

**MINUTES**  
**AIR QUALITY ADVISORY COUNCIL**  
**January 20, 2016**  
**Department of Environmental Quality**  
**Multipurpose Room**  
**Oklahoma City, Oklahoma**

Official AQAC Approved  
at October 12, 2016 meeting

**Notice of Public Meeting** – The Air Quality Advisory Council (AQAC) convened for its Regular Meeting at 9:00 a.m. on January 20, 2016, in the Multipurpose Room of the Department of Environmental (DEQ), 707 N. Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the Office of Secretary of State on October 20, 2015. The agenda was posted at the DEQ twenty-four hours prior to the meeting. Also, Ms. Botchlet-Smith acted as Protocol Officer and convened the hearings by the AQAC in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51 and Title 27A, Oklahoma Statutes, Sections 2-2-201 and 2-5-101 through 2-5-117. She entered the agenda and the Oklahoma Register Notice into the record and announced that forms were available at the registration table for anyone wishing to comment on any of the rules. Ms. Sharon Myers, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

**MEMBERS PRESENT**

Gerald Butcher  
David Gamble  
Jim Haught  
Laura Lodes  
Sharon Myers

**MEMBERS ABSENT**

Montelle Clark  
Gary Collins  
Robert Lynch

**DEQ STAFF PRESENT**

Eddie Terrill  
Beverly Botchlet-Smith  
Cheryl Bradley  
Laura Finley  
Jonathan Truong  
Brooks Kirlin  
Melanie Foster  
Nancy Marshment  
Quiana Fields  
Malcolm Zachariah  
Phil Fielder  
Michelle Wynn  
Martha Penisten  
Lloyd Kirk  
Kent Stafford  
Matt Paque  
Diana Henson

Dawson Lasseter  
Leon Ashford  
Cooper Garbe  
Rick Groshong  
Jaklyn Garrett  
Mark Gibbs  
Randy Ward  
Melissa McKibben

**OTHERS PRESENT**

Lynette Wrany, Court Reporter

**Approval of Minutes** – Mr. Butcher moved to approve the Minutes of the October 14, 2015 Regular Meeting. Mr. Gamble made the second.

	<i>See transcript pages 3 - 4</i>		
Gerald Butcher	Yes	Sharon Myers	Yes
David Gamble	Yes		
Jim Haught	Yes		
Laura Lodes	Yes		

**Election of Officers** – Mr. Haught nominated Mr. Butcher as Chair and Ms. Lodes as Vice-Chair. Mr. Gamble made the second. Ms. Myers and Mr. Butcher switched seats and Mr. Butcher proceeded with the next agenda item.

	<i>See transcript pages 4 – 5</i>		
Gerald Butcher	Yes	Sharon Myers	Yes
David Gamble	Yes		
Jim Haught	Yes		
Laura Lodes	Yes		

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

Mr. Brooks Kirlin, Professional Engineer of the Air Quality Division (AQD), stated the Department is proposing to amend OAC 252:100-9, Excess Emission Reporting Requirements, to comply with federal requirements for Startup, Shutdown and Malfunction (SSM) as published in the Federal Register by the EPA on June 12, 2015 (80 FR 33840), and to conform with EPA’s restated and updated SSM policy applicable to SIPs. Following discussion by the Council and by the public, Mr. Haught made a motion that the Council approves the changes recommended by staff to Subchapter 9. Ms. Lodes made the second.

	<i>See transcript pages 7 – 45</i>		
Gerald Butcher	Yes	Sharon Myers	Yes
David Gamble	Yes		
Jim Haught	Yes		
Laura Lodes	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. Malcolm Zachariah, Environmental Programs Specialist of the AQD, stated the Department proposes to update OAC 252:100, Appendix E, Primary Ambient Air Quality Standards, and Appendix F, Secondary Ambient Air Quality Standards, to maintain consistency with recent federal changes to the primary and secondary NAAQS for ozone. Hearing no discussion by the Council or the public, Mr. Butcher called for a motion. Ms. Myers made a motion to approve the corrections as presented. Ms. Lodes made the second.

	<i>See transcript pages 45 – 50</i>		
Gerald Butcher	Yes	Sharon Myers	Yes
David Gamble	Yes		
Jim Haught	Yes		
Laura Lodes	Yes		

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

*See transcript page 51*

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

**New Business** – None

**Adjournment** – The next scheduled meeting is on Wednesday, June 8, 2016 in Tulsa. Meeting adjourned at 10:20 a.m.

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

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<p>1 DEPARTMENT OF ENVIRONMENTAL QUALITY 2 REGULAR MEETING 3 AIR QUALITY ADVISORY COUNCIL 4 5 6 7 8 9 10 11 JANUARY 20, 2016 - 9 00 A.M. 12 13 14 15 Multi-Purpose Room, 1st Floor 16 DEQ Building 17 707 N. Robinson 18 Oklahoma City, OK 19 20 21 22 Reported by Lynette H. Wrany, C.S.R. #1167 23 24 25</p>	1	<p>1 CALL TO ORDER - 9 05 A.M. 2 CHAIR MYERS: Let's call the meeting to 3 order. Call the roll, please. 4 MS. BOTCHLET-SMITH: Okay. We've got some AV 5 issues here. 6 MS. QUIANA FIELDS: I think we can go ahead 7 and call it. 8 Mr. Butcher? 9 MR. BUTCHER: Here. 10 MS. QUIANA FIELDS: Mr. Clark is absent. Mr. 11 Collins is absent. Mr. Gamble? 12 MR. GAMBLE: Here. 13 MS. QUIANA FIELDS: Mr. Haught? 14 MR. HAUGHT: Here. 15 MS. QUIANA FIELDS: Ms. Lodes? 16 MS. LODES: Here. 17 MS. QUIANA FIELDS: Mr. Lynch is absent. Ms. 18 Myers? 19 CHAIR MYERS: Here. 20 MS. QUIANA FIELDS: We have a quorum. 21 CHAIR MYERS: Okay. Next item on the Agenda 22 is the approval of the minutes from the previous 23 meeting. Any comments? 24 MR. BUTCHER: I'll make a motion that we 25 accept the minutes.</p>	3
<p>1 COUNCIL MEMBERS PRESENT: 2 Gerald Butcher 3 David Gamble 4 Jim Haught 5 Laura Lodes 6 Sharon Myers 7 8 COUNCIL MEMBERS ABSENT: 9 Montelle Clark 10 Gary Collins 11 Robert Lynch 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	2	<p>1 CHAIR MYERS: We have a motion. Do we have a 2 second? 3 MR. GAMBLE: Second. 4 CHAIR MYERS: A motion and a second to 5 approve the minutes. 6 Quiana, would you call the roll, please? 7 MS. QUIANA FIELDS: Mr. Butcher? 8 MR. BUTCHER: Yes. 9 MS. QUIANA FIELDS: Mr. Gamble? 10 MR. GAMBLE: Yes. 11 MS. QUIANA FIELDS: Mr. Haught? 12 MR. HAUGHT: Yes. 13 MS. QUIANA FIELDS: Ms. Lodes. 14 MS. LODES: Yes. 15 MS. QUIANA FIELDS: Ms. Myers? 16 CHAIR MYERS: Yes. 17 MS. QUIANA FIELDS: Motion passed. 18 CHAIR MYERS: Thank you very much. Okay. 19 The next item on the Agenda is election of the 20 officers. I'm open for suggestions. Just speak. 21 MR. HAUGHT: I'll just talk up. 22 I'd like to nominate Gerald Butcher as 23 Chairman and Laura Lodes as Vice-Chair. 24 MR. GAMBLE: I second. 25 CHAIR MYERS: We have a motion and a second.</p>	4

