

**SUMMARY OF COMMENTS AND STAFF RESPONSES FOR
SUBCHAPTER 44. CONTROL OF MERCURY EMISSIONS FROM
COAL-FIRED ELECTRIC STEAM GENERATION UNITS**

**WRITTEN COMMENTS RECEIVED PRIOR TO THE
JULY 19, 2006, AIR QUALITY ADVISORY COUNCIL MEETING**

EPA Region 6 – E-mail received July 12, 2006 from Jeffrey Robinson of the EPA, forwarded from Clean Air Markets Division.

Oklahoma's draft regulations incorporate by reference §§60.4101 through 60.4108; §60.4110 through 60.4114; §§60.4120 through 60.4124; §60.4130; §60.4140; §§60.4150 through 60.4157; §§60.4160 through 60.4162; and §§60.4170 through 60.4176 of EPA's model Hg trading rule (40 CFR part 60, subpart HHHH (as revised on May 18, 2005)). Oklahoma's regulations make minor alterations to sections of the model rule not listed above (§§60.4141 and 60.4142). The EPA has evaluated Oklahoma's draft regulations and comments as follows.

- 1. COMMENT:** Oklahoma's approach of incorporating by reference most of the provisions of the model rule not only facilitates EPA's review but also will facilitate adoption by Oklahoma of changes in the model rule. Oklahoma will need to adopt some changes in order to participate in the EPA-administered trading program. In the June 9, 2006 Notice of Final Action on Reconsideration of CAMR (FR 33388), EPA finalized changes to the applicability provisions of the Hg model trading rule and to the deadline for submission of initial allocations to the Administrator. In addition, EPA intends to issue a proposed CAMR federal plan rule, which will likely include proposed changes to the model rule necessary to take account of the CAMR federal plan rule. Oklahoma's incorporation by reference simplifies the adoption of final changes to incorporated provisions of the model rule since the publication date indicated for the incorporated rule provisions can be revised to reference an updated version of the model rule. EPA recommends that the date in 252.100-44-3 be changed to June 9, 2006 and that the State plan to update this date if changes are made to the rule in the future.

RESPONSE: Staff concurs.

- 2. COMMENT:** The State of Oklahoma incorporates §60.4140 of the model rule by reference which includes all the state budgets. EPA suggests that Oklahoma only include the Oklahoma Hg budget. EPA also suggests that Oklahoma specify the State Hg budget in terms of ounces, not tons, because each allowance that will be allocated authorizes one ounce of Hg emissions and emissions will be reported in ounces.

RESPONSE: Staff concurs.

- 3. COMMENT:** 252:100-44-5 (a) states November 30, 2006 as the deadline for submitting Hg allowance allocations for control periods in 2010 – 2014. In the

June 9, 2006 Final Rule mentioned above, this deadline was changed to November 17, 2006. Oklahoma needs to use the November 17 date.

RESPONSE: Staff concurs

4. **COMMENT:** 252:100-44-5 (b)(2) and (c)(2) provide for allocations in the absence of state submission of allocations to EPA; similar provisions are in the model rule. EPA notes that EPA's Clean Air Interstate Rule (CAIR) originally included in the NO_x model trading rule provisions similar to those in the Hg model rule. EPA subsequently removed those provisions from the CAIR NO_x model trading rule and may propose to take the same action with regard to the Hg model rule. In light of this potential change, EPA suggests that Oklahoma reconsider 252:100-44-5 (b)(2) and (c)(2).

RESPONSE: Staff will take that into consideration.

5. **COMMENT:** 252:100-44-9 creates an auction with one percent of the Oklahoma Hg budget. EPA suggests that Oklahoma include in the State rule some details of how the auction will be conducted and, particularly, when the auction for allowances allocated for specific years will be conducted, including a provision indicating when Oklahoma will notify EPA of the parties to whom specified amounts of auctioned allowances should be transferred.

RESPONSE: Staff is currently investigating state procedures and feasibility of selling emission credits.

