

**SUMMARY OF COMMENTS AND STAFF RESPONSES FOR
PROPOSED REVISION TO SUBCHAPTER 9
EXCESS EMISSION REPORTING REQUIREMENTS**

**COMMENTS RECEIVED PRIOR TO AND AT THE *OCTOBER 17, 2007*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

Cardinal Engineering - Letter from Adrienne Jones received October 15, 2007

1. **COMMENT:** "This proposed rule removes the option for submitting quarterly reports for excess emissions during startup or shutdown events due to technological limitations (OAC 252:100-9-3(b)(2)). The removal of this option will significantly increase the reporting burden for facilities with excess emissions attributable to technological limitations as PowerSmith has an average of 109 start up and shut downs each quarter (since 2006). PowerSmith requests the DEQ maintain the quarterly reporting option for facilities with technological limitations."

RESPONSE: Unfortunately the above referenced subsection is not consistent with current EPA guidelines for excess emissions due to technical limitations. However, we believe the problem with PowerSmith may be alleviated by a simple permit modification.

Environmental Protection Agency (EPA), Region 6 - Letter from Guy Donaldson, Chief, Air Planning Section, received October 16, 2007

2. **COMMENT:** "We noticed that the definition for the term 'Malfunction' also appears in the current Definitions portion of Subchapter 1 - General Provisions rule. Please make sure that the proposed change to the definition of 'Malfunction' in Subchapter 9 is properly cross-linked or reflected in Subchapter 1, as well."

RESPONSE: Staff concurs.

3. **COMMENT:** "Please elaborate on the rationale for the required time frame for notification in Paragraph 9-9(a) - Immediate Notice being 'the following working day' instead of the 'following calendar day.' Our concern is that if an excess release or discharge occurs on a Friday, and the following Monday is a legal holiday, it could be as many as four calendar days after the release before Oklahoma Department of Environmental Quality is notified."

RESPONSE: The immediate notification of an excess emission event is not considered an emergency by DEQ; consequently, DEQ considers the following working day an appropriate time frame. DEQ relies on other systems of immediate notification for emergency events including those which might result from excess emissions events.

4. **COMMENT:** The third sentence in Paragraph 9-9(b) - Written Excess Emission Event Report reads:

"Owners or operator of facilities experiencing an ongoing excess emissions event may file an initial excess emission event report within thirty (30) days of the immediate notice following by a final report within 30 days of the excess emissions event concludes."

This sentence could leave the reader with the impression those ongoing excess emissions events are normal and considered excusable for facilities in Oklahoma. Therefore, we are recommending that the third sentence in Paragraph 9-9(b) be revised to read:

"If a facility experiences an ongoing excess emissions event, then the owner or operator may file an initial excess emission event report within thirty (30) days of the immediate notice followed by a final report within 30 days of when the excess emissions event concludes."

RESPONSE: Staff concurs.

5. **COMMENT:** "We recommend adding a new sentence at the end of the Affirmative Defense Determination, Paragraph 9-11(d) of the proposed rule reading to the effect that

This section should not be construed as limiting EPA or citizens' authority under the federal Clean Air Act."

RESPONSE: Staff concurs.

6. **COMMENT:** "Please consider replacing the terms 'NSPS' and 'NESHAP' in Paragraph 9-11(c) - Affirmative Defense Prohibited with 40 Code of Federal Regulations 60, 61, and 63 instead."

RESPONSE: Staff concurs.

7. **COMMENT:** "Section 252:100-9-11 addressed Affirmative Defenses; subsection (a) applies to malfunctions, and (b) applies to start up/shut down. In comparing the two subsections, we noticed that different language was used for seemingly similar provisions: Section 252:100-9-11(b) start up/shut down: required to meet the requirements 'in a timely manner'. 252:100-9-11(a) malfunctions: required to meet the requirements, but no reference to 'in a timely manner' - please explain. In the same section, we compare (a)(5) and (b)(5); (a) malfunctions: 'All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality.' and (b) start up/shut down: 'All possible steps were taken to minimize the impact of the excess emissions on ambient air quality.' Please explain why different words were chosen."

RESPONSE: Staff will make the language consistent.