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<p style="text-align: right;">5</p> <p>1 Do we have any further discussion? Quiana?  2 MS. QUIANA FIELDS: Mr. Butcher?  3 MR. BUTCHER: Yes.  4 MS. QUIANA FIELDS: Mr. Gamble?  5 MR. GAMBLE: Yes.  6 MS. QUIANA FIELDS: Mr. Haught?  7 MR. HAUGHT: Yes.  8 MS. QUIANA FIELDS: Ms. Lodes?  9 MS. LODES: Yes.  10 MS. QUIANA FIELDS: Ms. Myers?  11 CHAIR MYERS: Yes.  12 MS. QUIANA FIELDS: Motion passed.  13 CHAIR MYERS: In that case, we're going to  14 play a little bit of a shuffle. Congratulations.  15 (Whereupon, the newly-elected officers  16 conducted the meeting.)  17 CHAIR BUTCHER: The next item on the Agenda  18 is Excess Emission Reporting Requirements. Brooks  19 Kirlin.  20 MS. BOTCHLET-SMITH: No, we need to do the  21 minutes.  22 CHAIR BUTCHER: Oh, do we need to --  23 MS. BOTCHLET-SMITH: Have you approved the  24 minutes?  25 CHAIR BUTCHER: Yes.</p>	<p style="text-align: right;">7</p> <p>1 very important you complete the form at the  2 registration table and you'll be called upon at the  3 appropriate time.  4 Audience members, please come to our podium  5 for your comments and please state your name prior to  6 making those comments.  7 At this time, we will proceed with what's  8 marked as Agenda Item Number 5A on the hearing agenda.  9 That is OAC 252: 100-9, Excess Emission Reporting  10 Requirements. And Mr. Brooks Kirlin of our staff will  11 be giving the presentation.  12 MR. BROOKS KIRLIN: Good morning,  13 Mr. Chairman, Members of the Council, Ladies and  14 Gentlemen. I'm --  15 MS. NANCY MARSHMENT: It's not on.  16 MR. BROOKS KIRLIN: It's not on? Okay.  17 Okay. Sorry. Let me repeat.  18 Good morning, Mr. Chairman, Members of the  19 Council, Ladies and Gentlemen. I'm Brooks Kirlin, an  20 Engineer with Air Quality's Rules and Planning  21 Section.  22 The Department is bringing back before the  23 Council today its proposal to amend Subchapter 9, in  24 particular the portion that's been referred to, an  25 "affirmative defense" provided for instances of excess</p>
<p style="text-align: right;">6</p> <p>1 MS. BOTCHLET-SMITH: Okay. I'm sorry. I was  2 distracted.  3 CHAIR BUTCHER: We elected the officers and  4 ready to do the rulemakings.  5 MS. BOTCHLET-SMITH: Good morning. I'm  6 Beverly Botchlet-Smith. I'm the Assistant Director of  7 the Air Quality Division. And as such, I'll serve as  8 the Protocol Officer for today's hearing.  9 The hearing will be convened by the Air  10 Quality Council in compliance with the Oklahoma  11 Administrative Procedures Act in Title 40 of the Code  12 of Federal Regulations, Part 51, as well as the  13 authority of Title 27A of the Oklahoma Statutes,  14 Section 2-2-201 and Sections 2-5-101 through 2-5-117.  15 Notice of the January 20th, 2016 hearings  16 were advertised in the Oklahoma Register for the  17 purpose of receiving comment pertaining to the  18 proposed OAC Title 252 Chapter 100 rules as listed on  19 the Agenda and will be entered into each record along  20 with the Oklahoma Register filing.  21 Notice of the meeting was filed with the  22 Secretary of State on October 20th, 2015. The Agenda  23 was duly posted twenty-four hours prior to the meeting  24 here at the DEQ.  25 If you wish to make a statement today, it's</p>	<p style="text-align: right;">8</p> <p>1 emissions that result from startup, shutdown, or  2 malfunction, or "SSM."  3 To review part of the background, the U.S.  4 Environmental Protection Agency finalized the National  5 SSM SIP Call on June 12th, 2015, which includes  6 Oklahoma's State Implementation Plan. The action also  7 disapproved the version of Subchapter 9 that is in  8 Oklahoma's existing State Implementation Plan or SIP,  9 that's DEQ's 1994 version, which EPA previously  10 approved in 1999. The SIP Call was part of EPA's  11 final action on a petition for rulemaking filed by the  12 Sierra Club and was directed -- redirected by an April  13 of 2014 decision by the D.C. Circuit Court of Appeals.  14 The SIP Call requires each of the 36  15 affected states to amend rule provisions that apply to  16 excess emissions during periods of startup, shutdown,  17 and malfunction, and to submit a corrective SIP  18 revision by November 22nd, 2016.  19 Considering the steps involved for Oklahoma,  20 there's not a lot of leeway in the schedule,  21 obviously, if we're to submit a SIP revision by that  22 deadline. The fortunate side is that the changes to  23 the language of Subchapter 9 that we've proposed  24 should satisfy the SIP Call and EPA's updated SSM  25 Guidance, while generally allowing AQD to continue</p>

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<p style="text-align: right;">9</p> <p>1 its current-applied policy in dealing with SSM.  2 Now, for a bit of context. Oklahoma has had  3 excess emissions reporting requirements since 1972.  4 The most recent changes to Subchapter 9 were approved  5 and became effective in 2009 following a significant,  6 multi-year review process. DEQ submitted the current  7 version of the rule to EPA as a SIP Revision in July,  8 2010, and, at the same time, withdrew a 2001 revision  9 that had not been acted on by EPA.  10 On September 6th, 2013, EPA Region 6 proposed  11 three actions: approval of the Applicability,  12 Definitions, and Reporting sections -- that's Sections  13 9-1, 9-2, and 9-7; limited approval and limited  14 disapproval of the proposed -- I'm sorry -- of the  15 Purpose and Affirmative Defense sections -- Sections  16 9-1 and 9-8, and a SIP Call to correct disapproved  17 portions.  18 One of EPA's primary objectives or objections  19 was that the Subchapter provides an affirmative  20 defense, in their view an automatic shield for startup  21 and shutdown incidents that are planned events.  22 Region 6's intent was that the proposed action, if  23 finalized, would make Oklahoma's inclusion in the  24 February 2013 proposed National SIP Call moot.  25 However, EPA's reading of the subsequent D.C. Circuit</p>	<p style="text-align: right;">11</p> <p>1 respectively.  2 Regarding startup and shutdown emissions,  3 EPA's interpretation is that, under Section 302(k) of  4 the Clean Air Act, emission limitations must be  5 continuous and all excess emissions are violations.  6 However, EPA's updated SSM guidance would permit  7 alternative emission limits during startup and  8 shutdown, so long as they are "properly developed,  9 narrowly tailored, federally enforceable, and  10 consistent with Federal Clean Air Act requirements."  11 EPA has expressed that the alternative emission limits  12 may not exceed an applicable limit in the SIP, and  13 also that an alternative limit may be in the form of a  14 work practice standard, if that's appropriate.  15 With these issues in mind, Staff brought a  16 proposed Subchapter 9 revision before the Council in  17 October with the changes needed to satisfy the  18 requirements of the SIP Call. The Council passed the  19 rule proposal at its October 2015 meeting with some  20 minor changes. However, the Department determined --  21 determined shortly after that meeting that staff  22 responses during the meeting, particularly regarding  23 how section -- or Subsection 9-8(d)(2) is implemented,  24 may have been misinterpreted and could have affected  25 the vote of one or more Council members. Therefore,</p>
<p style="text-align: right;">10</p> <p>1 Court decision broadened the objections and changed  2 their view. And to avoid a separate, accelerated  3 timeline for Oklahoma, DEQ agreed to Region 6's  4 request that Oklahoma withdraw its July 2010  5 Subchapter 9 SIP submittal and we did.  6 As I mentioned, in June 2015 EPA took final  7 action on the proposed National SSM SIP Call  8 disapproving various states' SSM SIP provisions. EPA  9 also clarified, restated, and revised its SIP guidance  10 concerning Clean Air Act requirements for treatment of  11 excess emissions that occurred during periods of SSM.  12 The preamble identified several specific  13 issues, including that some states' SIPs specifically  14 exempt units from emission limitations during periods  15 of startup, shutdown, and malfunction or say that SSM  16 excess emissions aren't violations. However, EPA  17 believes that the April 2014 D.C. Circuit decision  18 held that affirmative defense provisions cannot be  19 applicable to violations of the Clean Air Act  20 requirements, even if the violations resulted from  21 malfunctions.  22 Concerns over affirmative defense in SIPs  23 include automatic exemptions, removing agency  24 discretion, and possible preclusion of actions by EPA  25 and citizens under Clean Air Act Sections 113 and 304,</p>	<p style="text-align: right;">12</p> <p>1 the Department asked the Environmental Quality Board  2 to return the rule proposal to the Council for further  3 consideration.  4 In light of the October Council deliberations  5 and subsequent further staff discussions, Air Quality  6 Division staff modified language in Section 9-8 of the  7 proposal for the January 2016 Council meeting. If  8 you'll allow me, I'll go -- I'll briefly go through  9 the proposal section-by-section, highlighting the  10 language that has been changed from the October  11 proposal.  12 In the Purpose Section, Section 9-1, we're  13 proposing to shift from the problematic "affirmative  14 defense" term to "mitigating factors." We've also  15 tried to express more explicitly that these mitigating  16 factors would continue to be taken into account if the  17 Department is considering administrative penalties for  18 an instance of excess emissions, but would not  19 preclude other appropriate actions.  20 The Purpose Section also serves as a good  21 reminder that Subchapter 9 sets out reporting  22 requirements that apply to an excess emission event,  23 that is, as opposed to setting permit requirements or  24 limits. No changes were made to Section 9-1 for this  25 from the October proposal.</p>

