's just for consistency.                  17 That's our recommendations.                  18 MS. LODES: I have a question for                  19 you, because I want to make sure I understand                  20 this, versus some of what Eddie was saying.                  21 So when I read what we've changed                  22 about expiration of startup and shutdown                  23 mitigating provisions, where it says 9-8(c)                  24 shall expire, if we expire those does that mean                  25 this whole Section (c) goes away and we have</p>	<p style="text-align: right;">115</p> <p>1 MR. TERRILL: No, it moves into our                  2 policy. It -- it changes nothing. It just --                  3 it moves out of the rule itself into our policy.                  4 MS. BOTCHLET-SMITH: So, Brooks,                  5 have you stated the staff recommendations for                  6 this rule?                  7 MR. KIRLIN: I believe so,                  8 recommendation would be to approve this -- or                  9 these rule changes for recommend -- and                  10 recommend to the environmental quality board for                  11 adoption as final rules, as proposed with those                  12 stated changes.                  13 MS. LODES: Will you flip it back a                  14 page so -- okay. I was just making --                  15 Okay. On this one, we say whereupon                  16 the effective date of federal approval of the                  17 provision of Subchapter 9. Should we have SIP                  18 in there?                  19 I mean, does it need to state that                  20 it's part of the State implementation plan?                  21 MR. KIRLIN: We discussed trying to                  22 work that in. I think we -- I don't know.                  23 We've basically settled on we think this is                  24 adequate. That's what they're doing.                  25 I mean, it's a --</p>
<p style="text-align: right;">114</p> <p>1 nothing in our excess emission that rules for                  2 startup and shutdown?                  3 Everything -- I guess that's what I                  4 want to understand what that means.                  5 MR. KIRLIN: That is correct, that                  6 section --                  7 MS. LODES: Would totally --                  8 MR. KIRLIN: -- would go -- would                  9 move into our enforcement policy.                  10 MS. LODES: It would totally be                  11 deleted out of this and we would have nothing?                  12 MR. KIRLIN: In -- nothing in                  13 Subchapter 9.                  14 MS. LODES: For startup and                  15 shutdown. Okay. It would only be malfunction                  16 covered under this regulation.                  17 MR. KIRLIN: Well, right, it would                  18 be mitigating factors rule.                  19 MS. LODES: Yeah, because I think                  20 that's where I was trying to understand was the                  21 and prohibitive relief under D 2 that we had                  22 talked about, and I know Laura had said, no, you                  23 would just go back to our normal way, but if                  24 this whole section expires, then we basically                  25 have nothing?</p>	<p style="text-align: right;">116</p> <p>1 MS. LODES: I mean --                  2 MR. KIRLIN: Right. That's what --                  3 they would be approving that. I mean, because                  4 we don't have provisions of Subchapter 9 in our                  5 SIP at this time. It has not been -- we don't                  6 have any approved versions of Subchapter 9 that                  7 is currently approved by EPA, and --                  8 MS. LODES: So if we did upon the                  9 effective date of federal approval of the                  10 provisions of Subchapter 9 into the State                  11 implementation, or whichever -- whichever is                  12 later?                  13 MR. KIRLIN: That would be fine, the                  14 problem that we were trying to -- you know, work                  15 it the easiest way, but, yeah, that would be --                  16 back again? I can get it.                  17 MS. LODES: So while he's doing                  18 that, Laura, I have a legal question for you on                  19 this.                  20 If we do this, and we word it this                  21 way, in theory, Subchapter -- the section (c),                  22 basically the mitigating factors for startup and                  23 shutdown could go away, if the EPA loses its                  24 myriad of lawsuits, so therefore our SIP is not                  25 really approved, do we just stand the way we</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">117</p> <p>1 are?