**COMMENTS RECEIVED PRIOR TO AND AT THE *JANUARY 17, 2008*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

Steve Willis P.E., Sr. Engineer, Environmental Health and Safety - Email dated December 11, 2007

- 8. COMMENT:** Section 252:100-9-11(a)(1) should be changed to read,

"The excess emissions were caused by a sudden breakdown of equipment, or a sudden failure of a process to operate in the normal or expected manner **and could not have been avoided by following the manufacture's recommended maintenance and operation procedures.**"

Or

"The excess emissions were caused by a sudden, **reasonably** unavoidable breakdown of equipment, or a sudden, reasonably unavoidable failure of a process to operate in the normal or expected manner."

RESPONSE: Staff has considered the suggested wording, and the language has been modified.

- 9. COMMENT:** Section 252:100-9-11(a)(1) should be changed to read,

"The excess emissions did not stem from any activity or event that could reasonably have been foreseen and avoided, or planned for, and could not have been avoided **by following the manufacturer's recommended operation and maintenance practices.**"

Or

"The excess emissions did not stem from any activity or event that could reasonably have been foreseen and avoided, or planned for."

RESPONSE: Staff has considered the suggested wording, and the language has been modified.

- 10. COMMENT:** "The affirmative defense for maintenance was removed. This provides an incentive to reduce maintenance which will increase the probability of a malfunction and even greater emissions. In our case, to avoid any excess emissions, a 5 minute preventative maintenance operation on our wet scrubber would require we shut down our process equipment, let all the product run through, perform the PM work on the scrubber, restart the process equipment and wait for the product to feed back in. This would result in the loss of a considerable amount of production for less than 10 pounds of excess emissions. An affirmative defense for emissions during periods of maintenance should be reinstated back into 252:100-9-11 (b)."

RESPONSE: Staff disagrees. The scenario described can and should be handled through the permitting process.

11. **COMMENT:** "The vast majority of excess emissions event from the Dal Italia operations are for 30 pounds or less, with several being 10 pounds or less. We recommend permitting by rule or some similar mechanism for routine maintenance that results in 24 hour emissions below a reportable quantity threshold, or establishing a de minimus 24 hour emission level. This would greatly reduce the reporting requirements for permit holders and lessen review work by the ODEQ without causing any material effect on the environment."

RESPONSE: Staff disagrees. Emissions resulting from routine (scheduled) maintenance should be accounted for in the facility's permit.

12. **COMMENT:** Section 252:100-9-1 reads in part:

"Accordingly, it is reasonable to expect that careful and prudent planning and design will eliminate the chances for violations of emission limitations during such periods."

It is unreasonable to believe that 100% of excess emissions can be eliminated. If so, there would be no need for any affirmative defenses. It should be changed to:

"Accordingly, it is reasonable to expect that careful and prudent planning and design will reduce the chances for violations of emission limitations during such periods."

RESPONSE: Staff has considered the suggested wording, and the language has been modified.

Oklahoma Independent Petroleum Association (OIPA) - email attachment from Ms. Angie Burckhalter, V.P., Regulatory Affairs, dated January 16, 2008

13. **COMMENT:** "ODEQ is proposing to require reporting of any amount of excess emission which will be unnecessarily burdensome on industry as well as ODEQ. We would request ODEQ establish a reportable quantity (RQ), similar to Texas' reportable quantity under TAC Chapter 101 and the federal Clean Air Act, which would prevent unnecessary paper work for both ODEQ and industry regarding small quantities of excess emissions."

RESPONSE: Although staff is not recommending a reportable quantity, the proposed rule language has been modified to include a similar concept. Specifically, the proposed rule language has been modified to include an excess emission threshold below which a facility will not be required to provide an immediate notice. Therefore, the unnecessary burden related to the immediate reporting of "small quantity" excess emissions will be eliminated.

14. **COMMENT:** "We would like to have a better understanding of ODEQ's purpose of the proposed changes for minor sources as compared to major sources? We are concerned there is no distinction on how ODEQ treats excess emissions from major sources versus minor sources or the recognition that minor air sources present less of a concern or impact on the environment. For example, under 252:100-9-11(c)(5), it appears modeling would be required to prove that NAAQS or PSD increments were not exceeded for minor sources. We urge

ODEQ to consider less stringent requirements for minor sources and not create a 'one-size fits all' rule that would truly be onerous on minor sources."