<p style="text-align: right;">13</p> <p>1 The proposed revisions for the Applicability  2 and Definition Sections, Sections 9-1.1 and 9-2,  3 respectively, go together. EPA expressed concern that  4 our definition of "excess emissions" excludes fugitive  5 VOC emissions that are covered by a leak detection and  6 repair program, or LDAR. We've moved the sentence to  7 the Applicability section to clarify that any of these  8 emissions should be reported as required by the LDAR  9 program that applies. Again, no changes were made to  10 the October proposal for these two sections.</p> <p>11 Now for Section 9-8. First, of course, the  12 proposal would change the section title from  13 "Affirmative defense" to "Mitigation." We've proposed  14 to remove the last sentence of the "General"  15 subsection, which mainly echoes part of the Purpose  16 section.</p> <p>17 The existing language of the first sentence  18 in Subsection 9-8(a) satisfies one of EPA's national  19 concerns, in that it clearly states that all periods  20 of excess emissions are violations, whether they merit  21 any enforcement action or not.</p> <p>22 Subsection (b) gives the mitigating factors  23 for malfunctions that would continue in effect.  24 Again, we've tried to clarify that this section deals  25 with factors that DEQ will consider in applying the</p>	<p style="text-align: right;">15</p> <p>1 numerical limit could apply during startup and  2 shutdown, within the limits of any applicable SIP  3 requirement.</p> <p>4 The changes we've made to the first paragraph  5 under Subsection (c) in today's proposal are intended  6 to further clarify that emissions in compliance with  7 such limitations would not be considered excess  8 emissions. We've also tried to emphasize more clearly  9 that Subchapter 9 does not govern these alternative  10 limits, that they originate under the permitting  11 provisions.</p> <p>12 You'll note that we dropped the previously  13 proposed new paragraph 9-8(c)(9) that would have added  14 as a mitigating factor a facility's effort to deal  15 with expected startup and shutdown emissions through  16 permitting.</p> <p>17 Subsections (d) and (e) would be modified to  18 replace affirmative action -- I'm sorry --  19 "affirmative defense" with "mitigation" or "mitigating  20 factors," and emphasize that the provisions apply to  21 DEQ administrative actions. And no changes to the  22 Subsections (d) and (e) for that, for this proposal,  23 from the October proposal.</p> <p>24 Considering the October Council Meeting  25 discussions and further staff discussions, we've also</p>
<p style="text-align: right;">14</p> <p>1 enforcement policy in administrative proceedings that  2 could result in a penalty. It doesn't deal with civil  3 or other court actions, or actions by EPA or  4 citizens.</p> <p>5 Subsection 9-8(c) deals with startup and  6 shutdown emissions. As with malfunctions, we've  7 proposed to shift terminology to "mitigating factors,"  8 and clarify that they would continue in use for DEQ  9 administrative actions as appropriate. The proposal  10 as updated for today continues to more directly  11 address the situation where there are anticipated  12 increases in emissions during startup and shutdown.  13 The Department has encouraged facilities to estimate  14 startup and shutdown emissions, and make sure they are  15 taken into account in a facility's permitted limits.  16 This would remove much of the startup and shutdown  17 emissions from the whole realm of excess emissions  18 reporting.</p> <p>19 One of the chief objections in the SSM  20 litigation was that certain states exempted facilities  21 from emission limitations during periods of startup  22 and shutdown. Under the Federal Clean Air Act,  23 emission limitations must be continuous, although they  24 may be different for different operating scenarios,  25 If justified, a work practice standard or a higher</p>	<p style="text-align: right;">16</p> <p>1 dropped our provision -- our previous recommendation  2 to add a new Subsection 9-8(f) that would have  3 "sunsetted" a portion of the rule or the portion of  4 the rule that deals with startup and shutdown,  5 Subsection 9-8(c), and move it into the Division's  6 enforcement policy.</p> <p>7 Notice of the proposed rules -- rule changes  8 was published in the Oklahoma Register on December  9 15th, 2015. Prior to the October Council Meeting, we  10 received written comments from three parties and one  11 of the commenters spoke at the meeting to reiterate  12 and clarify their written comments. These comments  13 were discussed during the meeting, and a summary of  14 the comments, along with updated responses, is  15 included in the Council Packet. We believe that the  16 changes we have proposed today further or better  17 address their concerns.</p> <p>18 We received additional written comments from,  19 as of today, two parties during the current comment  20 period, which have been included in your folder. And  21 I might take a minute, because I guess they may be a  22 little confusing, what's in there.</p> <p>23 There's the -- we received a -- one comment  24 -- a comment letter from the Sierra Club this morning  25 by electronic copy. And then -- and several of the</p>