</p> <p>2 MS. FINLEY: Yes.</p> <p>3 MS. LODES: Or if EPA approves our</p> <p>4 SIP, and then loses the lawsuit what does that</p> <p>5 mean?</p> <p>6 MS. FINLEY: Loses --</p> <p>7 MS. LODES: And then loses --</p> <p>8 MS. FINLEY: All these changes take</p> <p>9 place and then they still lose?</p> <p>10 MS. LODES: Yeah.</p> <p>11 MS. FINLEY: Then it still stands.</p> <p>12 I mean, the rule would still stand in our State</p> <p>13 rules just like that.</p> <p>14 MS. LODES: I just think that was</p> <p>15 the reason for wanting the off ramp, was that --</p> <p>16 was that scenario, because there's so many</p> <p>17 lawsuits about it.</p> <p>18 MS. FINLEY: Sure.</p> <p>19 MR. TERRILL: This is Eddie,</p> <p>20 Terrill. If the Council wants us to consider</p> <p>21 the off ramp, we're going to have to carry this</p> <p>22 over, because that's not something that we had</p> <p>23 considered and -- and talked to the EPA about.</p> <p>24 So what we've presented is what we</p> <p>25 believe we can approve today. Anything beyond</p>	<p style="text-align: right;">119</p> <p>1 requirements and submit that to EPA.</p> <p>2 I'm not sure what the work group</p> <p>3 would do. We can do that, but I don't know to</p> <p>4 what end that's going to -- what effect that's</p> <p>5 going to have.</p> <p>6 One of -- one of the things that</p> <p>7 we're -- I mentioned this to some folks. We are</p> <p>8 having a half day seminar as part of our Redbud</p> <p>9 emissions inventory workshop in January or</p> <p>10 February, whenever it -- I don't know exactly</p> <p>11 when it is, but we're carving out some time to</p> <p>12 talk about permitting and enforcement issues</p> <p>13 that came up at the last workshop, and we're</p> <p>14 going to be talking about a lot of things. SSM</p> <p>15 is one of the things we're going to talk about</p> <p>16 with the regulating committee. So we're going</p> <p>17 to do that then.</p> <p>18 Again, I'm not opposed to doing</p> <p>19 that, but I want to make it clear that it will</p> <p>20 just be wordsmithing issues that we've already</p> <p>21 resolved.</p> <p>22 We're not going -- if we're going to</p> <p>23 try to open this up, then that goes beyond the</p> <p>24 scope of what we agreed to do, and -- and I</p> <p>25 think we've already submitted that to EPA, and I</p>
<p style="text-align: right;">118</p> <p>1 that we ask for the Council to carry that over</p> <p>2 for consideration in January.</p> <p>3 MS. BOTCHLET-SMITH: Do we have any</p> <p>4 further discussion of the Council? Sharon?</p> <p>5 MS. MYERS: Sharon Myers --</p> <p>6 MS. BOTCHLET-SMITH: Can you go to a</p> <p>7 microphone, please?</p> <p>8 MS. MYERS: No, I don't like them.</p> <p>9 MS. BOTCHLET-SMITH: So everyone can</p> <p>10 hear you.</p> <p>11 MS. MYERS: I don't like them.</p> <p>12 I've got a question for you, for</p> <p>13 staff. What about getting a small group of</p> <p>14 affected sources together, that this would</p> <p>15 majorly impact, your cement plants, your power</p> <p>16 plants, some of the folks that Laura works for,</p> <p>17 and having a small working group prior to the</p> <p>18 Council meeting in January, to just go through</p> <p>19 the wordsmithing that's going on right now, and</p> <p>20 ensure that we've covered all the bases?</p> <p>21 MR. TERRILL: We can do that, but we</p> <p>22 did that nine years ago, and I don't -- I don't</p> <p>23 know how many times I've said this, we are not</p> <p>24 changing the requirements that exist today in</p> <p>25 the rule, and we're not going to change the</p>	<p style="text-align: right;">120</p> <p>1 would just as soon be FIP'd on that as opposed</p> <p>2 to try to wordsmith this and send something new</p> <p>3 down there for them to approve.</p> <p>4 MS. LODES: I think, Eddie, that the</p> <p>5 whole problem everybody has with this really</p> <p>6 comes down to the whole loss of, basically, C,</p> <p>7 because then our responsible official is going</p> <p>8 to have to report -- you have to report excess</p> <p>9 emission, and some designated person has to sign</p> <p>10 off on it, and then we've got to go into this</p> <p>11 CEO, or VP, whoever it is and say, yeah, we have</p> <p>12 excess emissions, and, no, there's nothing in</p> <p>13 the rule, it's just in State policy, which can</p> <p>14 change, and I think that's the biggest heartburn</p> <p>15 that's had here with this clause, with this part</p> <p>16 that's going away because of F, and why people</p> <p>17 are wanting a sunset clause, or something -- or</p> <p>18 -- or -- or not sunset, but an off road, because</p> <p>19 then we don't have anything to go off of there.