RESPONSE: All excess emissions from minor or major sources are violations and are to be reported. This is consistent with current EPA guidance for state air pollution control programs. The Department has enforcement discretion to address violations including those attributable to excess emissions and prioritizes its enforcement efforts taking into consideration their potential for causing adverse harm to public health and the environment.

15. **COMMENT:** "It is our understanding that Permit Exempt Facilities are exempt from the reporting requirements under 252:100-9 as long as a facility's actual emissions do not exceed 40 tons per year of any air contaminate and there is no excess of an opacity standard."

RESPONSE: That is incorrect. Permit exempt facilities are exempt from permitting requirements, annual emissions inventory requirements and annual operating fees; however, they are subject to all other applicable state and federal air quality control rules and standards. For example, permit exempt facilities are subject to the opacity standards in OAC 252:100-25 so any exceedances of those standards would be reported as excess emissions.

16. **COMMENT:** OAC 252:100-9-1. "All excess emission events are not the same. There is no distinction in those emissions which can be quantified and permitted (start-up, shutdown, and maintenance) and those that cannot (malfunctions/upsets). Currently start-up, shutdown, and maintenance are not included in the vast majority of existing permits. We are concerned that numerous permit modifications to incorporate start-up, shutdown, and maintenance will backlog ODEQ and industry with excessive paper work. How does ODEQ plan to address this issue i.e. will ODEQ consider grandfathering existing minor sources, provide an amnesty or grace period to modify permits, or a scheduled priority approach that addresses the most significant concerns down to the least? Finally, upsets and malfunctions are not permitted either. If there is no permit limit, then what will this type of emission be compared to in determining an excess emission if an RQ is not established?"

RESPONSE: The comment is correct in that most existing permits do not address start up, shutdown and maintenance, but the Department plans to incorporate, to the extent possible, those processes into permits in the future. The Department will consider different implementation options such as offering a "grace period" or "amnesty". The Department does not plan to "grandfather" existing facilities from any provision of this proposed rule. If increased emissions during start-up, shutdown and maintenance are accounted for in a facility's operating permit, they are not by definition excess emissions. The Department will work with any facility to resolve any ongoing start-up/shutdown emission problem. The Department has determined that it is inappropriate to address upsets and malfunctions in permits so there are no plans to incorporate those into permits.

17. **COMMENT 1:** OAC 252:100-9-7. "ODEQ's proposed rule states that 'All periods of excess emissions regardless of cause are violations...' This language is problematic in that all excess emission should not be subject to a notice of violation or penalties if an affirmative defense is provided. We urge ODEQ to revise this language."

COMMENT 2: OAC 252:100-9-11(a) and (b). "We are concerned that notice of violations will be issued even though an owner/operator has provided an affirmative defense. We would request ODEQ make changes to the rule to address this issue."

RESPONSE: Staff disagrees. All excess emissions are by definition violations. The Department will exercise its enforcement discretion and determine the appropriate actions to address these violations. The purpose of the proposed affirmative defense provision is not to define which excess emissions are violations but to provide owners and operators a mechanism to provide information that could result in DEQ reducing or possibly eliminating the amount of civil or administrative penalties assessed.

18. **COMMENT:** OAC 252:100-9-11(a)(7) and (b)(2). "For an affirmative defense, ODEQ states that excess emissions cannot be related to an 'inadequate' design. What is 'adequate' versus 'inadequate'? Many production wells have equipment that has been in service for many years, but in good working condition. This equipment represented the industry standard at the time it was installed, however, as technology has changed, so has the industry standard. To upgrade to the newest technology would not be cost effective on many wells, especially marginal wells. We urge ODEQ to clarify this issue to prevent operators from unnecessarily spending funds on the most updated technology."

RESPONSE: The Department acknowledges that design standards change over time. The emission standards in Chapter 100 address this issue by establishing emission standards based on the date the equipment was installed or constructed. If the process and control equipment installed at a new or existing facility meets the applicable emission requirements, there should be no or very few excess emissions. If, however, inadequate care is taken and the equipment installed (old or new) does not meet the applicable emissions standards, then the owner or operator of the facility may be subject to enforcement action by the Department.