17	<p>1 other comments are attached together. There is three                  2 different EPA --                  3 MS. NANCY MARSHMENT: These have been                  4 corrected.                  5 MR. BROOKS KIRLIN: In the folder?                  6 MS. NANCY MARSHMENT: Yes.                  7 MR. BROOKS KIRLIN: Oh, okay. There. I                  8 guess they are separated out.                  9 So the Sierra Club comments, and there was an                  10 attachment of an EPA letter to the State of Colorado                  11 as an attachment to the Sierra Club there. And then                  12 there's a comment from EPA Region 6 that's in your                  13 folder related to this.                  14 Mr. Guy Donaldson, Chief of Region 6's Air                  15 Quality -- or, I'm sorry, Air Planning Section,                  16 provided both general and specific comments in support                  17 of the proposed changes, which are very similar to                  18 those provided in October. Among their comments is a                  19 request that DEQ include confirmation in the record                  20 that, first, Subsections 9-8(b) and (c) do not affect                  21 the State's ability to take -- to seek penalties in                  22 court for excess emissions, emission violations; and                  23 that, second, even if a facility establishes it meets                  24 all the mitigating factors in Section 9-8, DEQ could                  25 still decide to assess an administrative penalty.</p>	19	<p>1 EPA Region 6 staff regarding the most appropriate                  2 approach for SIP updates related to Subchapter 9, and                  3 expects to have an opportunity for public review                  4 before we finalize a decision on the submittal.                  5 We welcome input from the Council Members and                  6 the public during the formal review period, and                  7 informally between now and perhaps late summer, if                  8 we're going to withdraw the 1994 version by the                  9 November National SIP Call deadline.                  10 We believe that, regardless of any SIP                  11 action, today's proposal represents definite                  12 improvement, and provides improved clarity and                  13 understanding for both industry and the public.                  14 Now, as I mentioned, we did receive an                  15 additional comment this morning from Sierra Club and I                  16 have not been able to review that in depth. But my                  17 understanding is their primary concerns there are that                  18 sections or Subsection 9-8(c) and --                  19 MS. CHERYL BRADLEY: (c).                  20 MR. BROOKS KIRLIN: (c) should be removed --                  21 certain sections should be removed from the SIP. And                  22 also there, they have concerns over the alternative                  23 emissions limitations in Subsection 9-8(c), that they                  24 stated the emission limits should be in the SIP and                  25 not just in permits, that the language is not --</p>
18	<p>1 We -- and we can confirm both those assertions, and                  2 this will, again, be reflected in the updated summary                  3 of comments and responses.                  4 However, staff does not believe that EPA's                  5 suggestion in their comments that the language in the                  6 proposal should further clarify any request for                  7 administrative penalty relief can be denied by the                  8 Department is necessary or appropriate. I think we                  9 had adequately stated as we've proposed.                  10 As requested by EPA, DEQ also confirms for                  11 the record that alternative emission limits for                  12 startup and shutdown in permits must be as stringent                  13 as an applicable emission limitation in the                  14 EPA-approved SIP.                  15 Other than reiterating these points, EPA's                  16 primary comments focused on actions outside the state                  17 rule promulgation process, but relevant to the                  18 subsequent SIP update. EPA stated specifically that                  19 the state should withdraw the 1994 version of                  20 Subchapter 9 from the Oklahoma SIP. They also                  21 suggested that if today's proposed changes are                  22 adopted, their concerns would seem to be satisfied and                  23 the mitigation provisions could continue in effect as                  24 "state-only" requirements.                  25 Let me see. AQD will continue to work with</p>	20	<p>1 doesn't define it narrowly enough what those or how                  2 the alternative emission limitations would be set.                  3 And third, I'm going to -- and (reading) "The proposed                  4 rule changes fail to make it adequately clear that                  5 when establishing limits the state must consider the                  6 collective impact of the new limits on NAAQS, PSD                  7 increments and many other ambient standards, such as                  8 toxics or other standards."                  9 And our response to that is -- and actually I                  10 think another brief comment by EPA, that, again,                  11 Subchapter 9, we're trying to point out Subchapter 9                  12 does not govern the limits. It's -- those are                  13 governed by permitting requirements elsewhere, you                  14 know, those rules that govern how we develop permit                  15 limits and, you know, in some cases, some specific                  16 SIP-approved limits.                  17 And so, EPA had suggested perhaps we needed                  18 to add some clarifying language somewhere. And a                  19 response to that would have been that -- or -- and                  20 here would that -- when -- if we have occasion to open                  21 the permitting rules, then that would be a good time                  22 to consider those issues at that time.                  23 So, considering all this, staff does ask that                  24 the Council recommend the proposed rules to the                  25 Environmental Quality Board for approval as permanent</p>

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<p style="text-align: right;">21</p> <p>1 rule change -- changes. Thanks.</p> <p>2 MS. BOTCHLET-SMITH: At this time we'd take</p> <p>3 questions and entertain a discussion from the Council.</p> <p>4 MR. HAUGHT: Brooks, do you know offhand --</p> <p>5 just kind of for completeness and how timely this</p> <p>6 is -- the letter from EPA from Mr. Donaldson to Cheryl</p> <p>7 Bradley isn't dated. Do you know when that came? Or</p> <p>8 when? Is that a pretty recent submittal?</p> <p>9 MR. BROOKS KIRLIN: It was the 14th, I</p> <p>10 believe. I believe we received it on the 14th.</p> <p>11 MR. HAUGHT: Of January?</p> <p>12 MR. BROOKS KIRLIN: Of January, yes.</p> <p>13 VICE-CHAIR LODES: So I have a question.</p> <p>14 These comments about basically Subchapter 9 shouldn't</p> <p>15 be part of the SIP, but we've got a SIP Call, so what</p> <p>16 does this mean? If we pass this version and then</p> <p>17 they're saying it shouldn't be part of the SIP, then</p> <p>18 why pass a version at all? Why not leave Subchapter 9</p> <p>19 as it is?</p> <p>20 MR. BROOKS KIRLIN: Well, --</p> <p>21 VICE-CHAIR LODES: I mean, they're saying</p> <p>22 Subchapter 9 is not part of -- shouldn't be part of</p> <p>23 the SIP.</p> <p>24 MR. BROOKS KIRLIN: This was -- we found this</p> <p>25 a little confusing exactly how appropriate. Their</p>	<p style="text-align: right;">23</p> <p>1 the public is that we would like to hear whether or</p> <p>2 not you believe we should submit this rule to EPA as a</p> <p>3 SIP revision. We can live with it either way.</p> <p>4 Personally, I think that if you do submit it</p> <p>5 as a SIP revision, it does require EPA, who made</p> <p>6 comments to this rule and were comfortable with what</p> <p>7 we were doing, to affirmatively say, yes, we</p> <p>8 participated in the process, we agree that we can</p> <p>9 support that rule, we can support that as being part</p> <p>10 of the SIP, and it does provide some cover, I guess,</p> <p>11 should EPA at some point in the future decide they</p> <p>12 don't like what we've done. But I don't see that as</p> <p>13 happening, but you never know. So that would be one</p> <p>14 reason I could see why this could be a reason to</p> <p>15 submit this as a SIP revision. But we can live with</p> <p>16 it either way.</p> <p>17 So what we're planning on doing is, if you</p> <p>18 agree that this version of the rule should be part our</p> <p>19 state -- state rules, we'll take it to the Board. If</p> <p>20 it goes to the legislature and we're ready to submit</p> <p>21 it as a SIP, we'll bring it back to the Council, we'll</p> <p>22 take comments during that period. We had to do a</p> <p>23 public hearing before we did it as a SIP submittal,</p> <p>24 and we'll either submit it as a SIP submittal in late</p> <p>25 summer or not.</p>
<p style="text-align: right;">22</p> <p>1 comments indicated that clearly what we've got in the</p> <p>2 SIP now, what they just disapproved, is not adequate</p> <p>3 and that it --</p> <p>4 VICE-CHAIR LODES: It's also several years</p> <p>5 old.</p> <p>6 MR. BROOKS KIRLIN: They're stated that we</p> <p>7 need to make the changes, because, even if it's not in</p> <p>8 the SIP, that there are some -- it could be construed</p> <p>9 or it could interfere with federal actions or</p> <p>10 citizens' actions. That it's -- that it is part of</p> <p>11 our program -- I don't know if I can answer it better</p> <p>12 than that.</p> <p>13 MR. EDDIE TERRILL: Let me try. I'll be</p> <p>14 perfectly honest. Had we known we were going to be</p> <p>15 where we are today, I might have recommended we just</p> <p>16 leave our state rule exactly like it was, because I</p> <p>17 was happy with it. I think we've made some changes</p> <p>18 that will make our rule better than it was before, but</p> <p>19 we've gone through a lot of effort to get here and I'm</p> <p>20 not sure the effort was worth it.</p> <p>21 Having said that, we know we do have to</p> <p>22 withdraw the '94 version, its approved part of the</p> <p>23 SIP. That does contain the affirmative defense, which</p> <p>24 EPA issued the SIP Call on.</p> <p>25 The question I think for the Council and for</p>	<p style="text-align: right;">24</p> <p>1 So we'll kind of leave it to the -- because,</p> <p>2 like I say, we can live with it either way. And so,</p> <p>3 if Council believes it's important enough to submit as</p> <p>4 a SIP submittal, we'll do it. If the Council is</p> <p>5 ambivalent and the public feels like it's important</p> <p>6 enough, we'll do it. And if nobody cares one way or</p> <p>7 the other, then we'll probably agree with EPA and not</p> <p>8 submit it. But --</p> <p>9 VICE-CHAIR LODES: I mean, that's what I was</p> <p>10 trying to understand. So basically EPA is saying you</p> <p>11 could just withdraw what's been in our SIP. We could</p> <p>12 just withdraw what's in our SIP and not have to</p> <p>13 replace it at all?</p> <p>14 MR. EDDIE TERRILL: As far as a federally</p> <p>15 enforceable part our SIP.</p> <p>16 VICE-CHAIR LODES: Right.</p> <p>17 MR. EDDIE TERRILL: Because that way they have</p> <p>18 the ability to over file, if you will, in the event</p> <p>19 that we don't -- they don't believe we've addressed</p> <p>20 excess emissions adequately.</p> <p>21 VICE-CHAIR LODES: Right.</p> <p>22 MR. EDDIE TERRILL: As part of our state</p> <p>23 program.</p> <p>24 VICE-CHAIR LODES: So it's really just</p> <p>25 Subchapter 9 really becomes strictly a state-only</p>