</p> <p>20 So in my case, where I said I</p> <p>21 permit, you know, 50 tons of emissions for SSM,</p> <p>22 but now I have 60 tons, and I go in to report my</p> <p>23 excess emissions, I've got nothing but a policy</p> <p>24 to go into that VP of operations with to discuss</p> <p>25 it.</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">121</p> <p>1 MR. HAUGHT: Laura, I'm going to  2 kind of -- I had a different interpretation of  3 that. That official still signs off that those  4 excess emissions happen.  5 All this does is says what may and  6 may not be subject to penalties. That person is  7 not signing off of anything any different than  8 what they ought to be signing off of today.  9 So this is all about do -- are some  10 of these maybe looked at, and then the new term  11 is, you know, mitigating factors that maybe we  12 don't get fined for.  13 We don't get an administrative  14 penalty for, the foul is a foul, and that person  15 ought to be signing off on that regardless of  16 whether C is there or not. An excess emission  17 should be reported.  18 MR. TERRILL: Again, we're not  19 opposed to carrying this over if that's what the  20 Council's preference is, to talk about it.  21 I Just want to be crystal clear,  22 though, that it will be a matter of semantics  23 for -- I think, for the most part, that we'll be  24 talking about as part of the carry over.  25 I think that the -- the substantive</p>	<p style="text-align: right;">123</p> <p>1 you know, does have to go through approval.  2 Not having been through one before,  3 I can't say exactly what that approval process  4 is.  5 MR. BUTCHER: There's no public  6 comment period or anything like that?  7 MS. FINLEY: That's a question that  8 somebody who's been here a little bit longer  9 than me would have to answer. I'm not -- I  10 apologize, but I can -- I can certainly find  11 out.  12 MR. TERRILL: We've -- we've never  13 done that in the past. I mean, it's -- it's  14 just a policy, and like Laura was saying, it --  15 it can change, but generally the -- the changes  16 that are made are like our SIP policy that  17 expands that, or clarifies it.  18 So there hasn't really been any  19 substantive change to that policy in quite a  20 while. It will change whenever EPA's policy  21 changes.  22 If EPA changes their HPV policy,  23 then we'll reflect that in our policy changes as  24 well, but it's mainly informative for the  25 regulated community, but that will be something</p>
<p style="text-align: right;">122</p> <p>1 things that we've said that we don't believe are  2 going to be approvable will still be the same  3 two months from now that -- as they are today,  4 but we're willing to have that discussion if you  5 guys want to.  6 MR. BUTCHER: Before we jump on  7 that, I have a question for Laura, I think. The  8 enforcement policy, is that -- if all of this  9 moves to the enforcement policy, how easy is  10 that to get changed, or does it get changed, or  11 is it firm?  12 I don't know that -- I'm too new, I  13 guess. I'm not too new, I'm too old, but --  14 MS. FINLEY: I mean, it's not -- the  15 enforcement SOP is signed off on -- by --  16 usually by Jimmy Givens. So -- but -- and  17 they're -- I can tell you that we are looking at  18 it right now, just to make sure that's  19 up-to-date, and make sure that it makes sense.  20 I don't think -- I don't know the  21 last time that it was -- it was updated. I  22 could -- I can pull it up and look at the date  23 the last time he signed off on it, but the --  24 it's usually, you know, staff and -- and mainly  25 legal works on that, and it's something that,</p>	<p style="text-align: right;">124</p> <p>1 we'll talk about, and -- and as part of that  2 workshop.  3 So that's a good thing for you all  4 to understand how that works, and the -- what  5 goes into that and how we publicize those  6 changes, but generally they're -- they're just  7 tweaks. They're not major shifts in -- in our  8 policy.  9 MS. LODES: So just to make sure I  10 understand the whole question, because I know  11 this was a couple of questions earlier,  12 if we change that expiration of  13 startup and shutdown mitigating provision to  14 where it's upon approval of the SIP, we've got  15 that Section C effectively in there until that  16 EPA SIP is approved?  17 MS. FINLEY: Correct.  18 MR. KIRLIN: I believe so, yes.  19 MS. BOTCHLET-SMITH: Are there  20 further questions or discussions, and if not,  21 Sharon, I would hand it to you.  22 MS. MYERS: I don't want it.  23 MR. COLLINS: I guess my position is  24 I'm not really interested in -- in carrying them  25 -- I'm not interested in -- in taking the risk</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">125</p> <p>1 of getting FIP'd.