

**MINUTES
AIR QUALITY COUNCIL
October 15, 2008
DEQ Multipurpose Room
707 North Robinson
Oklahoma City, Oklahoma**

For EQB November 18, 2008
TO be APPROVED by AQC
January 21, 2009

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. October 15 at the DEQ Multipurpose Room 707 North Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on November 2, 2007 and amended on September 18, 2008 to change the location from Broken Bow to Oklahoma City. Agendas were posted at the meeting facility and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting. Ms. Beverly Botchlet-Smith convened the hearings by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51, and Title 27A, Oklahoma Statutes, Sections 2-5-201 and 2-5-101-2-5-118. Ms. Smith entered the Agenda and the Oklahoma Register Notice into the record and announced that forms were available at the sign-in table for anyone wishing to comment on any of the rules. Mr. David Branecky, Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

MEMBERS PRESENT

David Branecky
Jim Haught
Laura Lodes
Bob Lynch
Sharon Myers
Jerry Purkapple

DEQ STAFF PRESENT

Eddie Terrill
Beverly Botchlet-Smith
Cheryl Bradley
Joyce Sheedy
Max Price
Nancy Marshment

**DEQ STAFF
PRESENT**

Diana Hinson
Sarah Penn
Dawson Lasseter
Kendal Stegmann
Myrna Bruce

MEMBERS ABSENT

Montelle Clark
Gary Collins
Vacancy

OTHERS PRESENT

Christy Myers, Court
Reporter

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

Approval of Minutes Mr. Purkapple made motion to approve the Minutes as presented and Mr. Haught made the second.

Jim Haught	Yes	Jerry Purkapple	Yes
Sharon Myers	Yes	Bob Lynch	Yes
Laura Lodes	Yes	David Branecky	Yes

Meeting Schedule for Calendar Year 2009 Proposed dates and locations discussed and scheduled were January 14 at the DEQ; April 15 in Tulsa; July 15 in Oklahoma City; and October 21 in Broken Bow Oklahoma. This motion was made by Ms. Myers and seconded by Dr. Lynch.

Jim Haught	Yes	Jerry Purkapple	Yes
Sharon Myers	Yes	Bob Lynch	Yes
Laura Lodes	Yes	David Branecky	Yes

OAC 252:100-9. Excess Emission Reporting Requirements

Mr. Max Price advised that the Department’s proposal would amend Subchapter 9 to clarify its requirements and make them more compatible with EPA guidelines. Mr. Price conveyed that staff recommendation was that the rulemaking be continued to Council’s next meeting and that workgroup sessions would be held to receive further input. Ms. Myers made motion to continue to the January meeting and Mr. Purkaple made the second.

Jim Haught	Yes	Jerry Purkaple	Yes
Sharon Myers	Yes	Bob Lynch	Yes
Laura Lodes	Yes	David Branecky	Yes

OAC 252:100-25. Visible Emissions and Particulates

Ms. Diana Hinson advised that the proposal would amend Subchapter 25 -3 (b) (3), Opacity limit, to correct an error in a rule reference for clarification and to add ‘OAC’ where it had been inadvertently left out. Staff recommendation was for permanent approval by the Environmental Quality Board. Hearing no comments, Mr. Branecky called for a motion as proposed. Mr. Haught made the motion and Ms. Myers made the second.

Jim Haught	Yes	Jerry Purkaple	Yes
Sharon Myers	Yes	Bob Lynch	Yes
Laura Lodes	Yes	David Branecky	Yes

OAC 252:100-33. Control of Emission of Nitrogen Oxides

Ms. Cheryl Bradley advised that this proposed revision would define “solid fossil fuel” to resolve issues regarding emission standards for direct-fired fuel burning equipment, standards for fuel burning equipment that uses more than one type of fuel, and equipment with technological limitations. Ms. Bradley mentioned that there were still some outstanding issues and suggested that Council continue the rule to Council’s next meeting. Staff fielded questions and comments from Council, then Mr. Branecky entertained a motion to continue the rulemaking to the January Council meeting. Mr. Jim Haught made the motion and Dr. Lynch made the second.

Jim Haught	Yes	Jerry Purkaple	Yes
Sharon Myers	Yes	Bob Lynch	Yes
Laura Lodes	Yes	David Branecky	Yes

Appendix E. Primary Ambient Air Quality Standards [REVOKED]

Appendix E. Primary Ambient Air Quality Standards [NEW]

Appendix F. Secondary Ambient Air Quality Standards [REVOKED]

Appendix F. Secondary Ambient Air Quality Standards [NEW]

Mr. Leon Ashford advised that the proposal would update Appendices E and F to be consistent with federal standards for ozone changing the value of the standard from 0.08 to 0.075. He stated that the old Appendix E and F would be revoked and replaced with new Appendix E and F. Mr. Ashford mentioned a non-substantive change also proposed for footnote #4. Hearing no public comments, Mr. Branecky called for a motion to recommend the rulemaking to the Environmental Quality Board for permanent adoption. Mr. Purkaple made the motion and Ms. Lodes made the second.

Jim Haught	Yes	Jerry Purkaple	Yes
Sharon Myers	Yes	Bob Lynch	Yes
Laura Lodes	Yes	David Branecky	Yes

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

Ms. Nancy Marshment advised that the proposal would update Appendix Q to incorporate the latest changes to federal regulations by reference. Among the changes are the additions of New Source Performance Standards (NSPS) and Part 63 National Emissions Standards for Hazardous Air Pollutants (NESHAP) for area sources. Ms. Marshment read the new standards into the record. Staff recommendation was to forward the changes to the Environmental Quality Board for permanent adoption. Mr. Haught made the motion and Ms. Myers made the second.

Jim Haught	Yes	Jerry Purkapple	Yes
Sharon Myers	Yes	Bob Lynch	Yes
Laura Lodes	Yes	David Branecky	Yes

Division Director's Report – As discussed in the July 16 meeting, the Director's Report would become a matter of record. Full transcript is attached. Mr. Terrill mentioned that an auditor has been engaged to conduct the Title V audit as requested by the Finance Committee. Also, Mr. Terrill pointed out that a presentation is planned in January to update the fish-flesh sampling project.

New Business - Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.

Adjournment -- Meeting adjourned at 10:45 a.m.

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

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA**

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**TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED
AIR QUALITY COUNCIL MEETING**

**HELD ON OCTOBER 15, 2008, AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA
ITEMS 1-4**

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

COUNCIL MEMBERS

DAVID BRANECKY, CHAIRMAN
JIM HAUGHT, MEMBER
SHARON MYERS, MEMBER
JERRY PURKAPLE, MEMBER
LAURA LODES, MEMBER
MONTELLE CLARK, MEMBER
GARY COLLINS, MEMBER (ABSENT)

DEQ STAFF

MYRNA BRUCE
BEVERLY BOTCHLET-SMITH
EDDIE TERRILL
MAX PRICE
CHERYL BRADLEY
NANCY MARSHMENT
LEON ASHFORD
DIANA HINSON

PROCEEDINGS

MR. BRANECKY: Good morning.
It's 9:00, let's go ahead and get started.
Before we get started I would like to
remind everyone if they could to turn their
cell phones either on silent, or off. And
with that, Myrna, would you call roll,
please.

MS. BRUCE: Good morning.

Jim Haught.

MR. HAUGHT: Here.

MS. BRUCE: Sharon Myers.

MS. MYERS: Here.

MS. BRUCE: Laura Lodes.

MS. LODES: Here.

MS. BRUCE: Jerry Purkaple.

MR. PURKAPLE: Here.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Here.

MS. BRUCE: David Branecky.

MR. BRANECKY: Here.

**MS. BRUCE: For the record absent
we have Montelle Clark, Gary Collins, and**

we have a vacancy. But we do have a quorum.

MR. BRANECKY: All right. Thank you. With that we'll move on to the next item on the agenda which is the Approval of the July 16, 2008 Meeting Minutes.

Do I have a Motion?