25	<p>1 program?</p> <p>2 MR. EDDIE TERRILL: That's correct. It would</p> <p>3 become a state-only program at that point. That's the</p> <p>4 reason that we really weren't going to ask for you all</p> <p>5 to make a decision today or a recommendation, give</p> <p>6 time to think about it, how it would affect you and</p> <p>7 how it might affect your clients, how those of you in</p> <p>8 the audience have -- if you have an opinion about</p> <p>9 that, we would like to hear about it. Because we're</p> <p>10 not under any -- once we make that withdrawal of the</p> <p>11 '94 version that we have in the SIP, that really</p> <p>12 satisfies the SIP Call. And we don't really have</p> <p>13 to -- we're not under a time constraint to get it to</p> <p>14 EPA at that point.</p> <p>15 So -- and again, had I known that, if we had</p> <p>16 known we were going to end up here, we probably would</p> <p>17 not have pushed this quite as hard as we did. But it</p> <p>18 took a while for us to get to this realization with</p> <p>19 EPA, for them to come out and try to make that</p> <p>20 determination they really didn't -- really didn't want</p> <p>21 it as part of the SIP. But, if we were going to make</p> <p>22 it, then they wanted these changes made.</p> <p>23 So, we believe that, with the changes we've</p> <p>24 made and the proposal you have today, that satisfies</p> <p>25 the EPA's concerns in the event that we decide to</p>	27	<p>1 all. It does clarify some things and, I think, makes</p> <p>2 it clearer as to what we had intended relative to</p> <p>3 permitting these emissions and making those part of</p> <p>4 our permit limits, as opposed to being subject to the</p> <p>5 excess emission rule.</p> <p>6 Which that's the mistake we made last time,</p> <p>7 if you also -- if some of you were wondering. I made</p> <p>8 the statement -- somebody asked if you permit these</p> <p>9 emissions and you had an altered emission limit, if</p> <p>10 you will, in your permit and you exceeded that, would</p> <p>11 you still be subject to the mitigating factors in the</p> <p>12 excess emission rule. And I incorrectly stated that,</p> <p>13 yes, you could still take advantage of that. And</p> <p>14 nobody corrected me, either the Council or of my</p> <p>15 staff, and we let that get past. And so, that's not</p> <p>16 correct.</p> <p>17 Once you permit these emissions and you go</p> <p>18 through that process of, you know, verifying it</p> <p>19 doesn't violate the NAAQS and all the other things</p> <p>20 that you have to do to get an emission limit change in</p> <p>21 your permit, that if you violate that, you're subject</p> <p>22 to enforcement as if it were a permit violation.</p> <p>23 You're not a -- it's not an excess emission at that</p> <p>24 point, it's a permit violation.</p> <p>25 So we misspoke and that's the reason we felt</p>
26	<p>1 submit it as a SIP revision.</p> <p>2 MS. MYERS: So if we don't -- if we don't put</p> <p>3 that in as a SIP revision, what's the downside?</p> <p>4 What's the downside of keeping the rule like we had it</p> <p>5 with the affirmative defense as a state-only rule?</p> <p>6 MR. EDDIE TERRILL: You mean as you passed</p> <p>7 five or six years ago? That version?</p> <p>8 MS. MYERS: Yeah. Yes.</p> <p>9 VICE-CHAIR LODES: Yes.</p> <p>10 MR. EDDIE TERRILL: Well, I think it -- I</p> <p>11 think this version does provide some clarification, if</p> <p>12 you will, to what we had done several years ago. And</p> <p>13 it's a matter of perception, I think, and the fact</p> <p>14 that, if you have an affirmative defense language in</p> <p>15 there, there are some people that believe that that --</p> <p>16 that alone could subject additional scrutiny of folks</p> <p>17 to our program. And to me, it's just a way to kind of</p> <p>18 clarify and make it more transparent as to how we're</p> <p>19 actually implementing the changes that EPA has</p> <p>20 recommended or how we'd actually be running our</p> <p>21 program.</p> <p>22 That may not be a very good explanation, but</p> <p>23 -- but the reality is that the way we've -- the way</p> <p>24 we've done our program the last seven or eight years</p> <p>25 won't change. The effects, it doesn't change it at</p>	28	<p>1 like that we needed to bring that back to the Council,</p> <p>2 because we let something slip that wasn't the way we</p> <p>3 had done things in the past and we would do things in</p> <p>4 the future. So --</p> <p>5 MR. HAUGHT: I just want to comment. I don't</p> <p>6 know that it's so much a question. But what I'm going</p> <p>7 to describe, if anybody has another opinion about it,</p> <p>8 I would appreciate it.</p> <p>9 But it looks like, by changing this language</p> <p>10 now, we probably would lessen the chances for</p> <p>11 challenge by someone later on. I mean, since just the</p> <p>12 term "affirmative action" is -- this is what seems to</p> <p>13 have caused a lot of heartburn with people in terms of</p> <p>14 the SIP Call.</p> <p>15 But whether we put this in place as proposed</p> <p>16 with language that clarifies that this is a state-only</p> <p>17 issue, state-only provision, and include it in the</p> <p>18 SIP, or whether we don't include it in the SIP as a</p> <p>19 state-only provision, it doesn't look like much of a</p> <p>20 difference on that to me. I mean, I think this is --</p> <p>21 this is -- only impacts the state's enforcement. So,</p> <p>22 that makes it clear.</p> <p>23 So whether it's included or whether it's not</p> <p>24 included, that decision, I mean, I'd like the time to</p> <p>25 think about it and address that later on. But I don't</p>