19. **COMMENT:** OAC 252:100-9-11(a)(9) and (c)(5). "We are concerned, especially for minor air emission sources, that modeling will be required for all excess emissions to show that there was no violation of a NAAQS. This can be a costly and burdensome effort on industry. We request DEQ remove this type of requirement for minor sources."

RESPONSE: Staff disagrees. It is the owner or operator's obligation to prove his case by a "preponderance of the evidence." Modeling as such is not specified but might be required in specific cases where, in the judgment of the Department, the excess emissions had the potential to violate any applicable NAAQS or PSD increment.

Kiowa Power Partners, LLC - letter from Mr. Larry Carlson dated January 15, 2008

20. **COMMENT:** OAC 252:100-9-9(a) and (b) - "...understanding that excess emissions events from startup and shutdown at our facility are not typically 'excess' but 'routine', perhaps the Department could, at the very least, allow this type of facility to aggregate all events in one calendar day for reporting purposes... [We] could have as many as 250 'routine' excess emissions events per month."

RESPONSE: "Routine" incidents are part of the facility's normal operations and should be made a part of the facility's operating permit.

21. **COMMENT:** OAC 252:100-9-11(b) - "... our 3rd quarter 2007 quarterly report utilizing this form [Form # 100-922] was 320 pages in length, requiring 160 signatures. This represents a tremendous reporting burden and exhaustive use of natural resources. We would request that the Department either allow the use of our past reporting format which is generated automatically from the plant's data acquisition and handling system or allow one affirmative defense response page and associated signature for all such events in the reporting period for which the specific responses are applicable."

RESPONSE: Staff has taken that into consideration. Many sources will find that the proposed new alternative reporting provision added as OAC 252:100-9-7(d) will allow additional reporting flexibility. Upon adoption of the proposed rule, DEQ Form #100-922 or its equivalent will be reviewed and revised to reflect the new reporting requirements.

22. **COMMENT:** "...EPA guidelines specify that the use of technical limitations as an affirmative defense for violations of a NSPS or NESHAP standard are not allowed because technical limitations are already taken into account in these standards. [We are] subject to NSPS Subparts Da and GG with a turbine NO_x limitation of 109 ppm compared to the SIP limit of 15 ppm (including duct burners). [DEQ] should consider use of the NSPS [sic] as the only valid emission rate during such events..."

RESPONSE: Subchapter 9 does not establish emission standards so the issue of which emissions standard is applicable to the facility can not be addressed in this proposed rule making.

**COMMENTS RECEIVED PRIOR TO AND AT THE *JANUARY 17, 2008*
AIR QUALITY ADVISORY COUNCIL MEETING**

NO COMMENTS WERE RECEIVED

**COMMENTS RECEIVED PRIOR TO AND AT THE *OCTOBER 15, 2008*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

RFS Consulting, Inc. - Email from Ron Sober, P.E., dated September 29, 2008

23. **COMMENT:** OAC 252:100-9-2, Definitions. "Incorporation of the term 'mass' in the definition for 'Excess emissions' will promote clarification and avoid confusion."

RESPONSE: As defined, "excess emissions" includes violations of standards or limits which may or may not be a simple mass per unit time function. An example of this type of excess emission is a violation of opacity limits.

24. **COMMENT:** OAC 252:100-9-7 Excess emission reporting requirements. "Please extend the concept of immediate notification thresholds to the written reports."

RESPONSE: See comment number 13 from January 2008 responses.

EPA, Region 6 - Letter from Guy Donaldson, Chief, Air Planning Section, received October 8, 2008

25. **COMMENT:** "It is our understanding that the criteria established in 252:100-9-7(a)(1)(A) and (B) apply *only (emphasis added)* to the immediate notification reporting provision of the rule. It is also our understanding that reporting requirements under 252:100-9-7(b) apply to *all (emphasis added)* emission events including those that are exempt from immediate notification. Please confirm that our understanding of these sections is correct."