MR. PURKAPLE: So moved

MR. HAUGHT: I'll second it.

MR. BRANECKY: All right. Myrna,

please.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: Yes.

MS. BRUCE: Jerry Purkaple.

MR. PURKAPLE: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Motion approved.

MR. BRANECKY: The next item on

the agenda is the meeting schedule for next year -- the year 2009. If you look at your packet, Mr. Terrill has presented us with suggested dates and locations. So we will need to approve that today. Do we have any discussion?

MS. MYERS: I would like to suggest that the October meeting be held in Broken Bow, please.

MS. BOTCHLET-SMITH: In addition, I think we've noticed that there is a problem with meeting on January 21, and DEQ would like to propose that we move that to January 14, instead of January 21.

MR. BRANECKY: All right. So I've got two suggested changes. One is moving the January 21st meeting to January 14th; and then moving the October 21st meeting from Oklahoma City to Broken Bow, Oklahoma. I need a motion.

MS. MYERS: I'll make a motion that we have the January meeting on January the 14th in Oklahoma City, and October 21st in Broken Bow.

MR. BRANECKY: And the other two

meetings as proposed?

MS. MYERS: As proposed.

DR. LYNCH: I'll second it.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: Yes.

MS. BRUCE: Jerry Purkapple.

MR. PURKAPLE: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Motion passed.

(Items 1 through 4 Concluded)

C E R T I F I C A T E
STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

**I, CHRISTY A. MYERS, Certified
Shorthand Reporter in and for the State of
Oklahoma, do hereby certify that the above
proceeding is the truth, the whole truth,
and nothing but the truth; that the
foregoing proceeding was taken down in
shorthand by me and thereafter transcribed
under my direction; that said proceeding
was taken on the 15th day of Oklahoma,
2008, at Oklahoma City, Oklahoma; and that
I am neither attorney for, nor relative of
any of said parties, nor otherwise
interested in said action.**

**IN WITNESS WHEREOF, I have hereunto
set my hand and official seal on this, the
18th day of October, 2008.**

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

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA**

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**TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED
AIR QUALITY COUNCIL MEETING
ITEM 5A
HELD ON OCTOBER 15, 2008, AT 9:00 AM
IN OKLAHOMA CITY, OKLAHOMA**

*** * * * ***

**MYERS REPORTING SERVICE
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MEMBERS OF THE BOARD

DAVID BRANECKY, CHAIR
LAURA LODES, VICE-CHAIR
JIM HAUGHT, MEMBER
JERRY PURKAPLE, MEMBER
SHARON MYERS, MEMBER
MONTELLE CLARK, MEMBER (ABSENT)
GARY COLLINS, MEMBER (ABSENT)

DEQ STAFF

MYRNA BRUCE
BEVERLY BOTCHLET-SMITH
EDDIE TERRILL
MAX PRICE
CHERYL BRADLEY
NANCY MARSHMENT
LEON ASHFORD
DIANA HINSON

PROCEEDINGS

MR. BRANECKY: All right. With that we'll go into the public hearing portion of the meeting.

Mr. Terrill will be joining us here in a little while. It will be another 20 -- 25 minutes, if we are still here.

MS. BOTCHLET-SMITH: Good morning. I am Beverly Botchlet-Smith, I'm the Assistant Director of the Air Quality Division and as such, I'll be serving as the Protocol Officer for today's hearings.

The hearings will be convened by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 of the Code of Federal Regulations, Part 51, as well as the authority of Title 27A of the Oklahoma Statutes, Section 2-2-201; Sections 2-5-101 through 2-5-118.

Notice of the October 15, 2008 hearings were advertised in the Oklahoma Register for the purpose of receiving

comments pertaining to the proposed OAC Title 252 Chapter 100 rules as listed on the Agenda and will be entered into each record along with the Oklahoma Register filing.

Notice of the meeting was filed with the Secretary of State on November 2, 2007 and amended on September 18, 2008 to change the location from Broken Bow to Oklahoma City.

The Agenda was duly posted 24 hours prior to the meeting at this facility here at DEQ.

If you wish to make a statement, it is very important to complete the form at the registration table, and you will be called upon at the appropriate time. Audience members please come to the podium when you make your comment and please state your name.

At this time, we will proceed with what's marked as Agenda Item Number 5A on the Hearing Agenda. That's OAC 252:100-9, Excess Emission Reporting Requirements. Mr. Max Price of our staff will give the

presentation.

MR. PRICE: Mr. Chairman, Members of the Council, ladies and gentlemen.

The Department is proposing changes to subchapter 9, Excess Emission Reporting Requirements, to make the rule consistent with the current interpretation of the EPA guidelines on excess emissions.

At the April and October 2007 Air Quality Advisory Council Meetings, staff asked for public comment on the existing rule.

On November 26, 2007 the Department held a public meeting to present information on the options being considered and to provide additional opportunity for informal comments and discussion.

At the October 2007 Council Meeting, it was decided that the subchapter 9 workgroup would be formed. The workgroup was composed of select Air Quality Division personnel, legal staff, and interested parties and Council Members.

The subchapter 9 workgroup has met five times: January 9th; January 31st;

February 22nd; May 30th; and July 11th, 2008.

At the January 17, 2008 Air Quality Advisory Council Meeting, staff presented amendments to subchapter 9.

Council tabled these proposals until the July '08 meeting to allow more time for the workgroup to draft a better excess emissions and reporting rule.

At the July 16, 2008 Air Quality Advisory Council Meeting, staff presented a revised subchapter 9, with most of the language the workgroup had developed.

However, there was some language concerning the immediate notification thresholds that still needed staff's attention. As a result, Council again carried the proposal over until this meeting.

This proposal is the same as the July 16, 2008 proposal with the addition of the immediate notification threshold language presented at the July Air Quality Advisory Council Meeting.

In addition, some non-substantive

language changes were made including one minor change to the proposed language in 252:100-9-8(b) and (c) to remove the word "notice" from the phrase "notice requirements". This language change was requested by a Member of the Council at the July meeting.

Also, please note that staff is asking for five more changes to the text in the proposal -- the proposal contained in the Council's briefing packet. These changes are highlighted in the document entitled, changes to be made to 252:100-9-7 not reflected in the Council briefing packet that has been made available to Council and the public.

The first change is to OAC 252:100-9-2 to correct the word "subchapter".

The second change is to correct the web address in 252:100-9-7(a).

The third is to change the references in the proposed language for 252:100-9-7(a)(1)(A) from OAC 252:100-7-1.1 to OAC 252:100-1.3.

The fourth change is to replace the word "and" with the word "any" in the phrase, "after the start of an excess emission event" in the proposed subsection to 252:100-9-7(b).

And the fifth change is to remove the word "engineering" from the phrase "good engineering practice" in the proposed 252:100-9-7(b)(5).

Staff has received several late comments concerning this. The latest is one from OPI; we don't have a copy of that but we are making a copy for the Council.

MS. BOTCHLET-SMITH: We've got them now.

MR. PRICE: You have them now. All right. We haven't had a chance to even look at that yet.

Yesterday we also received some comments from EFO. We received five comments on that and I believe that's in your packet. And this morning we got some guidance on how to answer those, so I would like to go ahead and respond to those comments.

MR. BRANECKY: Okay.

MR. PRICE: For the comments One through Three, staff believes that the comments were addressed in the changes that we've already made.

Their fourth comment having to do with maintenance as part of an affirmative defense, we've been in contact with EPA and EPA has notified us that they wouldn't approve a SIP that had that in there. So maintenance is kind of off the board if you want to get an approved SIP.

MR. BRANECKY: Why would they not approve it?

MR. PRICE: Let me find their exact words here. Okay. I am going to paraphrase this. Pursuant to the 1999 policy, affirmative defense is allowed only for penalties for excess emissions from startup, shutdown and malfunctions; maintenance is not included. That's an exact quote from them. And that's based on their 1999 policy guides which is what we are trying to make this thing do.