29	<p>1 know that it makes any -- any difference to me right                  2 now that we pre-determine whether we're going to                  3 include this or not, if we think this language is                  4 better than what -- than what's out there now.                  5 VICE-CHAIR LODES: So our SIP doesn't have to                  6 have an excess emission rule as part of it. Is that                  7 what EPA is saying?                  8 MR. EDDIE TERRILL: I believe that is what                  9 EPA is saying.                  10 MS. LAURA FINLEY: Now.                  11 MR. EDDIE TERRILL: Now.                  12 MS. LAURA FINLEY: That's what they're saying                  13 now.                  14 MR. EDDIE TERRILL: That's not what they were                  15 saying when we first started this process.                  16 VICE-CHAIR LODES: Well, and I realize that's                  17 not what they said back in 2010 when we revised                  18 Subchapter 9 the last time and we went in and did a                  19 big push to revise it. And then they never bothered                  20 to review it. And then they did a SIP Call based off                  21 the seventeen year-old -- sixteen year-old rule,                  22 because they didn't bother to look at the newer                  23 version.                  24 So that's why I'm like, why are we changing                  25 our rule and going through a whole lot of effort when</p>	31	<p>1 correct a little bit what you stated there.                  2 EPA did look at what we submitted to them                  3 back in 2010, or whenever it was, because we worked --                  4 if you remember, we worked very closely with Adam                  5 Kushner and the OECA folks. And at one time we were                  6 the model program in the country for making the                  7 changes that the enforcement folks at headquarters                  8 believed were necessary to have a excess emission                  9 program that was federally defensible, if you will.                  10 It was only after they got sued and                  11 determined that that wasn't acceptable and lost, by                  12 the way, that that -- that they did. And the fact                  13 that EPA didn't approve it at the regional level and                  14 headquarters, that's more of a factor they haven't                  15 approved anything, than it does that they didn't look                  16 at the rule.                  17 So at one time we very much had a rule that                  18 was acceptable, it just never --                  19 VICE-CHAIR LODES: I guess that's my concern.                  20 We went through a lot of effort five years ago and we                  21 changed our rule and we were told it was acceptable,                  22 and EPA liked it, and we got comments back from the                  23 EPA saying, hey, this looks great, we're going to go                  24 forward with it. And they didn't act on it. They got                  25 sued. They lost. And suddenly, we have an</p>
30	<p>1 they haven't even bothered to review our rule as it                  2 is.                  3 MS. LAURA FINLEY: So if they do --                  4 MS. BOTCHLET-SMITH: Laura, would you -- for                  5 the court reporter.                  6 MS. LAURA FINLEY: Yeah. Laura Finley.                  7 So if they do change their mind later though,                  8 like you said, it would -- it would -- and then we                  9 later need to include this in the SIP, now it's                  10 compliant. It's compliant with the Clean Air Act, it                  11 takes, you know, the heat off of us. It makes us less                  12 of a target without the affirmative defense                  13 provisions, without the provision saying, you know,                  14 civil -- you know, civil cases, and things like that,                  15 you know, where we would have the appearance that we                  16 may preclude or interfere with that judicial                  17 jurisdiction.                  18 Without those provisions, it makes it more,                  19 you know, makes us less of a target. And then later                  20 on, if EPA changes their mind again and we need to                  21 submit it, or if we determine that we do want to                  22 submit it as a SIP, as a part of our SIP, then it's                  23 more acceptable. It's easier to get it -- to get it                  24 through. It's more defensible.                  25 MR. EDDIE TERRILL: And, Laura, I would</p>	32	<p>1 unacceptable excess emissions program.                  2 So we're in here looking at it again. We're                  3 going to go in and make it, what we think is,                  4 compliant, but are we going to be back here again in                  5 four years because magically this program is still not                  6 compliant because they've changed their mind again?                  7 MR. EDDIE TERRILL: Actually the portion that                  8 we're withdrawing, the '94 SIP submittal, that's what                  9 makes our program subject to the SIP Call. It's not                  10 what we submitted in 2010. We're -- we thought that                  11 we, since we were going to have to do this change                  12 anyway, that it would be a good time to take another                  13 look at the rule, do some updates, make some changes                  14 and try to make it a better rule, if you will.                  15 So but, you're right. If we decided -- if                  16 the Council said, we just don't want to make any                  17 change at all, all we would have to do is withdraw the                  18 '94 SIP submittal and we would have a state-only rule,                  19 as we submitted or as you all passed back in 2010 or                  20 whenever it was.                  21 Again, you've gone to all this work. It's                  22 just a matter of passing it and sending it on. I                  23 would recommend that you not throw that out, that I                  24 think we've made some good changes, at least I hope we                  25 have, that better clarify what we're trying to do.</p>

<p style="text-align: right;">33</p> <p>1 And then we can take some time over the next few                  2 months and decide whether or not it's something that                  3 we want to submit as a SIP submittal or just leave it                  4 in the state-only plan.                  5 I share your frustration, because I'll be --                  6 when we first started thinking about this, like I                  7 said, I think, several times, I was happy with what we                  8 did before. I think there was nothing wrong with what                  9 we had down there that was pending their approval that                  10 we withdrew.                  11 But again, it's -- it's up to you all. You                  12 all are the ones that are -- that's the purpose of the                  13 Council and we'll do whatever you guys want us to do.                  14 But given the time and effort that's been put                  15 into this and the amount of effort you all have put                  16 into it, if you believe that the changes that we have                  17 made better clarify the rule that we had, I'd                  18 recommend still passing that and then we can make a                  19 determination to whether or not it should be a SIP                  20 submittal at a later date.                  21 VICE-CHAIR LODES: I do have some questions                  22 on the rule itself, as proposed sitting there today.                  23 The first one under 100-9-1.1, we've added a                  24 statement that says, "Fugitive VOC emissions covered                  25 by an existing leak detection and repair program that</p>	<p style="text-align: right;">35</p> <p>1 a way that it should be, you know, they're not subject                  2 to this subpart because they're subject under that.                  3 Do we need to do a change there?                  4 MS. CHERYL BRADLEY: Cheryl Bradley. We                  5 can't specifically exclude them, because, if the                  6 facility fails to comply with the LDAR program, they                  7 become excess emissions. So there is some feed over                  8 into Subchapter 9 if the LDAR provisions are not acted                  9 upon appropriately. Therefore, the language addresses                  10 the issue in hand. But under certain circumstances                  11 they do become excess emissions if the repairs are not                  12 accomplished.                  13 VICE-CHAIR LODES: I guess what was our                  14 reason for removing the sunset provision we had in                  15 here? I guess since we may not include it in the SIP                  16 at all? Is that why we're taking it out?                  17 MS. CHERYL BRADLEY: Cheryl Bradley again.                  18 We actually removed it because we moved -- under the                  19 mitigating factors for startup and shutdown, we                  20 removed the provision to obtain a permit that                  21 addresses startup and shutdown. So, that's why we                  22 removed the -- the sunset provisions.                  23 VICE-CHAIR LODES: Okay.                  24 MS. BOTCHLET-SMITH: Laura, do you have other                  25 questions? Are you looking for those? Or --</p>
<p style="text-align: right;">34</p> <p>1 is required by a federal or state regulation should be                  2 reported in accordance with the applicable LDAR."                  3 Does this mean you don't do any reports under                  4 Subchapter 9 for -- under -- for the LDAR? Can we                  5 clarify that?                  6 MR. EDDIE TERRILL: Okay.                  7 MR. BROOKS KIRLIN: I think that's the -- I                  8 believe that's what that's saying, is that we're --                  9 because the LDAR program has specific reporting                  10 requirements. Originally, remember it -- previously                  11 -- I mean the existing rule, under the definition of                  12 excess emissions says, "This term does not include                  13 fugitive VOC emissions covered by an existing leak                  14 detection and repair program that is required by a                  15 federal or state regulation."                  16 Okay. So they -- from that definition, that                  17 is -- those would have been exempted from the                  18 requirements of Subchapter 9. And so, yes, that --                  19 because the LDAR program should have requirements for                  20 how you handle excess emissions, that's -- that's the                  21 intent.                  22 VICE-CHAIR LODES: I'm just wondering if we                  23 should maybe add a statement. Because before in the                  24 definition where we very clearly excluded it from                  25 excess emissions, I'm just trying to think if there's</p>	<p style="text-align: right;">36</p> <p>1 VICE-CHAIR LODES: I don't know that I have                  2 any other at the moment.                  3 MS. BOTCHLET-SMITH: Okay. Any other                  4 questions from the Council at this time?                  5 Okay. We want to move on. And we've got a                  6 couple from the audience that indicated they wanted to                  7 make a comment, so we'll take those. And then, if the                  8 Council wants to readdress it, we'll come back to                  9 you.                  10 Johnson Bridgewater from the Sierra Club, are                  11 you here? Okay.                  12 If you will just state your name and then                  13 feel free.                  14 MR. JOHNSON BRIDGEWATER: Thank you all very                  15 much. Johnson Bridgewater. Oklahoma Chapter of                  16 Sierra Club.                  17 Again, I want to thank you for the                  18 opportunity to provide comments on the proposed                  19 changes to the startup and shutdown rules. The                  20 proposed rule change is the result of a rule issued by                  21 the Federal Environmental Protection Agency called the                  22 SIP Call that requires many states to close                  23 long-standing loopholes in their air regulations that                  24 serve to excuse major sources of air emissions from                  25 meeting emissions limits during periods of startup and</p>