</p> <p>2 You know, I -- I agree with Jim, I</p> <p>3 think the -- I think there's not -- there's not</p> <p>4 a lot of difference in how that's handled from</p> <p>5 excess emission reporting perspective, and I</p> <p>6 like the idea of -- if we can work out the</p> <p>7 logistics of it, I like the idea of making an</p> <p>8 attempt to permit SSMS.</p> <p>9 I agree with you Laura, that there's</p> <p>10 a little bit of issue how you quantify that, but</p> <p>11 that's my position on it.</p> <p>12 MR. HAUGHT: And I would like to</p> <p>13 remind Council members, also, that the January</p> <p>14 meetings have been at risk before because of</p> <p>15 weather, and that's not -- it's not always been</p> <p>16 reliable, so if we get to a drop dead date, and</p> <p>17 it has to be January, there are -- we have</p> <p>18 canceled January meetings in the past because of</p> <p>19 weather.</p> <p>20 MR. BUTCHER: I'll go out on a limb</p> <p>21 and make a motion that we have a special meeting</p> <p>22 before January to work this out.</p> <p>23 MS. LODES: Eddie, is there -- if we</p> <p>24 were to have a special meeting, is there an</p> <p>25 issue with that based off the dates we have to</p>	<p style="text-align: right;">127</p> <p>1 publication date for the notice would be</p> <p>2 November 16th, and we would have to submit our</p> <p>3 notice change for -- by October 23rd, if we were</p> <p>4 to have a meeting in December, I guess, 16th or</p> <p>5 later.</p> <p>6 MR. COLLINS: Gerald, what are your</p> <p>7 concerns right now with the language?</p> <p>8 MR. BUTCHER: I'm not sure that</p> <p>9 everybody that had written comments could be</p> <p>10 here today, and maybe they could shed some light</p> <p>11 on some things that I -- I still am concerned</p> <p>12 about the comment about why civil -- civil</p> <p>13 wording couldn't be added.</p> <p>14 That came from a lawyer. If it's</p> <p>15 illegal, then I don't understand.</p> <p>16 MS. FINLEY: Gerald, that -- I can</p> <p>17 respond to that -- that -- under the Clean Air</p> <p>18 Act, under Section 304 and 113, that is where</p> <p>19 the civil suit provision and EPA lawsuit</p> <p>20 provisions are.</p> <p>21 So if we have in there that we -- if</p> <p>22 we have it in our rule that we can offer</p> <p>23 affirmative defense for a civil penalty, or a</p> <p>24 penalty not just by our agency or -- I mean, I'm</p> <p>25 sorry, an action not just by our agency, then</p>
<p style="text-align: right;">126</p> <p>1 have the public notice and such?</p> <p>2 MR. TERRILL: I'll defer to -- to</p> <p>3 legal with that. When -- when could we have a</p> <p>4 special meeting?</p> <p>5 MS. BRADLEY: If we had a special</p> <p>6 meeting on December 15th, or after, in order to</p> <p>7 meet the notice deadline for the -- October 23rd</p> <p>8 is the deadline for us to file our notice, and a</p> <p>9 copy of the rule revisions with -- updated with</p> <p>10 the Governor's office.</p> <p>11 MR. BUTCHER: Where did you get the</p> <p>12 December 15th?</p> <p>13 MS. BRADLEY: If -- if we were to</p> <p>14 have a meeting prior to the January meeting, I'm</p> <p>15 assuming you -- that's my assumption, that you</p> <p>16 would likely want to have it before Christmas.</p> <p>17 The date we have now is -- schedule</p> <p>18 date that was approved is the 20th of January,</p> <p>19 so we could not provide notice for an earlier</p> <p>20 date.</p> <p>21 MR. BUTCHER: Oh, okay.</p> <p>22 MS. BRADLEY: December 15th is --</p> <p>23 let's see -- well, for publication -- to meet --</p> <p>24 to -- to give 30 days public notice, if that's</p> <p>25 -- because it would be a substantive change, the</p>	<p style="text-align: right;">128</p> <p>1 that's in violation of those Clean Air Act</p> <p>2 provisions.</p> <p>3 That's why we struck them. If you</p> <p>4 -- and if you go back and you read in the rule,</p> <p>5 that was one of the -- that is the main reason</p> <p>6 that the Sierra Club petitioned for this</p> <p>7 rulemaking, was because there were rules out</p> <p>8 there that were -- you know, there were three</p> <p>9 different things that they sued on, and other</p> <p>10 states' rules are even worse than ours.</p> <p>11 I mean, they add automatic exemption</p> <p>12 things that these excess emissions were in</p> <p>13 violation. Ours weren't that bad, but the</p> <p>14 existence of the word civil in there purports to</p> <p>15 take away that authority from the court to</p> <p>16 assess a penalty, rather than just our agency</p> <p>17 assessing a penalty.</p> <p>18 That's why we made those changes.</p> <p>19 MR. HAUGHT: Did you talk to Don</p> <p>20 about that?</p> <p>21 MS. FINLEY: I did, yes, and I --</p> <p>22 yes, as a matter of --</p> <p>23 MR. HAUGHT: Did he agree?