MR. BRANECKY: Okay.

MR. PRICE: In any case, these comments will be made a part of the rulemaking record.

Staff believes that this proposal is ready for final adoption and I'll ask that the Council vote to send this proposal to the Environmental Quality Board with a recommendation that it be adopted as a permanent rule. Thank you.

MS. BOTCHLET-SMITH: At this time we will be taking comments and questions from the Council for Mr. Price.

MR. PURKAPLE: Max, question.

MR. PRICE: Yes, sir.

MR. PURKAPLE: On 252:100-9-7(a)(1)(A) the reference was changed from 100-7-1.1 to 100-1-3.

MR. PRICE: Yes, sir.

MR. PURKAPLE: Over on the next page, and this would be 252:100-9-7(a)(1)(B)(5), there is another reference to 100-7-1.1. Is that an appropriate reference?

MR. PRICE: Does this have to do with the startup and shutdown or -- I don't

have that rule right in front of me right here. I have everything else I need on that.

Yes, sir. The 7-1.1 is when we have our HAPS defined and that is the correct reference for that.

MR. PURKAPLE: Okay. Thank you.

MS. LODES: Max, one thing I've noted is I believe the web address is actually still incorrect because it looks like you have an extra parentheses after US.

MR. PRICE: Yes. Good catch. Thank you, ma'am. Dad-gum software. We've been fighting the software we just changed to. It keeps putting things back in that I take out.

MR. HAUGHT: Max, in the -- on the five changes that have been proposed on that page where they're highlighted in yellow --

MR. PRICE: Yes, sir.

MR. HAUGHT: -- on the 9-7(b), you've got the excess emissions, why was it changed from "an" to "any"? What is the

significance of that?

MR. PRICE: Well, there was some in-house discussions there, when say "an" we're dealing with one and there could be a particular one. And if you put in "any" that was done because of the notifications. We don't want people to assume that if they don't have to give a notification, they don't have to give us a report following up.

And so that left the impression that if they had a notification they didn't have to do that, then they would have to do the report. And so if you say "any", that means any has to do it, not "an" referring back to the notification situation. That's why it was changed.

MS. BRADLEY: Cheryl Bradley, with the Rules and Planning Group. The change was requested by EPA to clarify, just as Max has said, they had a concern that someone might assume that if they were exempt from the immediate notification requirement, they would not have to submit a 30 day report or the written report and

that was a specific change that they

requested.

MR. HAUGHT: Okay.

MS. BOTCHLET-SMITH: Are there any other questions from the Council? Okay. I have a --

MR. PURKAPLE: Yes. Excuse me, just one more.

MS. BOTCHLET-SMITH: I'm sorry, Jerry. Go ahead.

MR. PURKAPLE: Max, it looks like you address the comments delivered yesterday, maybe, from Environmental Federation of Oklahoma.

What about the comments from OIPA? I guess what I'm thinking is, do we need to give time to address these particular concerns and kind of part of that is if this doesn't move forward today, I mean, what's -- is there a need to get it done today or what if -- or what about January, in order to give time to address additional comments?

MR. PRICE: We just received these comments this morning from OIPA, and

to tell you the truth, I haven't even had a chance to read them yet. And for procedure I suppose we could look at this and come back with responses to them today.

MR. BRANECKY: Because if we passed it today or in January, unless we pass it as an emergency it won't become effective until July of next year.

MR. PRICE: That's right. We'll probably hold it over until January.

MR. BRANECKY: There is no advantage to passing it today unless you pass it as an emergency.

MR. PURKAPLE: Okay. So there is no downside in waiting until January other than the fact that there has been a lot of work gone into it already, but then you still have some comments that need to be addressed.

MR. BRANECKY: I don't see any.

MS. BOTCHLET-SMITH: I think that would be fine but you might -- you might remember that this has been going on for a year now, so we need to get those comments addressed so we can move on.

MR. BRANECKY: But what I'm saying is we want to make it right, we don't have to come back and revisit it if we find something we missed. So if there is no disadvantage to waiting until January, then I don't see why we shouldn't wait, but that's my opinion. But let's hear some comments from the public. I think there is some.

MS. BOTCHLET-SMITH: Yeah. I don't want to be misconstrued on what I just said.

MR. BRANECKY: Right.

MS. BOTCHLET-SMITH: I'm not saying we need to do it today. I just -- we need to get those comments brought out today, so we can get them addressed and be in a position to move forward in January.

MR. BRANECKY: Okay.

MS. BOTCHLET-SMITH: And I do have a number of people from the public that indicated that they wanted to comment and I'll just remind you to step to this podium. I'm going to call your name, but if you would re-announce it when you get to

the podium so we can get it for the court reporter, that would be helpful. And before I do that, it's been brought to my attention that for any of us here at the table that have cell phones, if they are left on the table it causes static on the recording. So I've had to move mine, so I just thought I'd make a comment to the rest of you.

(Comment by the Reporter)

MS. BOTCHLET-SMITH: Throughout the room?

THE REPORTER: At least turn them

off.

MR. BRANECKY: Turn them off.

MS. BOTCHLET-SMITH: All right. Apparently, we have had some problems with some of our recordings in the past and the static makes it difficult for the Court Reporter. So it would be appreciated if everyone could just turn off their cell phones. I think you had already mentioned that. Thank you.

Okay. First commenter, Mr. Steve Willis with Dal-Tile.

MR. WILLIS: Steve Willis with Dal-Tile. And I have a couple of comments and a couple of questions. Now that you've taken maintenance out, I believe you need much better guidelines on what the difference between malfunction and maintenance is. It doesn't matter so much right now but in the future it's going to be a big deal. And we have open -- the example that comes to mind that we deal with a lot is if you have a pump going to failure and a bearing go out, you have several hours warning it's going to fail. If you stop it and fix it, is that going to be a malfunction or is that going to be maintenance? And if it's maintenance, doesn't that give us an incentive then to let it go to failure, which then makes it go down longer and causes a greater emission? That's one comment.

There the -- the one, what does "sudden" mean? Does "sudden" mean you have to let it go to failure?

The second one is -- well that's the same thing. We have a lot like that, but

if you want us to put it into our permit and permit for these maintenance activities, we have a weekly maintenance that takes 15 minutes, however if we find a problem it can take up to eight hours to fix. If we find a problem during the maintenance, does that then become a malfunction or is it still under maintenance? Because if it's under maintenance that means we have to try and get in our permit eight hours a week, because that is the worst case that can happen at any time, put into our permit.

Then in -- when you are doing the defenses in (b)(2), you put a statement that to be an affirmative defense that the event could not have been planned for and avoided. Does that require a redundant system? Because you could have planned for any event and avoided it by having complete redundancy throughout your air control device. So is that saying in that point where as in the section above it you say "could have reasonably prevented", here you take out the "reasonably" and then say

"could have been planned". So that implies a totally redundant system. Is that what your intent is?

And the next one -- the last question is under (c)(1), is where you talk about a recurring pattern. Could you give us guidelines as to what meets the definition of a recurring pattern? Is that once a month, once a year, twice a year, is it some function of number of times? How do we know if we're exceeding that? That's all.

MS. BOTCHLET-SMITH: Thank you. Angie Burkhalter, OIPA.

MS. BURKHALTER: My name is Angie Burkhalter and I represent the Oklahoma Independent Petroleum Association. And I submitted my comments electronically on Monday but talking this morning with Max and Cheryl, I understand they did not receive it, so I apologize to the Council for not getting my comments in advance.

So anyway, this morning I would just like to kind of go over some of those concerns that we have.

We greatly appreciate the DEQ inserting or implementing a reportable quantity threshold under 252:100-9-7(a)(1). However, we see this language is a little bit confusing and we would suggest maybe trying to clarify the issue, because it appears to me that the opacity emissions are linked or related to a measured emission. So we just wanted to try to clarify or get some clarification in the way that is written.

Also, we would really like to have a better understanding of how those thresholds were established. We're not sure of where the ten percent or the 200 pounds came from.