<p style="text-align: right;">37</p> <p>1 shutdown.</p> <p>2       Comments today are divided into two parts.</p> <p>3 The first comment is directed at the proposed</p> <p>4 revisions to Subsection 252.100-9-8, parts (a), (b),</p> <p>5 (d) and (e). The second is regarding proposed</p> <p>6 Subsection (c).</p> <p>7       First, Sierra Club does not generally object</p> <p>8 to the proposal to change the language in Subsections</p> <p>9 (a), (b), (d) and (e) to clarify that the Subsections</p> <p>10 apply only to state administrative actions and do not</p> <p>11 apply to federal administrative actions or actions in</p> <p>12 federal court by EPA or citizens. However, we do ask</p> <p>13 for a clarification from ODEQ that Rule 252.100-9-8</p> <p>14 will be removed entirely from Oklahoma's SIP and</p> <p>15 maintained at most as a state-only rule.</p> <p>16       In a recent letter to the State of Colorado,</p> <p>17 EPA made it very clear that affirmative defense</p> <p>18 provisions cannot remain in SIPs, even if those</p> <p>19 affirmative defense provisions are changed to make</p> <p>20 clear that they apply only to state administrative</p> <p>21 actions.</p> <p>22       We've submitted that letter from EPA into the</p> <p>23 record as an attachment to our written comments. We</p> <p>24 invite you to review that guidance prior to voting on</p> <p>25 these proposed rule changes.</p>	<p style="text-align: right;">39</p> <p>1 and participation.</p> <p>2       The second major problem with the language is</p> <p>3 that it fails to narrowly limit the use of alternative</p> <p>4 emissions limits as required by law. We discuss this</p> <p>5 in greater detail in our written comments and I invite</p> <p>6 you all to read them.</p> <p>7       In short, the EPA SIP Call rule provides a</p> <p>8 set of seven criteria that must be used for developing</p> <p>9 alternative emissions limits for startup and shutdown.</p> <p>10 The proposed language does not include this criteria</p> <p>11 and so is impermissibly broad.</p> <p>12       For example, the EPA SIP Call rule makes</p> <p>13 clear that a control must be shown to be technically</p> <p>14 infeasible before an alternative emissions limit can</p> <p>15 be used. That's not in the proposed rule.</p> <p>16       The third major problem with the language in</p> <p>17 Subsection (c) is that it fails to make clear that</p> <p>18 when establishing alternative limits the state must</p> <p>19 consider the impact on compliance with other Clean Air</p> <p>20 Act requirements, such as the NAAQS, PSD increments</p> <p>21 and any other standards.</p> <p>22       So we would ask you to, please, review our</p> <p>23 written comments and not vote on the proposed rule</p> <p>24 revisions until ODEQ has addressed these concerns.</p> <p>25 And I am not the person with the expertise on this</p>
<p style="text-align: right;">38</p> <p>1       In that letter EPA explains that it believes</p> <p>2 in order to make it unequivocally clear that the</p> <p>3 affirmative defense provisions are not intended to</p> <p>4 apply to actions in federal court, such provisions</p> <p>5 should be removed altogether from SIPs. Again, we ask</p> <p>6 that ODEQ clarify that the rule will be deleted</p> <p>7 altogether from Oklahoma's SIP.</p> <p>8       So our second comment respects to Subsection</p> <p>9 (c) and the discussion of alternative emissions</p> <p>10 limits. We have serious concerns about the proposed</p> <p>11 language. The key language is as follows: Emissions</p> <p>12 in compliance with the federally enforceable</p> <p>13 alternative emission limit or means of compliance</p> <p>14 developed for inclusion in the facilities permit for</p> <p>15 periods of startup and shutdown shall not be</p> <p>16 considered excess emissions.</p> <p>17       We have three main ways in which we do not</p> <p>18 believe this section complies with federal law. The</p> <p>19 first, alternative emissions limits must themselves be</p> <p>20 developed through the SIP provision process, not</p> <p>21 merely through the permitting process for a facility.</p> <p>22 The SIP Call rule makes this clear, as we discussed in</p> <p>23 greater detail – detail in our submitted written</p> <p>24 comments. Importantly, the establishment of any</p> <p>25 alternative limits has to provide for public notice</p>	<p style="text-align: right;">40</p> <p>1 issue. Our national experts on the ODEQ's rule</p> <p>2 reviewed the proposal and we did submit written</p> <p>3 comments.</p> <p>4       In closing, in order to avoid federal action</p> <p>5 in Oklahoma, it's critical that we submit revisions to</p> <p>6 Oklahoma's State Plan that can be approved by EPA.</p> <p>7 So, that's the close of my comments. Thank you.</p> <p>8       MS. BOTCHLET-SMITH: Thank you,</p> <p>9 Mr. Bridgewater.</p> <p>10       Mr. Shandy.</p> <p>11       MR. DON SHANDY: Council Members, Don Shandy</p> <p>12 with Crowe and Dunlevy. As most of you know, I</p> <p>13 represent a number of industrials here in the state.</p> <p>14       First of all, I want to say there is</p> <p>15 obviously nobody that is as adept at the history and</p> <p>16 the intricacies of this rule as Brooks is. So thanks</p> <p>17 for the history of that.</p> <p>18       I also want to say thanks to Laura Finley,</p> <p>19 and Eddie, and other members of the staff for working</p> <p>20 through this. I have been involved in Subchapter 9</p> <p>21 for a number of years, including the current version</p> <p>22 that lists the affirmative defense provisions. And as</p> <p>23 some of you will recall, there was some litigation and</p> <p>24 I was involved in litigation in Colorado where their</p> <p>25 excess emission rule was addressed. And then Eddie</p>

<p style="text-align: right;">41</p> <p>1 had the vision to say, let's get together and try to                  2 address the concerns that were out there seven, eight                  3 years ago. So, that is the current version.                  4       There was a lot of effort that went into                  5 that. And again, I appreciated the time and effort                  6 the staff put into that effort a few years back, but                  7 here we are again.                  8       And Ms. Lodes made the comment, what's the                  9 assurance that we won't yet be standing or sitting in                  10 this position three or four years from now. I don't                  11 know. Depending upon how litigious the Clean Air Act                  12 is or the parties have become around the Clean Air                  13 Act, there are no assurances about anything.                  14       However, I would say that I believe that the                  15 staff, and with Eddie's leadership, have been very                  16 thoughtful in their approach. You do have the cases                  17 that are out there that do tell you that affirmative                  18 defenses provisions are not appropriate, as we sit                  19 here today. And so, the question then becomes, well,                  20 what do we do in trying to address this on a -- in a                  21 reasonable basis.                  22       To that end, I think it's very clear, given                  23 the amount of effort that has gone into looking at                  24 this issue and relooking at this issue, that the                  25 Council should move forward with the rule as proposed.</p>	<p style="text-align: right;">43</p> <p>1 applicable LDAR program, the provisions of this                  2 subchapter shall apply," or something to that effect.                  3 Because I thought it was a -- excuse me -- a little                  4 bit confusing as to how it was written, although I                  5 think the explanation is entirely appropriate in terms                  6 of reporting under the LDAR provisions.                  7       And the only other thing I would say is, I                  8 disagree that -- with the Sierra Club's position,                  9 although I haven't had a chance to read their                  10 comments. But I do disagree under Section 100-9-8(c)                  11 with the comments that were made previously. I think                  12 that paragraph, while I might quibble with some -- how                  13 some of the words appear in that paragraph, the                  14 substance of it, I think, are entirely accurate and, I                  15 think, appropriate.                  16       So from -- certainly from my perspective, I,                  17 again, would thank the Council, thank Eddie and staff.                  18 I know this has been a difficult effort. But I think                  19 that you've listened to all the parties and I think                  20 you should proceed, approve the rule and it should                  21 move as a SIP provision approved by EPA. Thank you.                  22       MS. BOTCHLET-SMITH: Thank you, Mr. Shandy.                  23 Did anyone else in the audience wish to                  24 comment? Okay.                  25       Seeing none, Council, do you have any other</p>
<p style="text-align: right;">42</p> <p>1       I also think that it's very important, if you                  2 look at where EPA is at on this, and Eddie did a good                  3 job of explaining where they're at, it sounds like,                  4 and I haven't had a chance to read their comments, but                  5 it sounds like there's really no objection. And in                  6 all honesty, from a lawyer's perspective, I don't see                  7 how they could object.                  8       What I do think is very, very important here                  9 is that this rule be approved and that it be inserted                  10 as a SIP provision. I don't agree with the comments                  11 that the Sierra Club has that this rule is somehow                  12 defective. It's not. It's been thought through and I                  13 think that it is very important, not only to make the                  14 changes to square it up with where the law is at, but                  15 also submit it as a SIP provision that needs to be                  16 approved by the federal government. I completely                  17 agree with Eddie's position on that.                  18       Laura Lodes made a comment earlier about the                  19 provisions around LDAR. And the only real comment I                  20 would have at this point is that maybe some language                  21 could be added at the end, if the Council chooses to                  22 do so, or the Staff thinks it's appropriate, to the                  23 fact at the end of paragraph 9-1.1 that would say,                  24 "except, however, should excess emissions not be                  25 appropriately reported in accordance with an</p>	<p style="text-align: right;">44</p> <p>1 questions for staff or any further discussion?                  2       Gerald, I don't see anyone's hands up, if you                  3 want to take it.                  4       CHAIR BUTCHER: Okay. So I guess we're ready                  5 for a possible action from the Council.                  6       MS. MYERS: Before we ask for a motion, what                  7 about additional language for clarification on the                  8 LDAR? Can that be added without a great deal of                  9 heartache?                  10       MS. LAURA FINLEY: I would say that it                  11 depends on what the language is and how far afield we                  12 go with that language. And then, too, I did want to                  13 point out -- I remembered something. We did get a                  14 comment from EPA. I think one when we officially --                  15 when we initially drafted this, I think we had that                  16 they -- we had the word exclusion or excluded in                  17 there. Do you remember this? And EPA commented                  18 that -- and that was really going to be an issue,                  19 because then it looks as though we are saying that any                  20 -- any leakage of any kind of, you know, fugitives or                  21 anything like that is not a violation, is not an                  22 excess emission, period.                  23       That is why we wrote the language the way                  24 that we did, just so that we're not saying it's                  25 excluded from Subchapter 9, we're just saying comply</p>

