

**SUMMARY OF COMMENTS AND STAFF RESPONSES FOR 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.

USEPA, REGION 6, Air and Planning Section - letter from Guy Donaldson, 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 timeframe. 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 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.

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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.

Angie Burckhalter, V.P., Regulatory Affairs, Oklahoma Independent Petroleum Association - email attachment 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 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.

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NO COMMENTS WERE RECEIVED

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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.

USEPA, REGION 6, Air and Planning Section - letter from Guy Donaldson, received October 08, 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.