And then based on historical information that DEQ has, we're curious as to how many companies reporting excess emissions would actually be able to use that provision if it were implemented.

Also startup/shutdown of maintenance is not included in a vast majority of existing permits. And we made this comment before and I know the staff has responded

that, you know, they plan to work with industry or permit holders to try and address these issues. But we're very concerned on how this will be addressed in a timely fashion. You know our industry needs regulatory certainly and to be able to plan and manage our operations in a reasonable manner to avoid, you know, any type of fear of enforcement or violations. So we would recommend that DEQ consider some kind of grace period to modify those permits or some kind of priority permit modification scheme of some sort.

And also, we see that DEQ's proposed rules appears to be a "one size fits all" rule for minor sources and major sources. We would like to see some kind of consideration given to less burdensome notification reporting requirements for minor sources.

**And that's all the comments that I have. I appreciate your time.
MS. BOTCHLET-SMITH: Thank you.
Don Shandy, with Ryan, Whaley.
MR. SHANDY: Council Members, my**

name is Don Shandy and I'm with the law firm Ryan, Whaley here in Oklahoma City and we represent a consortium of industries across Oklahoma that actively have been involved in this process. I've participated in the workgroup and, you know, one of the things that I want to make sure the Council hears from us is we appreciate the staff and the effort that they have put into this process. This has been somewhat tedious. And I think, Max, in his presentation, gave us an idea of, at times, how tedious it can be.

And there has been a lot of spirited debate and discussion as these meeting have proceeded. And so, again, I wanted to say to the staff, thanks for all the effort that they have put into this.

A couple of things. I think we are getting very close from my perspective of it. And a lot of people in this room have evaluated rules from a lot of different states. I've been involved in several other states where this process has been undertaken and in all honesty it's probably

gone better in Oklahoma than it has in some of the other states. But I still think there are a few things that we need to get worked out. But with that said, I do want to reiterate that I think we are getting really close to having an agreement here.

I know that, again, the EFO filed some comments previously. I would reiterate, we support the EFO comments. And, obviously, Max and the staff, haven't had a chance to really dig into those. I believe he even said that -- or he had addressed those a little bit earlier, but we haven't had a chance to talk through that. But we agree with the comments the EFO has provided.

One particular thing, and it's sort of following along the lines of Mr. Willis' comments earlier, but one of the things that I have seen in other states that has become a problem and we tried to address it with the alternative reporting provision where a facility or company could come in and ask for an alternative excess emission reporting scheme based upon the fact that

they are regulated by NESHAP or an NSPS or something of that nature. And the DEQ would have 90 days to make a decision about that, and if they didn't make a decision then essentially what was submitted to DEQ, would take over and it was sort of a self-executed-type provision.

One of the things that I would like to try to get clarity on, is really the issue related to the -- if you submit an alternative proposal and you have an NSPS that applies, what we've tried to do -- and I think everybody that has been working on this would agree, we've tried to simplify things. And a comment that I have gotten back repeatedly over the last 20 or 30 days was really related to if we get an alternative plan and we're subject to an NSPS or NESHAP or whatever it may be, we don't want duplicative reporting. So if a NESHAP applies and someone asks for that to be the program that they're going to respond under, we want to make sure that that's the program they respond under. So I don't know how the Council feels about

that, but it would be nice if we could get some clarity about that from the Council. I know this is an administrative record and if we all look back on it later, I just would like some clarity from perhaps the staff and also how the Council might view that.

Max made a comment on the EPA's view of the comment regarding maintenance. I would respectfully disagree with EPA's view about that, and it mainly is from a pragmatic perspective. I think the affirmative defense is appropriate in the appropriate circumstances and there are situations where I think that the comment that was made by, I think by the EFO or someone else -- it is an appropriate comment because what you don't want to do is discourage maintenance and I don't know how you draw the line in between. I think it's unfortunate that EPA's position is, we're not going to approve a rule that has that in there. Because I think that there is perhaps an untended consequence, maybe that EPA hasn't considered.

Now with that said, I'm not trying to say we ought to thumb our nose at EPA -- I'm sure they are here in the room and I would never suggest that, right, nor would anybody else for that matter.

But what I am saying is I think that we ought to talk about that a little bit more, because I do think that what we don't want to happen is an untended consequence as a result of that position. We want to encourage everybody to get in and do the maintenance and again I think that Steve Willis' comments maybe sort of hinted at that a little bit earlier. We don't just want to let things go to failure just because we can then qualify under the rule.

So again, I would suggest or would say that I think we're getting pretty close, the process has worked. At least based on my experience having been through this several times now in other locations and I want to again say thanks to the staff. I have no problems waiting until January. And if the group wants to reconvene and talk about this one more

time, that's fine with me. However, they want to handle that. But I don't think it's a problem waiting until January. But I will say this, I do think we need to draw the process to a conclusion. Thanks.

MS. BOTCHLET-SMITH: Thank you. Joe Cowan with Buzzie Unicem.

MR. COWAN: Thank you. My name is Joe Cowan and I work for a cement plant in Pryor which is owned by Buzzie Unicem, USA. And I want to pursue fine tuning the opacity issue in section 9-7.

There are in (b)(5), under that paragraph, there are some conditions under which your use of immediate reporting doesn't apply. And one of them is if the excess emission is a HAPS. And I'm thinking of some logic that comes from the EPA's promulgation of subpart LLL under 40 CFR 63 and that is that HAPS are regulated by controls on particulate emissions and they use two features of particulates. There is a limit on the actual mass of discharge of particulates and there is limit on opacity, where opacity is a -- one

of the surrogates for the particulate emissions. And my question is in this case would the Agency consider the opacity connected with the HAPS and therefore prevent us from using the relaxed rules or not? Thank you.

**MS. BOTCHLET-SMITH: Thank you.
Julia Bevers, OG&E.**

**MS. BEVERS: Good morning, I'm
Julia Bevers with OG Energy. Thank you,
Mr. Chairman, and Members of the Council.**

**I have submitted comments on -- I
said I was here for OGE, please strike
that, I'm here representing EFO this
morning, particularly OGE, and many other
companies as well.**

**I did submit comments and I do
regret that they were submitted on Monday.
I would have loved to get comments sooner.
I know it seems like this process is taking
a long time but I would just encourage you
to remember that it wasn't until July -- or
it wasn't really until September 15th, that
EFO Members knew, you know, what was going
to be considered today. So we only had a**

month to gather comments.

And I appreciate Max addressing our concerns about maintenance for making his comments from EPA. I agree with Don Shandy that I respectfully disagree with that conclusion. But we also had other comments here for suggestions for changes to the definition of excess emissions, and a clarification and immediate notification, which we feel like it's very important to distinguish and to clarify. It's somewhat confusing and we've had several discussions in the workgroup and individually with staff on how to make this more clear because it is kind of complicated. But I believe our suggestion clarifies that and I don't feel like that has been addressed yet.

Two separate items from the comments we submitted is the reference this morning on -- and I -- I'm probably wrong. Did you say -- did I hear you say that this reference, Max, to 100-7-1.1 startup and shutdown definitions is correct?

MR. PRICE: No. The one for

startup and shutdown is on 100-3.

MS. BEVERS: Okay. I misunderstood what you said. And then I also wanted to voice my support on what Don Shandy was saying about the alternative reporting. I didn't specify that in the comments I submitted. We did have some discussion about that and we do feel like if a source is subject to other reporting requirements -- federal requirements, whatever those requirements are would apply to the report we keep and not have additional burden relative to state reporting.

I guess in summary, is I would just request that this would be continued to January. I think it's very close also, but I believe it needs just a little bit of tweaking one last time at least. Thank you.

MS. BOTCHLET-SMITH: Thank you. David, I don't have any other indication that someone from the public wishes to speak. So at this time, I would put it back to the Council in case they have any

additional questions.