</p> <p>24 MS. FINLEY: -- last night, and I</p> <p>25 explained it to him, and he said he completely</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">129</p> <p>1 understood.</p> <p>2 MR. BUTCHER: Okay. I'll withdraw my</p> <p>3 motion then, because that's where I was</p> <p>4 concerned.</p> <p>5 MS. MYERS: Before we move forward</p> <p>6 with this, I would like to have a restatement of</p> <p>7 what changes have been made so that we fully</p> <p>8 understand what we're voting on.</p> <p>9 MR. KIRLIN: Okay. Staff would</p> <p>10 recommend approval of the proposal as proposed,</p> <p>11 with the following exceptions. In 100-9-8(c) --</p> <p>12 they're going to be in order -- that -- in the</p> <p>13 sentence that has the -- our OAC rule</p> <p>14 references, it has three of them, that those</p> <p>15 three would be replaced by the four -- that</p> <p>16 phrase right there, those rule references.</p> <p>17 In the following sentence, in that</p> <p>18 same paragraph, emissions in compliance with any</p> <p>19 such provision shall not be considered excess</p> <p>20 emissions for State Enforcement purposes, and</p> <p>21 we're recommending that we strike -- I mean,</p> <p>22 from our proposal that last -- those last four</p> <p>23 words, for State enforcement purposes.</p> <p>24 So emissions in compliance with any</p> <p>25 such provision shall not be considered excess</p>	<p style="text-align: right;">131</p> <p>1 off ramp, if for some reason the SIP is not</p> <p>2 approved, or the rules vacated, how does that</p> <p>3 work?</p> <p>4 MS. FINLEY: I'm sorry, will you ask</p> <p>5 your question again?</p> <p>6 MS. MYERS: Off -- off ramp</p> <p>7 provisions that I -- there was a question in one</p> <p>8 of the comments -- I guess that was the one</p> <p>9 through Shandy, as well as I think there was a</p> <p>10 comment in the OG&amp;E --</p> <p>11 MS. FINLEY: Yes.</p> <p>12 MS. MYERS: -- about an off ramp</p> <p>13 provision.</p> <p>14 Can you explain why we're not</p> <p>15 interested in doing that?</p> <p>16 MS. FINLEY: Well, for -- in -- in</p> <p>17 Don's recommendation, for one, he makes</p> <p>18 reference to the version of OAC 9 that's in the</p> <p>19 EPA's approved SIP, that we would refer back to</p> <p>20 that, and we can't do that.</p> <p>21 We don't have anything approved in</p> <p>22 the SIP right now, because it was disapproved.</p> <p>23 So we can't use that, and then, secondly, if</p> <p>24 we're going to make that change we certainly</p> <p>25 have to renotice it.</p>
<p style="text-align: right;">130</p> <p>1 emissions, period.</p> <p>2 Moving to 9-8(c)9, which is a new --</p> <p>3 again, a new paragraph, and the -- that same</p> <p>4 paragraph has the -- that paragraph has two OAC</p> <p>5 rule references, and, again, we would recommend</p> <p>6 replacing those two rule references with the</p> <p>7 four over there.</p> <p>8 Then, the 9-8(f), the new -- new</p> <p>9 paragraph, 9-8(f), would be -- would read,</p> <p>10 expiration of the startup and shutdown</p> <p>11 mitigating provisions, OAC 252:100-9-8(c), shall</p> <p>12 expire on November 22nd, 2018, or upon the</p> <p>13 effective date of federal approval of the</p> <p>14 provisions of Subchapter 9 in the State</p> <p>15 implementation plan, or SIP, whichever is later.</p> <p>16 Periods of excess emissions</p> <p>17 attributable to startup and shutdown that occur</p> <p>18 after expiration of OAC 252:100-9-8(c) shall be</p> <p>19 reported pursuant to the requirements of this</p> <p>20 chapter and will be considered under the</p> <p>21 Department's normal enforcement policies and</p> <p>22 rules.</p> <p>23 Those are the -- those were the</p> <p>24 recommendations.</p> <p>25 MS. MYERS: One final question. The</p>	<p style="text-align: right;">132</p> <p>1 That's too substantial of a change.</p> <p>2 MS. MYERS: Okay. Are there any</p> <p>3 other questions or comments from Council</p> <p>4 members, concerns?</p> <p>5 Any other comments from the public?</p> <p>6 In that case I will entertain a</p> <p>7 motion.</p> <p>8 MR. HAUGHT: I'll do it. I make a</p> <p>9 motion that we accept the proposed changes to</p> <p>10 252:100, Subchapter 9, excess emission reporting</p> <p>11 requirements as originally presented by staff</p> <p>12 prior to this meeting, effective with the</p> <p>13 changes that Brooks Kirlin just read into the</p> <p>14 record.</p> <p>15 MS. MYERS: We have a motion. Do we</p> <p>16 have a second?</p> <p>17 MR. BUTCHER: I'll second that.</p> <p>18 MS. MYERS: Quiana?</p> <p>19 MS. FIELDS: Mr. Butcher?</p> <p>20 MR. BUTCHER: Yes.</p> <p>21 MS. FIELDS: Mr. Collins?</p> <p>22 MR. COLLINS: Yes.</p> <p>23 MS. FIELDS: Mr. Gamble?</p> <p>24 MR. GAMBLE: Yes.</p> <p>25 MS. FIELDS: Mr. Haught?</p>