RESPONSE: Staff proposes a minor change in the wording of OAC 252:100-9-7(b) to clarify that any excess emissions must be reported including those exempt from immediate notification. The word "any" will be added to the first sentence in OAC 252:100-9-7(b). The sentence would read as follows:

(b) **Excess emission event report.** No later than thirty (30) calendar days after the start of any excess emission event, the owner or operator of an air contaminant source from which excess emissions have occurred shall submit a report for each excess emission event describing the extent of the event and the actions taken by the owner or operator of the facility in response to this event.

Environmental Federation of Oklahoma, Inc. - Letter from James R. Barnett, President, received October 13, 2008

26. **COMMENT:** OAC 252:100-9-2 Definitions. "There have been times when emission parameters such as opacity or other surrogates for contaminants, i.e., a concentration limit or a throughput limit in a permit, have been questioned by enforcement as representing an 'excess emission'. To promote clarity and consistency in the interpretation and implementation of Subchapter 9, the definition of excess emission merits modification, as follows:

'Excess emissions' means either the mass emission of regulated air pollutants or an opacity emission in excess of an applicable limitation or requirement as specified in the applicable rule(s), enforceable permit, administrative order, or judicial order. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation."

RESPONSE: The agency does not consider the examples provided in this comment as excess emissions; instead, the examples are addressed as permit violations.

27. **COMMENT:** 252:100-9-7(a)(1)(B). "It was explained by staff during development of this rule, that opacities that measure less than 10% over the established limit will not require an immediate notification. For example: given an opacity limit of 20 percent, this means any opacity that measures 30 percent or less would be exempt from immediate notification requirements. However, there is concern about the requirement in this section that to be

exempt, excess emissions during any 24 hour period must also measure less than 200 pounds. For the same reason provided in Comment 1[26], that at times inspectors have erroneously determined that opacity measurement can be correlated with mass emissions, we suggest the following language be added to 100-9-7(a)(1)(A) to address this concern:

(1) Immediate notification shall not be required for:

(A) excess emission events with a primary cause of startup or shut down as defined in OAC 252:100-7-1.1; or

(B) excess emissions that do not exceed ten percent (10%) of the applicable limit or standard, including opacity (10% opacity above the applicable opacity limit or standard), and, for emissions measured as mass emissions, are less than two hundred (200) pounds of the relevant regulated pollutant during any twenty four (24) hour period, provided:

(i) the excess emissions are not hazardous air pollutants as defined in OAC 252:100-7-1.1 or toxic air contaminants as listed in Appendix O of this Chapter; and

(ii) the excess emissions are not comprised of a criteria pollutant (or its precursor(s)) emitted from a source located in an area designated as nonattainment for the relevant criteria pollutant."

RESPONSE: Staff agrees that the referenced subsection of OAC 252:100-9 was subject to misinterpretation. Consequently, the proposed version of OAC 252:100-9-1 was amended to clarify that the 200 pound limit only applies to non-opacity excess emissions.

28. COMMENT: 252:100-9-7(a)(1). EFO would like a new subparagraph (C) to be added that explains the 10% excess emissions and the 10% increase in opacity and gives examples of the calculations for each.

RESPONSE: OAC 252:100-9-1 was also amended to clarify that the ten percent (10%) opacity threshold is actually 10% opacity above the applicable opacity limit (not merely an additional 10% of the applicable limit). In addition, the 10% threshold for non-opacity emissions was moved to a separate subsection and clearly indicates that the threshold is 10% of the applicable non-opacity emission limit.

29. COMMENT: 252:100-9-8(c). "The option to submit an affirmative defense for maintenance activities has been removed in the draft proposed rule; we request that it be replaced."

RESPONSE: EPA has indicated that a State Implementation Plan containing an affirmative defense for maintenance activities will not be approved (see Comment No. 43). As a result, emissions related to maintenance activities need to be addressed in a source's operating permit.

Oklahoma Independent Petroleum Association (OIPA) - letter from Angie Burckhalter, V.P., received October 15, 2008

30. COMMENT: OIPA would like DEQ to adopt a two tier system for notification and reporting of excess emissions with less stringent standards for minor sources.

RESPONSE: Minor source excess emissions are a concern because the excess emissions may cause a minor source to become a major source. Moreover, such a two-tiered approach would question the need for, or purpose of, any such permit limit.