MR. BRANECKY: Okay. The only danger I see, if we continue this until January, this has to go to the Board at the February meeting in order for it to become effective in July. Does the Board meet before July, after their February meeting? Is there another opportunity?

MR. TERRILL: No. You've got one shot.

MR. BRANECKY: Oh. And if for some reason there's bad weather in January, we may miss that. That's just a risk we'll have to take.

MR. TERRILL: Well we would probably try to reschedule that pretty quickly.

MR. BRANECKY: We could have a -- what's the latest we could have a meeting and still meet the --

MR. TERRILL: You would ask that.

MR. BRANECKY: -- Board's requirements.

MR. TERRILL: I honestly don't know.

MR. BRANECKY: Obviously, it could be another week. We had the original meeting scheduled a week later.

(Comments)

MR. BRANECKY: Yeah. So we've got some time.

MR. TERRILL: Yeah, we could probably do it if we had to.

MR. BRANECKY: Okay. With that, do I have any other discussion from the Council?

MR. PURKAPLE: I have a question. There seem to be two perspectives on the maintenance: the desire for the maintenance provision and yet the response from EPA seems to be that they wouldn't approve the SIP if that was included. Does anybody know of any examples of any states where there is a maintenance provision in their excess emission reporting? I mean is this something that has been allowed elsewhere?

And kind of a follow-up question, let me go ahead and get to the second question as well, and that is with respect to the comments on minor sources. Is

anybody aware of other states where the excess emission reporting for minor sources would be a little bit more expedited -- less -- fewer requirements that the major sources have to follow through? That there could be a more expedited way of doing that from a minor source point of view? So I'll just ask those two questions.

MR. BRANECKY: Max, do you have an answer?

MR. PRICE: Yeah. I have a couple of answers for that. One of the problems with maintenance is that EPA has never defined the term. I've done the research on all their federal rules trying to find a definition for maintenance and I've only found two rather brief and rather inadequate definitions in the Parts 60's rate and that's for coding operations. So basically we have an undefined term. And as far as the states making a difference between minor sources and major sources, it really is irrelevant because the EPA doesn't make that distinction and we have to satisfy their guidelines.

As for the maintenance issue, it's an ill-defined term. Everybody seems to know what it is but unless we define it, it doesn't mean anything in our rules. And so I think that's the reason that EPA is taking such a hard-line on it. They may change their mind about that eventually.

Preventive maintenance, like you've got a bearing going out in a pump, that's probably something we could address. I don't know for sure, I'm not making any promises, but we could probably list that under our malfunctions provisions in this rule. So it's highly possible to address the situation but it's something we're going to have to (inaudible). That's all I have.

MS. BRADLEY: Cheryl Bradley with Rules and Planning. Also the EPA representative went on and clarified in his statement that the startup before and the shutdown after, possibly a maintenance event could be addressed in the Affirmative Action Policy. So if we -- a lot of the emissions should be -- could be

characterized as startup and shutdown better associated with the maintenance event.

MR. HAUGHT: If we can't define maintenance, we struck the definition of malfunction out of this subchapter, are we referring to it somewhere else or are we now leaving malfunction up for --

MR. PRICE: I believe malfunction is defined in 1-3.

MR. HAUGHT: Okay. So if it's not defined separately here then that's --

MR. PRICE: Off the top of my head, I can't remember. I know malfunction is defined in (inaudible).

MS. BRADLEY: Yes, Mr. Haught, it is. And it's defined as any sudden, infrequent and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

MR. HAUGHT: Okay. Where does that -- Mr. Willis' comment about something

that upon review it appears that it is going to fail. And in his comment, is he not subject to the affirmative defense if they stop it before that piece of equipment fails? I mean, are they driven to let it fail so then it becomes a malfunction then?

I mean, what we don't want to do is we don't want the rule to drive the wrong actions. We all know what the actions that -- we all know what the outcome is that we want. We don't want the rules to drive the wrong action. And in the example that he gave, my concern is that we may drive the wrong action.

MR. PRICE: I can't speak for the Agency in general but as I said, there's a possibility of rolling maintenance into the malfunction part and for startup and shutdown (inaudible) preventive maintenance. We have to be very careful about that and make sure we don't step on EPA's toes. Maintenance itself is not an affirmative event. But as a part of a startup or shutdown or malfunction, it can be a part of that. You understand what I'm

saying? It can be a part of those affirmative defenses for an excess emission -- preventive maintenance for an event, catastrophic failure is certainly --

MR. HAUGHT: Well, I understand, but if they detect a bearing that's making noise and appears that it's going to fail, the time that they shut down the process, I understand that's -- once they repair that control device and they start back up, that's subject, but what about that time during -- he says it may be eight hours that it goes on to. But it looks like we're leaving that still to some (inaudible) that's not subject to affirmative.

MR. PRICE: Well, I think we might be splitting hairs on that. The eight hour period the way we defined excess emissions would be part of that event that was do to that shutdown. The excess emission event is a time period between the time of the shutdown and the time you start up.

MR. HAUGHT: Okay. So just the

fact that they shutdown, regardless of the cause which is still -- the whole event is subject to --

MR. PRICE: Yeah. The whole eight hours would still be included in that. The maintenance is really kind of irrelevant while they do the fix on that.

MR. HAUGHT: Okay. So why you shut down is not going to be -- you know, you don't expect that would be in question.

MR. PRICE: No. That's the reason that we took great care in defining an episode and an event in such ways, because actually when a malfunction or a shutdown starts until they repair it and get back online, that is the event -- not the event but the episode.

MR. HAUGHT: So then to meet -- your reason for shutdown met the criteria that's in the rule for the shutdown?

MR. PRICE: Correct.

MS. LODES: Cheryl and Max, Joe Cowan had a question similar to mine earlier this week where if the emissions that -- even if you don't have a specific

limit for HAPS, if HAPS are included in what you have a limit for, say VOCs, opacity PM, are you excluded from the immediate notification requirement?

And I appreciate the response I got. But maybe since I'm not the only one asking this question, we could somehow try and clarify that in this part of the rule. Because that seems to be a question that I've received from a number of people and obviously others are still asking that question, can make that a little bit clearer.

MS. BRADLEY: In the example provided, there was a bypassing of a particular piece of control equipment. The permittee had an establishment for VOCs, but not for any HAPS. It is likely that the excess emissions, by bypassing this piece of control equipment, will include HAPS.

Since there are no established emission limits in the permit or under any standard that would be applied to this facility, it would not prevent them from

the exemption of immediate notification. So essentially they have only a VOC limit even though it's reasonable for us to expect that there would be some HAPS emissions in them.

When we discussed this further we had established what -- or recommended what we thought were reasonable thresholds. The ten percent of the allowed limit, not to exceed 200 pounds, also allows us some control over the total amount of emissions even if it were more HAPS than we would anticipate. So we didn't feel they presented a great deal of risk. So sources that do not have a HAP limit or requirement in their permit, where they are not required by another standard, would not be precluded from using the exemption under immediate notification.

MS. LODES: I appreciate that, for you clarifying that on the record.

MR. HAUGHT: David, I've got one last question. What you're talking about, and some of the people have asked for, some relief for the smaller sources and minor

sources, on the 970, the Certificate of Truth Accuracy and Completeness, it talks about the signature by responsible official or designee. Is that responsible official -- is that essentially the Title V definition of responsible official in this case for, you know, small sources -- for minor sources?

MR. PRICE: That term is defined in several places in the rule and certainly under Title V. But I believe it is also defined in subchapter 7 for minor sources and maybe even in subchapter 1.

MR. HAUGHT: And so the applicable whichever --

MR. PRICE: Right.

MR. HAUGHT: -- applicable definition depending on what your status was.

MR. PRICE: Yeah. That's what I said we've got to work on because we really (inaudible) want to move that to a central location. That's one of the things we're working on.

MR. HAUGHT: All right.