AIR QUALITY ADVISORY COUNCIL MEETING 10/14/2015

<p style="text-align: right;">133</p> <p>1 MR. HAUGHT: Yes.</p> <p>2 MS. FIELDS: Ms. Lodes? Ms. Lodes?</p> <p>3 MS. LODES: Yes.</p> <p>4 MS. FIELDS: Mr. Lynch?</p> <p>5 MR. LYNCH: Yes.</p> <p>6 MS. FIELDS: Ms. Myers?</p> <p>7 MS. MYERS: Reluctantly, yes.</p> <p>8 MS. FIELDS: Motion passed.</p> <p>9 MS. BOTCHLET-SMITH: The next item</p> <p>10 on the agenda is No. 5 D. This is OAC</p> <p>11 252.100-2, incorporation by reference, along</p> <p>12 with Appendix Q, also incorporation by</p> <p>13 reference, and Ms. Nancy Marshment will give the</p> <p>14 staff presentation.</p> <p>15 MS. MARSHMENT: Madam Chair, members</p> <p>16 of the Council, ladies and gentlemen, I'm Nancy</p> <p>17 Marshment, environmental program specialist with</p> <p>18 the air quality division.</p> <p>19 The Department is proposing to</p> <p>20 update language in Subchapter 2, incorporation</p> <p>21 by reference, to reflect the new date of</p> <p>22 incorporation for Appendix Q.</p> <p>23 In addition, the Department is</p> <p>24 proposing to revoke the current Chapter 100,</p> <p>25 Appendix Q, incorporation by reference, and</p>	<p style="text-align: right;">135</p> <p>1 that have been made since September 1st, 2014,</p> <p>2 is provided in your packet, and is also included</p> <p>3 as the last page of the handout for Subchapter 2</p> <p>4 and Appendix Q.</p> <p>5 One federal rule has been added to</p> <p>6 Appendix Q, as noticed by Dr. Sheedy in her</p> <p>7 Subchapter 5 presentation, that is Table 1 to</p> <p>8 Appendix A of Subpart A of 40 CFR Part 51.</p> <p>9 Notice was published in the Oklahoma</p> <p>10 Register on September 1st, 2015, for these</p> <p>11 proposed changes. The notice requested written</p> <p>12 comments from the public and other interested</p> <p>13 parties. No substantive comments have been</p> <p>14 received as of today.</p> <p>15 Staff requests the Council recommend</p> <p>16 this rulemaking to the environmental quality</p> <p>17 board for a permanent adoption.</p> <p>18 Thank you.</p> <p>19 MS. BOTCHLET-SMITH: Do we have any</p> <p>20 questions from the Council for Ms. Marshment?</p> <p>21 Seeing none at this time – although</p> <p>22 I didn't see a notice from the public, do we</p> <p>23 have anyone from the public that has comments or</p> <p>24 questions regarding this rule?</p> <p>25 Seeing none. Sharon?</p>
<p style="text-align: right;">134</p> <p>1 adopt a new Appendix Q.</p> <p>2 This proposal is part of the annual</p> <p>3 update of Title 40, Code of Federal Regulations,</p> <p>4 incorporations by reference, in Chapter 100.</p> <p>5 The Oklahoma Rules on Rulemaking dictate the</p> <p>6 procedure for amending a rule appendix by</p> <p>7 revoking the old and creating an entirely new</p> <p>8 appendix.</p> <p>9 Upon final adoption, the permanent</p> <p>10 rule will be submitted to EPA as a revision to</p> <p>11 Oklahoma State Implementation Plan, or SIP.</p> <p>12 This rule hearing satisfies the public</p> <p>13 participation requirement for SIP revisions.</p> <p>14 We will also be submitting the rule</p> <p>15 changes – changes to update the Department's</p> <p>16 delegation of authority to implement and enforce</p> <p>17 the new source performance standards, NSPS, and</p> <p>18 national emission standards for hazardous air</p> <p>19 pollutants, NESHAPs.</p> <p>20 The proposed changes to Appendix Q</p> <p>21 reflect federal regulations that have been</p> <p>22 implemented as of July 1st, 2015. The update</p> <p>23 would also incorporate any amendments to</p> <p>24 standards currently listed in Appendix Q.</p> <p>25 A list of all changes to standards</p>	<p style="text-align: right;">136</p> <p>1 MS. MYERS: I'll entertain a motion</p> <p>2 on what we do with this one.</p> <p>3 MS. LODES: I move to accept the</p> <p>4 proposed changes for incorporation of Appendix</p> <p>5 Q.</p> <p>6 MR. HAUGHT: I'll second it.</p> <p>7 MS. FIELDS: Mr. Butcher?</p> <p>8 MR. BUTCHER: Yes.</p> <p>9 MS. FIELDS: Mr. Collins?</p> <p>10 MR. COLLINS: Yes.</p> <p>11 MS. FIELDS: Mr. Gamble?</p> <p>12 MR. GAMBLE: Yes.</p> <p>13 MS. FIELDS: Mr. Haught?</p> <p>14 MR. HAUGHT: Yes.</p> <p>15 MS. FIELDS: Ms. Lodes?</p> <p>16 MS. LODES: Yes.</p> <p>17 MS. FIELDS: Mr. Lynch?</p> <p>18 MR. LYNCH: Yes.</p> <p>19 MS. FIELDS: Ms. Myers?</p> <p>20 MS. MYERS: Yes.</p> <p>21 MS. FIELDS: Motion passed.</p> <p>22 MS. BOTCHLET-SMITH: Sharon, that</p> <p>23 concludes the hearing portion of today's</p> <p>24 meeting, so I turn the agenda back to you.</p> <p>25</p>