31. **COMMENT:** OIPA is concerned that the permitting process is too slow to incorporate emissions from start-up and shutdown to avoid excess emissions violations. "We [OIPA] recommend ODEQ consider a grace period to modify permits or a priority permit modification approach that addresses the significant concerns first followed by the ones that provide lesser concern."

RESPONSE: The agency intends to allow sources ample time to modify current permits to include emissions related to maintenance activities. Assuming passage, the proposed rule would not go into effect until July 2009. Once in effect, the agency will allow sources an additional six months in which to submit an application for permit modification. Stated otherwise, a source would have until January of 2010 in which to submit an application. In addition, once a timely application is submitted, the source will be allowed to operate under the proposed maintenance limits until the agency makes a determination concerning the proposed limits.

32. **COMMENT:** 252:100-9-7(A)(1). "We appreciate ODEQ implementing a reportable quality [immediate notification] threshold in 252:100-9-7(a)(1); however, it is confusing the way it is currently written as it appears ODEQ is measuring opacity emissions as a measured emission."

RESPONSE: See response to Comment Nos. 26 and 27.

Verbal Comments

Dal Italia - Steve Willis, P.E., Sr. Engineer

33. **COMMENT (Paraphrased from transcript):** By removing maintenance as an affirmative defense, the Department is encouraging facilities to let equipment run until failure.

RESPONSE: The agency considers maintenance to include regularly scheduled activities required to keep a facility operating as designed. However, the above comment appears to be more concerned with how the agency handles malfunctions. The agency understands that an operator may recognize that a piece of equipment is not working correctly long before the equipment ceases to operate. In such a situation, it would likely be appropriate to consider the problem a malfunction and not require an operator to wait until the equipment fails completely before addressing the issue. Whether these types of activities are considered maintenance activities or malfunction repairs will need to be determined on a case-by-case basis; however, it is not the agency's intent to encourage a facility to allow a piece of equipment to fail completely in order to avoid an excess emission.

34. **COMMENT (Paraphrased from transcript):** The following terms and phrases are ill

defined and open to interpretation by the Division: "maintenance", "sudden", "could have been planned for and avoided", "could have been reasonable prevented" and "recurring pattern."

RESPONSE: The proposed rule will apply to many different types of industries and facilities; consequently, the definition for the terms listed in the above comment will differ depending upon which type of facility is at issue. As a result, specifically defining each of the above terms would be problematic and would likely cause more confusion than clarity.

OIPA - Angie Burckhalter, V.P.

35. COMMENT: [See Comment and Response Nos. 30 through 32.]

Ryan Whaley Law Firm - Don Shandy

36. COMMENT: "I would reiterate, we support the EFO comments."

RESPONSE: See responses to Comments No. 26 through 29.

37. COMMENT (Paraphrased from transcript): Mr. Shandy requested that Council provide "clarity" on the requirements of the proposed rule on "alternative reporting."

RESPONSE: OAC 252:100-9-7(d) allows for an alternative to the regular excess emission reporting requirements under certain instances where the requirements of the proposed subchapter are duplicative of applicable federal reporting requirements. In these situations, the above provision specifically details the process (which includes the submittal of an alternative reporting plan and a written statement explaining the extent to which the State and federal reporting requirements are duplicative) by which a facility may obtain approval to operate under the alternative reporting requirement.

38. COMMENT (Paraphrased from transcript): Mr. Shandy disagreed with EPA's position on maintenance and affirmative defense and requested that staff include maintenance in the proposed affirmative defense provisions.

RESPONSE: See response to Comment No. 29.

Buzzi Unicem, USA - Joe Cowan

39. COMMENT (Paraphrased from transcript): 252:100-9-7. When opacity is used as a substitute for the direct measurement of HAPs and a facility records an opacity exceedance 10% or more above its allowable, this would seem preclude the use of the proposed provisions for immediate notification threshold under these circumstances.

RESPONSE: Emissions that are in excess of limits, including those for opacity and VOCs, and that are set specifically to control one or more HAPs, are ineligible for the proposed immediate notice exception pursuant to the proposed version of OAC 252:100-9-7(a)(3)(A). However, emissions (which may contain one or more HAPs) in excess of a limit not

specifically intended to control HAPs are eligible for the proposed immediate notice exception.