MS. LODES: Okay. I have one more. Reoccurring pattern. What's a reoccurring -- and I know this is a fundamental question that everybody asks; what's a reoccurring pattern? If a control device fails once every two years; is that a reoccurring pattern? Or is it only if it fails once every week? And I know that's a vague definition but if we could get some clarification there so facilities know what is really a reoccurring pattern when they are trying to do this for the affirmative defense.

MR. PRICE: That term is vague. It's one of those subjective things that I really hate in this rule, but it's there and EPA has defined what that is. And basically I think that really is a judgment call on our part, one that is a reoccurring pattern. If a facility has an upset -- if I can use that term, I like that term better -- every day of operation, obviously it's a reoccurring pattern. If they have one every six months, and it doesn't occur for a year, you know, it's really a

judgment call. And it also depends on the magnitude before we take action on it. It's a five percent in the past or something like that, I don't think our enforcement people have time to even deal with that.

But if it's a reoccurring pattern -- we have facilities that have an excess emission substantial every day they operate, that's a reoccurring pattern as far as our enforcement and compliance people are concerned. So it's really a judgment call. And you're right, we could give an absolute number for it, but I don't think industry would really appreciate that. That's my point of view on it.

MR. BRANECKY: Jerry.

MR. PURKAPLE: Just one question that's kind of related, again, to the minor source. For a permit exempt facility, how would the excess emission rule work?

MR. PRICE: I'm going to answer this and if anyone wants to jump in and tell me I'm wrong, feel free. The excess emission rule still applies to permit

exempt facilities. They are still subject to any NSPS or any -- not NSPS -- any rule that actually applies to them, still applies to them. So they in real life (inaudible) so they still have to report their excess emissions, the way I understand the rules for them. The only thing the permit exempt, exempts them from is inventory and permits. It doesn't exempt them from any emissions rule on our books. So, yes, they are still subject to subchapter 9. Whether or not we would know if they had an excess emission or whether or not they report it is going to kind of be up in the air unless we get a complaint. If we get complaints about excess emissions, then of course, we would take enforcement action.

MR. PURKAPLE: So then to apply the rule for the ten percent overage, would their limit then effectively be 40 tons per year?

MR. PRICE: Yes.

MR. PURKAPLE: That's the cutoff, although they don't have to have a permit.

MR. PRICE: Yes.

MR. PURKAPLE: So the ten percent would be -- that would be viewed as their limit then; is that right?

MR. PRICE: For them to qualify for the permit exemption it would be, seems to me like.

MR. PURKAPLE: But to apply what we're doing here now, you don't have to do an immediate notice unless you're ten percent above not to exceed 200 pounds, their limit would be viewed as 40 tons? And if they're above that they have to do immediate reporting.

MR. PRICE: Oh, I see what you're getting at.

MR. PURKAPLE: How do they -- I mean, what's their limit above which they have to do immediate reporting?

MR. PRICE: Well, I would assume that an excess emission that exceeded 20 tons for an annual basis would be something that they would probably need to come in and talk to us about. Generally excess emissions refer to some event. They don't

go on for a whole year. So if they have less than a 40 ton source out there for any glutant, similarly they're breaking that 40 tons for an annual basis in any one period of time, and of course, then they really have a problem. That's extreme excessive emissions.

MR. PURKAPLE: Okay. You're right. Then 40 tons per year divided by 365, whatever the math works out to be, that would a short-term (inaudible) above which exceeded it?

MR. PRICE: No, sir. That wouldn't be a short-term limit anyway. It would only be the rules that actually applies to them.

MS. BRADLEY: Mr. Purkapple, the primary applicability on two permit exempt facilities deals with opacity. We have the opacity rule, the lions share of our complaints -- citizens complaints relate to opacity because that's what they can see. And as Max pointed out, we're looking at short-term emissions. We would not break it down into a 40 ton limit into a daily

application of the rule. That would be a permit violation but we would not have an expectation that would be recorded as an excess emission through subchapter 9. There would be a requirement to report it on the annual emissions inventory.

The facility that exceeded the 40 tons would no longer be qualified for permit exempt and should start the process. So we -- I guess we're taking a more cut and dry approach to the limits being in the permit and not extrapolating.

MR. PURKAPLE: I appreciate the comments. I'm just trying to figure out from a very small minor source that may be permit exempt, how do you struggle with applying this subchapter -- this subchapter that we're dealing with. And the opacity comments are good, I hadn't really thought of. So, thank you.

MR. TERRILL: I get the last word before you vote?

MR. BRANECKY: No. But go ahead.

MR. TERRILL: I apologize for being late. Let me just say this. There

has been a lot of discussion today and it's a little bit disappointing that we're a year and three months into this and we've still got issues like this. But let me say this, we've got a lot of things going on next year. We need to get this rule passed in January. And I'm not going to be near as agreeable if we get comments two or three days before we have this next meeting. I'll just be blunt about it. We can live with the rule we've got, if you all can. And we would like to change this. We think -- we've given a lot on this rule, but don't kill the golden goose in the last few weeks trying to get everything for everybody. It's not going to happen. You just can't. You all don't want it defined to that degree and we don't want to have to monitor to that degree. So there is going to have to be some level of our discretion built into this at least until we see how the rule is going to work. We can always change it. But I would just encourage you all, you need to take a look at this rule closely over the next few weeks and get

comments to us so that we have plenty of time to work on that through the workgroup and through the other workgroups that are working on this because we need to get this done in January. And like I said, it's not going to be a perfect rule for everybody. And we're not going to give everything away in the last few months. It's just not going to happen. So with having said that, we're willing to continue to work on this but I think January needs to bring it to a close, because we've got a ton of other things going on.

You all know as well as I do with the new Administration, everybody's going to have a different idea about how to do air quality and we'll probably have to relearn whatever the nuances are in the next Administration and the next EPA. So let's really make a -- we'll pledge to get this thing done but we need you all to be working at this as well. And we'll try to address every comment we can but we're not going to be able to address -- make everybody happy. Nobody is ever happy when

we do rulemaking. So let's -- we'll do the best we can.

MR. BRANECKY: Okay. And with that, I would also like to second these comments that we do need to not wait until the last minute. We want to get this thing done in January. We probably ought to schedule another workgroup meeting as soon as possible. Because if you wait until December, we're going to start getting into holidays and vacations and stuff. So we need to get that done pretty quick and get this thing worked out and be ready to roll in January.

So with that, if there is no other discussions from the Council, I guess I'm up for a motion.

MS. MYERS: I'll make one. I'll move that we continue this rule to January so that the staff can address the concerns that have been raised today.

MR. BRANECKY: Do I have a second?

MR. PURKAPLE: Second.

MR. BRANECKY: Okay. A motion

and a second. Myrna, call the roll,

please.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: Yes.

MS. BRUCE: Jerry Purkapple.

MR. PURKAPLE: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Motion passed.

(Item Number 5A Concluded)

C E R T I F I C A T E

**STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA**

)

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ss:

**I, CHRISTY A. MYERS, Certified
Shorthand Reporter in and for the State of
Oklahoma, do hereby certify that the above
meeting is the truth, the whole truth, and
nothing but the truth; that the foregoing
meeting was taken down in shorthand by me
and thereafter transcribed under my
direction; that said meeting was taken on
the 15th day of October, 2008, at Oklahoma
City, Oklahoma; and that I am neither
attorney for, nor relative of any of said
parties, nor otherwise interested in said
action.**

**IN WITNESS WHEREOF, I have hereunto
set my hand and official seal on this, the
27th day of October, 2008.**

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

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA**

*** * * * ***

**TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED
AIR QUALITY COUNCIL MEETING
ITEM 5B
HELD ON OCTOBER 15, 2008, AT 9:00 AM
IN OKLAHOMA CITY, OKLAHOMA**

*** * * * ***

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BEVERLY BOTCHLET-SMITH
EDDIE TERRILL
MAX PRICE
CHERYL BRADLEY
NANCY MARSHMENT
LEON ASHFORD
DIANA HINSON

PROCEEDINGS

MS. BOTCHLET-SMITH: The next item on the agenda is Number 5B. This is OAC 252:100-25, Visible Emissions and Particulates. Ms. Diana Hinson of DEQ will be giving the staff presentation.