1 CERTIFICATE

2

3 STATE OF OKLAHOMA )

) SS:

4 COUNTY OF OKLAHOMA )

5

6 I, Ray Mullin, Certified Shorthand

7 Reporter for the State of Oklahoma, certify that

8 the foregoing proceedings were taken by me in

9 stonotype and thereafter transcribed by computer

10 and changes were made to the transcript of the

11 proceedings pursuant to the attached email;

12 that the proceedings were taken on October 14,

13 2015, at 9:00 a.m., at 707 North Robinson

14 Oklahoma City, Oklahoma; that I am not an

15 attorney for or a relative of either party,

16 or otherwise interested in this action.

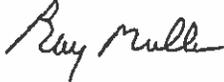
17 Witness my hand and seal of office on

18 this 26th day of October, 2015.

19

20

21



22

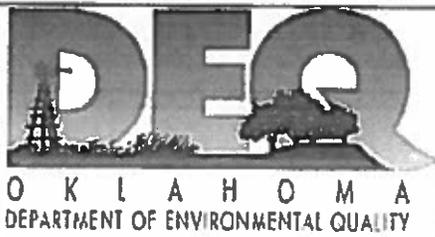
Ray Mullin, CSR #00951

For the State of Oklahoma

23

24

25

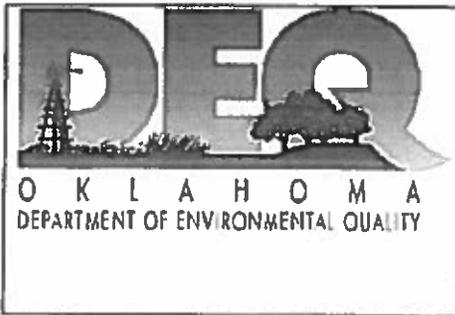


**AIR QUALITY COUNCIL**  
Attendance Record  
October 14, 2015  
Oklahoma City, Oklahoma

NAME and/or AFFILIATION

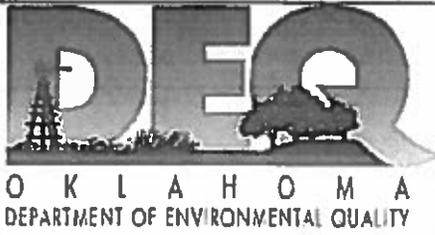
Address and/or Phone and/or E-Mail

Nancy Marshment	DEQ-AQD
Ron Blair	U.S. POSTER SERVICE MISC. ADDRESS
MALCOLM ZACHARIAH	DEQ AQD
Greg Crider	DEQ AQD
Ryan Biggerstaff	DEQ - AQD
Mary Quinn	Mary.quinn@apexcos.com
Quiana Fields	ONEQ
Jim Haught	AQC
Robert Morris	r.morris@CIB.ENERGY.COM
DAVID GAMBLE	AQC
Sharon Myers	AQC
Ushia Turner	OG+E
Gerald Bucher	WFFC
Mike Rednar	GRDA
DON WHITNEY	TSC ENVIRONMENTAL
Diana Hanson	DEQ - AQD
Sam Miller	SMILLER@apex.com
Randall Ward	DEQ - AQD
LEON ASH-FORD	DEQ - AQD
Cooper Garbe	DEQ
Beverly Butchlet-Smith	DEQ
Austin Partida -	apartida@kayelectric.coop
Yingjia Zhu	Apex / nancyzhu0115@gmail.com
Kent Stafford	AQD
Cheryl BRADLEY	AQD
Christina Akly / Apex	CAKly@apexcos.com