Environmental Federation of Oklahoma (EFO) - Julia Bevers

- 40. COMMENT (Paraphrased from transcript):** Supports the inclusion of maintenance as an affirmative defense.

RESPONSE: See response to Comment No. 29.

**COMMENTS RECEIVED PRIOR TO THE *JANUARY 15, 2009*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

Dal-Italia - Letter attachment to email from Steve Willis received October 22, 2008

- 41. COMMENT:** Please define the following terms and phrases: "malfunction", "maintenance", "sudden", "reasonably foreseen and avoided" and "infrequent."

RESPONSE: See response to Comment No. 34.

- 42. COMMENT:** 252:100-9-11(a)(11) and (b)(11). Please add the following language, "None of these provisions shall be construed to require the use or installation of additional or redundant pollution control equipment not otherwise required and that these provisions shall not be construed to automatically require the shutdown of process equipment to minimize emissions."

RESPONSE: Neither the current nor the proposed version of OAC 252:100-9 contain any specific emission limits or standards. Moreover, this subchapter does not require any type of control equipment. Specific emission limits and standards, as well as required control equipment, are established in other State rules, Federal regulations, and/or individual operating permits. The purpose of the proposed subchapter is only to establish the reporting requirements for excess emissions (see OAC 252:100-9-1). Therefore, staff believes the provision proposed is unnecessary.

EPA, Region 6 - Email from Alan Shar received October 23, 2008

- 43. COMMENT:** "Please be advised that EPA cannot (emphasis added) approve a SIP revision to an excess emission related rule that provides an affirmative defense for maintenance activities."

RESPONSE: See responses to Comment Nos. 29, 36, 38, and 40.

Dal-Italia - Letter received December 21, 2008

44. **COMMENT (Paraphrased):** Dal-Italia currently considers excess emissions that occur during maintenance activities to be insignificant activities as defined in the Chapter 100 rules. The proposed changes to OAC 252:100-9 would move these emissions out of this category and force extensive permit modifications. Dal Italia requests the following definition be added to the proposed 252:100-9-2.

"Insignificant activities" means maintenance activities that result in actual calendar year emission that do not exceed any of the limits in (A) and (B) of this definition. These emissions are considered to meet the definition of insignificant activities in OAC 252:100-8-2 and do not require a separate permitting action. Insignificant activities added during the term of any Permit shall be included in the next application for renewal.

(A) 5 tons per year for any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAPs, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

An alternative solution is to include language that states:

"Insignificant activities" means maintenance activities that result in actual calendar year emission that do not exceed any of the limits in (A) and (B) of this definition. Permitting these insignificant activities will be considered a minor permit modification as detailed in OAC 252:100-8-7.2(b)(1).

(A) 5 tons per year for any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAPs, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

RESPONSE: As an initial point, the term “insignificant activities” referenced in the above comment describes activities that are related to permitting determinations and, as such, the definition of this term is more appropriately located in the agency’s permitting rules. As stated in the above comment, the term is currently defined at OAC 252:100-8-2. The Oklahoma Administrative Procedures Act (“OAPA”), 75 O.S. §§ 250 *et seq.*, provides a detailed process that must be followed in order for any new or modified administrative rule to be promulgated. Since the rulemaking process required by the OAPA has not been initiated for OAC 252:100-8-2, the rule is not currently open for rulemaking or formal comment. In any event, staff does not believe a modification to the definition in OAC 252:100-8-2 is warranted. Similarly, staff believes that an inconsistent and inappropriately located definition in SC 9 would likewise be unwarranted. Lastly, it appears that Dal-Italia’s current Title V permit is up for renewal shortly after the expiration of the proposed grace period discussed in the response to Comment No. 31; therefore, the proposed modification could be included in the renewed permit and any increased permitting obligations should not be overly burdensome.

EFO - Email from Julia Bevers received December 3, 2008

45. **COMMENT:** “To add startup/shutdown emission limits and/or source-specific definitions for startup/shutdown to a Part 70 (or any type) permit, what Tier is the modification? Tier I?”

RESPONSE: If the addition of the startup and shutdown emissions will cause the relaxation of existing limits or impact a BACT determination, the application will be a Tier II. The Department will look at each case separately and there may be some cases where Tier I will be appropriate. There are so many different scenarios that a case-by-case approach is best.