MS. HINSON: Good morning, Mr. Chairman, Members of the Council, ladies and gentlemen.

I am Diana Hinson, an Environmental Programs Specialist in the Rules and Planning Section of Air Quality in the Department of Departmental Quality.

The Department is proposing to amend OAC 252:100-25-3(b)(3), Opacity limit, to correct an error in a rule reference for clarification. Also staff recommends the addition of abbreviation "OAC" subchapter 25 section 3(b)(2) and 3(b)(3) in order to be consistent with rule writing standards. Although "OAC" was included in the publication for 3(b)(3), it was inadvertently left out 3(b)(2). This is

the first time the Council has considered either of these changes.

Notice of the proposed rule changes were published in the Oklahoma Register on September 15, 2008, requesting comments from members of the public. No written comments have been received.

The Department suggests that the Council vote to send the proposal to the Environmental Quality Board with the recommendation that it be adopted as a permanent rule. Thank you.

MS. BOTCHLET-SMITH: Do we have any questions from the Council? Hearing none. I also have not received any notice of comments from the public. David.

MR. BRANECKY: Okay. This looks like an easy one to me. Any further discussion from the Council? No discussion, I'd entertain a motion.

MR. HAUGHT: I'll make a motion that we adopt staff's proposed changes to OAC 252:100-25 as recommended.

MR. BRANECKY: Do I have a second?

MS. MYERS: I'll second it.
MR. BRANECKY: Myrna, roll call,

please.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: Yes.

MS. BRUCE: Jerry Purkapple.

MR. PURKAPLE: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Motion passed.

(Item 5B Concluded)

C E R T I F I C A T E
STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

**I, CHRISTY A. MYERS, Certified
Shorthand Reporter in and for the State of
Oklahoma, do hereby certify that the above
proceeding is the truth, the whole truth,
and nothing but the truth; that the
foregoing proceeding was taken down in
shorthand by me and thereafter transcribed
under my direction; that said proceeding
was taken on the 15th day of Oklahoma,
2008, at Oklahoma City, Oklahoma; and that
I am neither attorney for, nor relative of
any of said parties, nor otherwise
interested in said action.**

**IN WITNESS WHEREOF, I have hereunto
set my hand and official seal on this, the
18th day of October, 2008.**

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

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA**

*** * * * ***

**TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED
AIR QUALITY COUNCIL MEETING
ITEM 5C
HELD ON OCTOBER 15, 2008, AT 9:00 AM
IN OKLAHOMA CITY, OKLAHOMA**

*** * * * ***

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EDDIE TERRILL
MAX PRICE
CHERYL BRADLEY
NANCY MARSHMENT
LEON ASHFORD
DIANA HINSON

PROCEEDINGS

MS. BOTCHLET-SMITH: The next item on the agenda is Number 5C. OAC 252:100-33, Control of Emission of Nitrogen Oxides. Ms. Cheryl Bradley of our staff will be giving the presentation.

MS. BRADLEY: Good morning. Mr. Chairman, Members of the Council, ladies and gentlemen, we are proposing to amend Subchapter 33 to define "solid fossil fuel", to resolve issues regarding the NO_x emission limits for direct fuel-burning equipment and for equipment with technological limitations; and to add a formula for determining NO_x emission limits for fuel-burning equipment utilizing more than one type of fuel. We are also proposing some non-substantive changes for consistency with other rules in Chapter 100 and grammatical corrections.

These changes were first presented to the Council at the Council Meeting held on January 17, 2008. That hearing was

continued until the July 16, 2008 Air Quality Council Meeting. Because there were still some outstanding issues, the July hearing was continued to the October 15, 2008 meeting, today's meeting.

We have made no substantive changes to the revision presented at the July 2008 hearing.

We have not yet resolved the issue of fuel-burning equipment that meets the emission limits in Subchapter 33, when operating at full heat input capacity, but is unable to meet the emission limits when operated under reduced heat input conditions. This fuel-burning equipment complies with the NO_x pounds per hour and tons per year emissions limits in their permits when operated under reduced heat input conditions.

Notice of the proposed rule changes was published in the Oklahoma Register on September 15, 2008, and comments were requested from members of the public.

On October 8th, we received comments from EPA Region 6 Planning Group. EPA has

clarified that we would need to add a statement that approval of a technological limitation by DEQ's Executive Director would not mean automatic approval by EPA. This revision would be necessary to get EPA approval of the rule as a SIP provision. They had previously submitted this comment, but it was not clear that it was an absolute requirement.

Due to the outstanding issues mentioned, we ask the Council to continue this rule until the January 2009 Air Quality Advisory Council meeting.

MS. BOTCHLET-SMITH: Are there any questions from the Council today?

MR. BRANECKY: Cheryl, has any progress been made since July in resolving these issues? Are we ever going to be able to resolve them? Are we making progress?

MS. BRADLEY: We are making progress. Most of that progress has been through the efforts of our Engineering Staff in clarifying the issue. Initially, the -- we're addressing it as a low-NOx burner issue and at this point we are not

absolutely sure that that is the -- for right now let me say that we don't think that the low-NOx burners or the ultra low-NOx burners are the issue. And I think we are close to having some kind of resolution.

MR. BRANECKY: Okay. Thank you.

Any other questions?

MR. HAUGHT: So, I'll ask, Cheryl, when you think you are close, at that point it will be put out to the public and Council to look at. And I think that right now it is between DEQ staff and EPA.

MS. BRADLEY: Oh, at this point, actually, it is primarily internal in DEQ staff. We are not sure at this point that we are actually going to need to write a rule provision. By adding an additional provision we have to justify to EPA that we have not weakened the SIP. In light of the change in the ozone standard and we are looking at potential non-attainment areas being designated in the State of Oklahoma, it's going to be a hard sale. If we are able to utilize the existing rule to

address the situations that we have identified, it would be to our advantage to do so and not justify this as an alternative standard.

MR. HAUGHT: Thank you.

MS. BOTCHLET-SMITH: Any other questions from the Council? Again on this rule, I haven't received any indication that anyone from the public wished to comment. So if the Council doesn't have anymore questions you can go for your motions.

MR. BRANECKY: Okay. Staff has recommended that we continue this to the January meeting. So, I'll entertain a motion.

MR. HAUGHT: So moved. I'll move to continue OAC 252:100-33 to the January Council Meeting.

MR. BRANECKY: I need a second.

DR. LYNCH: Second.

MR. BRANECKY: All right. Thank you. Myrna, roll the call, please.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Sharon Myers.
MS. MYERS: Yes.
MS. BRUCE: Laura Lodes.
MS. LODES: Yes.
MS. BRUCE: Jerry Purkapple.
MR. PURKAPLE: Yes.
MS. BRUCE: Bob Lynch.
DR. LYNCH: Yes.
MS. BRUCE: David Branecky.
MR. BRANECKY: Yes.
MS. BRUCE: Motion passed.

(Item 5C Concluded)

C E R T I F I C A T E
STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

**I, CHRISTY A. MYERS, Certified
Shorthand Reporter in and for the State of
Oklahoma, do hereby certify that the above
proceeding is the truth, the whole truth,
and nothing but the truth; that the
foregoing proceeding was taken down in
shorthand by me and thereafter transcribed
under my direction; that said proceeding
was taken on the 15th day of Oklahoma,
2008, at Oklahoma City, Oklahoma; and that
I am neither attorney for, nor relative of
any of said parties, nor otherwise
interested in said action.**

**IN WITNESS WHEREOF, I have hereunto
set my hand and official seal on this, the
18th day of October, 2008.**

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

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA**

*** * * * ***

**TRANSCRIPT OF PROCEEDINGS
OF THE REGULARLY SCHEDULED
AIR QUALITY COUNCIL MEETING
ITEM 5D
HELD ON OCTOBER 15, 2008, AT 9:00 AM
IN OKLAHOMA CITY, OKLAHOMA**

*** * * * ***

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COUNCIL MEMBERS

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NANCY MARSHMENT
LEON ASHFORD
DIANA HINSON

PROCEEDINGS

MS. BOTCHLET-SMITH: The next item on the agenda is Number 5D. This is Appendix E, Primary Ambient Air Quality Standards; and Appendix F, Secondary Ambient Air Quality Standards.