EPA Region 6 – E-mail received July 12, 2006 from Jeffrey Robinson of EPA Region 6

6. **COMMENT:** 252:100-44-5(a) – November 30, 2006 should be changed to November 17, 2006. The due date for allowance allocations for 2010, 2011, 2012, 2013, 2014 is November 17, 2006 per 40 CFR § 63.4141(a). Currently, the CAMR rule requires the EPA Administrator to record the allowances by December 1, 2006 in the budget sources compliance account for 2010 – 2014 [40 CFR § 60.4153(a)].

RESPONSE: Staff concurs

7. **COMMENT:** 252:100-44-5(b)(1) - The October 31, 2009 date should be changed to October 31, 2008. The due date for the control period in the sixth year after the year of the applicable deadline established in this paragraph is October 31, 2008 per 40 CFR § 60.4141(b)(1). Currently, the CAMR rule requires the allowances for the control period 2015 to be recorded by EPA on December 1, 2008 [40 CFR § 60.4153(b)].

RESPONSE: Staff concurs

8. **COMMENT:** 252:100-44-9 – The proposed regulatory text does not provide any specific provisions detailing how and when the auction of 1% of the allowances held by ODEQ will occur. Will the initial allowances be auctioned prior to the November 17, 2006 due date for allowance allocations in 2010-2014, or does ODEQ envision a system to auction the allowances during the control period and then submit Hg allowance transfer requests to EPA for the purchaser’s budget source account? EPA requests that ODEQ include its auction process or incorporate by reference an existing State regulation that ODEQ may utilize to describe how the auction will be managed. EPA would also like an opportunity to review the auction process to determine how the process and timing will interact with the Federal cap and trade program.

RESPONSE: Staff is currently investigating state procedures and feasibility of selling emission credits.

**VERBAL COMMENTS RECEIVED AT THE JULY 19, 2006
AIR QUALITY ADVISORY COUNCIL MEETING**

Mr. Bud Ground of Public Service Company of Oklahoma offered several oral comments at the July 19, 2006 Air Quality Advisory Council meeting. Those points are addressed here.

9. **COMMENT:** OAC 252:100-44-3 – Mr. Ground stated that this paragraph places a limit of the May 18, 2006 version of the regulations to be used in the rulemaking. The most recent version should be used in rulemaking. Also, the word “existed” was misspelled.

RESPONSE: The staff concurs. The current rule incorporates the version from the June 9, 2006 Federal Register. The spelling error has been corrected.

10. **COMMENT:** OAC 252:100-44-7 – Mr. Ground proposed staff should change the phrase Part 75 of this Chapter to 40 CFR Part 75 throughout this paragraph.

RESPONSE: The staff concurs. That section is now incorporated by reference from the federal model rule and that reference is correct.

11. **COMMENT:** OAC 252:100-44-9 – Mr. Ground proposed that the Department not use an auction to offset costs of the mercury program.

RESPONSE: The staff concurs. DEQ no longer plans to pursue an auction.

**TELEPHONE COMMENTS RECEIVED PRIOR TO THE OCTOBER 18, 2006
AIR QUALITY ADVISORY COUNCIL MEETING**

12. **COMMENT:** OAC 252:100-44-5 (c)(2) - Julia Beavers of OG&E requested clarification of this section.

RESPONSE: This section is to be incorporated by reference from the federal CAMR. The first part of this section outlines how the credits are apportioned if a state fails to submit the mercury allocations to the EPA before the October 31 deadline for a given year. The remainder says that a source which qualifies for mercury emission credits as both an existing source with a newly established heat baseline and as new source which received credits from the set-aside the year before would not receive the credits as a new source. Staff believes this would only occur if a state failed to submit those allocations between May 1 and October 31 and a facility in its sixth year of operation requested credits from both scenarios.

**WRITTEN COMMENTS RECEIVED PRIOR TO OCTOBER 18, 2006
AIR QUALITY ADVISORY COUNCIL MEETING**

EPA Region 6 – E-mail received October 10, 2006 from Jeffrey Robinson of the EPA

- 1. COMMENT:** The comment was that 40 CFR Part 60.4141(b)(1), which corresponds to OAC 252:100-44-5 (b)(1) in the proposed rule, will most likely be changed in a future EPA rulemaking to change the “October 31, 2008 “ date to “October 31, 2009”. In short, this will make the 2015 allocation due October 31, 2009. This has not been included in an EPA rulemaking yet.

RESPONSE: Staff will take this under consideration.