46. **COMMENT:** “For adding emission limits for certain maintenance activities to the permit: Tier I?”

RESPONSE: If the addition of the emissions from maintenance activities will cause the relaxation of existing limits or impact a BACT determination, the application will be a Tier II. The Department will look at each case separately and there may be some cases where Tier I will be appropriate. There are so many different scenarios that a case-by-case approach is best.

47. **COMMENT:** “Will there be a fee to modify the permits for any of these reasons? Amount?”

RESPONSE: Generally, there will only be a need for an operating permit modification which will be \$500 for a minor modification (Tier I) and \$1000 for a significant modification (Tier II).

48. **COMMENT:** “Can the affirmative defense be submitted at any time following an excess emission? My understanding is the answer is ‘yes’.”

RESPONSE: Correct, unlike the thirty (30) day deadline for the “demonstration of cause” set forth in the current rule, the proposed affirmative defense may be asserted at any time following an excess emission.

49. **COMMENT:** “Could failure to submit an affirmative defense result in a violation for not submitting the defense, in addition to the excess emission violation?”

RESPONSE: No, there is no requirement to submit an affirmative defense. The proposed affirmative defense merely provides a facility with the opportunity to avoid civil or administrative penalty actions for excess emissions during periods of startup, shutdown, or malfunction under certain circumstances.

50. **COMMENT:** “I believe the current definitions for startup and shutdown are inadequate for more complex operations where there are multiple processes contributing to operation of a source. This could be handled by permit modifications that add definitions specific to each source, but I believe that including definitions in the rule for each of the three source categories could be of benefit; i.e. 1) combustion, 2) oil and gas, and 3) manufacturing. Perhaps this would make it easier for the inspectors, especially those who are new and need a fast learning curve. It could allow for more consistency between permits within source categories. I don’t want to hold up the currently proposed rule, but what do you think about adding such source

category definitions to SC9 as a subsequent revision?”

RESPONSE: Staff disagrees. The proposed rule will apply to many different types of industries and facilities; consequently, the specific definitions for startup and/or shutdown for individual industries or facilities may vary significantly. Staff believes that attempting to specifically define the terms for all situations would be very difficult and may result in incomplete or inappropriate definitions being applied. However, to the extent that the EPA has specifically defined startup and/or shutdown for an industry type or process, those definitions have been incorporated into the agency’s rules and will be applied.

Dal-Italia - Letter received January 12, 2009

51. COMMENT (Paraphrased): In order to avoid the potential burdens related to a significant modification of its Title V Air Permit, Dal-Italia proposes a modification to the definitions in Subchapter 9 to include the following definition for “insignificant maintenance emissions:”

252:100-900-2 Definitions

“Insignificant maintenance emissions” means emissions from maintenance activities that result in actual calendar year emissions that do not exceed any of the limits in (A) and (B) of this definition. Permitting these insignificant maintenance emissions will be considered a minor permit modification as detailed in OAC 252:100-8-7.2(b)(1). Any such emissions must be rolled into the Permit at the next renewal date.

(A) 4 tons per year of any one criteria pollutant.

(B) 1.5 tons per year for any one hazardous air pollutant (HAP) or 4 tons per year for an aggregate of two or more HAP's, or 15 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

RESPONSE: The agency appreciates the time and effort that Dal-Italia has gone through to revise and resubmit its prior comments. The comments have been thoroughly considered and, for the same reasons discussed in the Response to Comment No. 44, the agency believes that adding a definition for “insignificant maintenance emissions” is unwarranted. In addition to the concerns discussed in the above referenced response, the proposed definition could result in a State rule that effectively weakens a federal requirement. For example, although maintenance emissions less than 4 TPY of a criteria pollutant may initially appear insignificant, additional emissions of 4 TPY may cause certain major facilities with permitted emissions already near federal thresholds to actually exceed those thresholds. Once a threshold is exceeded, additional federal permitting requirements may be triggered. Consequently, a blanket provision defining all maintenance emissions under 4 TPY of a criteria pollutant or 1.5 TPY of any HAP as insignificant (and therefore a minor modification) would effectively weaken the federal requirement and would not be approved by EPA.