**AIR QUALITY COUNCIL**  
**Attendance Record**  
**October 14, 2015**  
**Oklahoma City, Oklahoma**

<u>NAME</u> and/or <u>AFFILIATION</u>	<u>Address</u> and/or <u>Phone</u> and/or <u>E-Mail</u>
Rick Gresham ODEQ	405-702-4150
Laura Finley ODEQ	702-7187
Crystal K. Stearns ODEQ	702-9160
Carrie Schmeder ODEQ	702-4100
Laura Herron ODEQ	553-3057
Jeremy Blodgett OGE	553-3036
Miller Hiron OGE	553-3031
GARY Collins AEC	918 266 9614
Jayce Shudy DEQ	405 762-4215
Bryan K Moore BCM	405-513-5111
Brooks Kirlin DEQ	4174
Ray Muller Lawry & Assoc	405-390-9980
Lindsay Ross ODEQ	702-4139
Cecelia Klemm ODEQ	702-4178
Louise Espenson ODEQ	702-4712
Michael Watt OMPA	405 359 2515
Summer Goebel Guernsey	405-416-8117
Jaklyn Gunnett ODEQ	405-408-5164
Jonathan Truitt ODEQ	405-702-7100
Chris Laley ODEQ	405 702 4208
BRANDON LONG Trinity Consultants	479-880-7293
MARK GIBBS DEQ	405-702-4174
Sid Sperry OREC	405-627-7754
Curt Goeller ODEQ	
Sidney Liberman Zepco	919 696 6255
Martha Ernst DEQ	
Lloyd Kirk DEQ	



**AIR QUALITY COUNCIL**  
**Attendance Record**  
**October 14, 2015**  
**Oklahoma City, Oklahoma**

<u>NAME and/or AFFILIATION</u>	<u>Address and/or Phone and/or E-Mail</u>
Laura Guthrie Enable Midstream	318-429-3706
Lance Lodes	" "
Jeremy Tomby Trinity Consultant	405 848 7724
Robin Hammon	" " "
Alyssa Strebin	" "
Brian McFourn ONEOK	405-553-3439
Karen Lyall ONEOK	405-250-6443
Marwan Alfallouh Sand Ridge	405 816 0697
Bethanne Edwards Ramboll ENVIRON	<del>bedwards@</del> bedwards@ramboll.com
Bobbie Hull AES Shady Point	518-649-3142
Linda Riper AES	
Steve Landers GP	
Michelle Wynn DEQ	
Kimber Shoof OGE	405 553-3023
Kathryn Crumady IP	580 933-1449
Robbie Gillam ID	580 933 1171
Jason Lyons ONEOK	406-478-9900
Arnold Ruffin AEP	Kwruffin@aep.com
Heather Lerch DEQ	heather.lerch@dep.ok.gov