Mr. Leon Ashford will be giving the staff presentation.

MR. ASHFORD: Mr. Chairman, Members of the Council, ladies and gentlemen. In March 2008, EPA set a new standard for ozone, changing the value of the standard from 0.08 to 0.075 parts per million.

Appendices E and F are our state primary and secondary Ambient Air Quality Standards. At this time we would like to revoke the old Appendices E and F and replace them with new Appendices E and F, to reflect those changes.

One additional non-substantive change was made to footnote Number 4. And it was made too late to provide it in the

regular packet, but I believe it has been provided to the Members of the Council, and that change was to change the end of the footnote from "as determined by 40 CFR Appendix P" to "as provided in 40 CFR 50.15".

Staff would recommend passage with the change to the footnote at this time.

MS. BOTCHLET-SMITH: Do we have any questions from the Council? Hearing none, I also have not received notice of comment from the public. David.

MR. BRANECKY: Okay. If I have no further discussion from the Council, staff has recommended these be approved and sent to the Board for approval. So I'll need a motion.

MR. PURKAPLE: So moved.

MS. LODES: Second.

MR. BRANECKY: All right. Myrna, call the roll, please.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: Yes.

MS. BRUCE: Jerry Purkapple.

MR. PURKAPLE: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Motion passed.

(Item 5D Concluded)

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) ss:
COUNTY OF OKLAHOMA)

**I, CHRISTY A. MYERS, Certified
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**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA**

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**TRANSCRIPT OF PROCEEDINGS
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ITEM 5E
HELD ON OCTOBER 15, 2008, AT 9:00 AM
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*** * * * ***

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DIANA HINSON

PROCEEDINGS

MS. BOTCHLET-SMITH: The next item on the agenda is Number 5E, this is Appendix Q, Incorporation By Reference. Ms. Nancy Marshment of staff will be giving the presentation.

MS. MARSHMENT: Good morning. Mr. Chairman, Members of the Council, ladies and gentlemen. My name is Nancy Marshment and I am an Environmental Programs Specialist with the Air Quality Division. The Department is proposing to revoke the current Chapter 100, Appendix Q, Incorporation by Reference, and adopt a new Appendix Q.

These proposals are part of the annual review of Title 40, Code of Federal Regulations (40 CFR), Incorporation by Reference.

The following 40 CFR rules are being incorporated by reference in the proposed Appendix Q. The newly added items are highlighted in the Council Members packets

**so that you can follow along more easily.
It is a long list, so I'll try to move
through it quickly.**

**The first edition is 40 CFR 60,
subpart Ja, Standards of Performance for
Petroleum Refineries for which
construction, reconstruction, or
modification commenced after May 14, 2007.**

**The second one, 40 CFR 60, subpart
JJJJ, Standards of Performance for
Stationary Spark Ignition Internal
Combustion Engines.**

**Number 3. 40 CFR 63, subpart
BBBBBB, National Emission Standards for
Hazardous Air Pollutants for Source
Category: Gasoline Distribution Bulk
Terminals, Bulk Plants, and Pipeline
Facilities.**

**Number 4. 40 CFR 63, subpart
CCCCCC, National Emission Standards for
Hazardous Air Pollutants for Source
Category: Gasoline Dispensing Facilities.**

**Number 5. 40 CFR 63, subpart
MMMMMM, National Emission Standards for
Hazardous Air Pollutants for Carbon Black**

Production Area Sources.

**Number 6. 40 CFR 63, subpart
NNNNNN, National Emission Standards for
Hazardous Air Pollutants for Chemical
Manufacturing Area Sources: Chromium
Compounds.**

**Number 7. 40 CFR 63, subpart
OOOOOO, National Emission Standards for
Hazardous Air Pollutants for Flexible
Polyurethane Foam Production and
Fabrication Area Sources.**

**Number 8. 40 CFR 63, subpart
PPPPPP, National Emission Standards for
Hazardous Air Pollutants for Lead Acid
Battery Manufacturing Area Sources.**

**Number 9. 40 CFR 63, subpart
QQQQQQ, National Emission Standards for
Hazardous Air Pollutants for Wood
Preserving Area Sources.**

**Number 10. 40 CFR 63, subpart
RRRRRR, National Emission Standards for
Hazardous Air Pollutants for Clay Ceramics
Manufacturing Area Sources.**

**Number 11. 40 CFR 63, subpart
SSSSSS, National Emission Standards for**

**Hazardous Air Pollutants for Glass
Manufacturing Area Sources.**

**Number 12. 40 CFR 63, subpart
TTTTTT, National Emission Standards for
Hazardous Air Pollutants for Secondary
Nonferrous Metals Processing Area Sources.**

**Number 13. 40 CFR 63, subpart
WWWWW, National Emission Standards for
Hospital Ethylene Oxide Sterilizers.**

**Number 14. 40 CFR 63, subpart
WWWWW, National Emission Standards for
Hazardous Air Pollutants: Area Source
Standards for Plating and Polishing
Operations.**

**Number 15. 40 CFR 63, subpart
XXXXXX, National Emission Standards for
Hazardous Air Pollutants Area Source
Standards for Nine Metal Fabrication and
Finishing Source Categories.**

**Number 16. 40 CFR 63, subpart
YYYYY, National Emission Standards for
Hazardous Air Pollutants for Area Sources:
Electric Arc Furnace Steelmaking
Facilities.**

Number 17. 40 CFR 63, subpart

ZZZZZ, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.

The last one on this list is 40 CFR 64, and that's all subparts, Compliance Assurance Monitoring.

In addition, it was suggested recently that we clarify the last entry in the Appendix for Part 72, it's in the current list, by changing the word "all" to "all subparts" in order to avoid confusion with the titles and the subparts. We ask that Members consider this change as well.

Finally, the following 40 CFR rule is being removed from the list of rules incorporated by reference in the proposed Appendix Q, because the federal courts have vacated all or part of it:

40 CFR 60, subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced after November 30, 1999 or for which Modification or Reconstruction is Commenced on or after June 1, 2001. That was remanded or vacated

on June 8, 2007.

Notice was published in the Oklahoma Register on September 15, 2008 for these proposed changes. The notice requested written comments from the public and other interested parties. No comments have been received as of today.

This is the first hearing for these proposed changes. Since this proposal is a routine housekeeping measure, staff requests that the Council vote to send this rule to the Environmental Quality Board with a recommendation that the changes be adopted as a permanent rule. Thank you.

MS. BOTCHLET-SMITH: We will now take questions and comments from the Council.

MR. BRANECKY: Nancy, just one point of clarification. The last, subpart 64, the "all" that's going to be changed to also do all subparts?

MS. MARSHMENT: Yes. I didn't give you a corrected version but yes, the whole thing will be changed to include "all subparts".

MS. BOTCHLET-SMITH: Any other questions from the Council? Also, I have not received any notice that the public wishes to comment on this action. So, David, I'll turn it back to you.

MR. BRANECKY: All right. Staff has recommended that we approve this and send it to the Board. I don't know about you, but it feels good to pass something, doesn't it? So with that, I'll entertain a motion.

MR. HAUGHT: I'll make a motion that we accept the proposed incorporation by reference changes.

MR. BRANECKY: Okay.

MS. MYERS: I'll second it.

MR. BRANECKY: Motion and second. Myrna, will you call the roll, please.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: Yes.

MS. BRUCE: Jerry Purkale.

MR. PURKAPLE: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Motion passed.

(Item 5E Concluded)

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) ss:
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