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<p style="text-align: right;">45</p> <p>1 with your federal standards for LDAR. So those are                  2 the only two comments that I have.                  3 MR. HAUGHT: I would make a motion that                  4 Council approve the changes recommended by staff to                  5 Subchapter 9.                  6 CHAIR BUTCHER: We have a motion on the floor                  7 to accept the changes as proposed by the staff. Do we                  8 have a second?                  9 VICE-CHAIR LODES: I'll second.                  10 CHAIR BUTCHER: We have a motion and a second                  11 with the changes made by staff. So I guess we're                  12 ready for the roll call.                  13 MS. QUIANA FIELDS: Mr. Gamble?                  14 MR. GAMBLE: Yes.                  15 MS. QUIANA FIELDS: Mr. Haught?                  16 MR. HAUGHT: Yes.                  17 MS. QUIANA FIELDS: Ms. Lodes.                  18 VICE-CHAIR LODES: Yes.                  19 MS. QUIANA FIELDS: Ms. Myers?                  20 MS. MYERS: Yes.                  21 MS. QUIANA FIELDS: Mr. Butcher?                  22 CHAIR BUTCHER: Yes.                  23 MS. QUIANA FIELDS: Motion passed.                  24 MS. BOTCHLET-SMITH: The next item on today's                  25 Agenda is Number 5B. This is Appendix E, Primary</p>	<p style="text-align: right;">47</p> <p>1 Ozone is an unstable form of oxygen with the                  2 chemical formula O3. Ozone is not directly emitted                  3 into the air by specific sources, but instead is                  4 created in the atmosphere from ultraviolet radiation                  5 in sunlight reacting with other gases. While there is                  6 a natural ozone layer in the upper atmosphere created                  7 by other molecular forms of oxygen, in the lower                  8 atmosphere and ground level chemicals released through                  9 human activities can lead to abnormally high ozone                  10 concentrations. These chemicals include nitrogen                  11 oxides, carbon monoxides and volatile organic                  12 compounds, and they can come from incomplete burning                  13 of fuels, chemical solvents, and gasoline vapors.                  14 Ozone is a powerful oxidizer, and it can                  15 cause health effects by damaging the mucous and                  16 respiratory tissues of animals and also plants. Most                  17 of the evidence describes effects from short-term                  18 exposure on the order of hours to weeks. It is                  19 believed that ozone forms secondary oxidation products                  20 in the respiratory tract, which stimulate inflammation                  21 in the airways and allergic or asthmatic responses.                  22 Groups most at risk are children, people with asthma                  23 and other lung diseases, the elderly and adults active                  24 or working outside. Chronic exposure can affect                  25 developing lungs and immune systems.</p>
<p style="text-align: right;">46</p> <p>1 Ambient Air Quality Standards, and Appendix F,                  2 Secondary Ambient Air Quality Standards. Mr. Malcolm                  3 Zachariah of our staff will give the presentation                  4 today.                  5 MR. MALCOLM ZACHARIAH: Thank you.                  6 Mr. Chair, Members of the Council, Ladies and                  7 Gentlemen, I am Malcolm Zachariah, Environmental                  8 Programs Specialist with the Air Quality Division.                  9 The Department proposes to update Chapter                  10 100, Appendix E, Primary Ambient Air Quality                  11 Standards, and Appendix F, Secondary Ambient Air                  12 Quality Standards to incorporate new national primary                  13 and secondary ozone standards. The Oklahoma Rules on                  14 Rulemaking dictate the procedure for amending a rule                  15 appendix by revoking the old and creating an entirely                  16 new appendix. The Department proposes to revoke the                  17 current Appendices E and F and adopt new Appendices E                  18 and F.                  19 The changes to Appendices E and F are being                  20 made to maintain consistency with federal revisions to                  21 the National Ambient Air Quality Standards (NAAQS) for                  22 ozone which became effective on December 28th, 2015.                  23 This update also includes revisions of the footnotes                  24 within Appendices E and F for clarification and                  25 consistency.</p>	<p style="text-align: right;">48</p> <p>1 On October 26, 2015, the Environmental                  2 Protection Agency (EPA) published final revisions to                  3 the primary and secondary standards for ozone to                  4 ensure adequate protection of public health and                  5 welfare. The ozone NAAQS were last revised in 2008.                  6 Based in part on recommendations from the                  7 Clean Air Scientific Advisory Committee and new                  8 clinical studies, the EPA strengthened the primary and                  9 secondary standards from .075 ppm to .070 ppm while                  10 retaining the eight-hour averaging time and form,                  11 which is the annual fourth-highest daily maximum                  12 average over three years. Also, the ozone monitoring                  13 system for -- season for Oklahoma remained                  14 unchanged.                  15 The revisions to Appendices E and F will                  16 change the ozone standards in Chapter 100 from .075                  17 ppm to .070 ppm to make them consistent with the                  18 federal standards that are already in effect                  19 nationwide. Also, the footnotes have been reordered                  20 to match the sequence they first appear in the tables.                  21 After publication of the proposed rules, it                  22 was brought to our attention that a reference error                  23 occurs in footnote 4 of the new Appendix E and                  24 footnote 3 of the new Appendix F. The references                  25 should be to 40 CFR Section 50.19 and not Section</p>

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49	<p>1 50.15. In your packets, we have provided revised                  2 verasions of the new Appendices with the correct                  3 references highlighted.                  4 Notice was published in the Oklahoma Register                  5 on December 15th, 2015 for these proposed changes.                  6 The notice requested written comments from the public                  7 and other interested parties. We received one written                  8 comment during the comment period, which has been                  9 included in your folders. Ms. Mary Stanton, Chief of                  10 the EPA Region 6 State Implementation Section noted                  11 the previously described footnote reference error in                  12 the new appendices.                  13 Staff requests the Council recommend these                  14 rules with the identified corrections to the                  15 Environmental Quality Board for permanent adoption.                  16 Thank you.                  17 MS. BOTCHLET-SMITH: Do we have any questions                  18 from the Council?                  19 Seeing none, at this time do we have any                  20 comments or questions from the audience?                  21 Also seeing none, Gerald, if there aren't any                  22 further questions, you can take a motion.                  23 CHAIR BUTCHER: Do we have a motion from the                  24 Council?                  25 MS. MYERS: I will make a motion that we</p>	51
50	<p>1 accept it as is.                  2 CHAIR BUTCHER: Okay. We have a motion as                  3 it's been proposed.                  4 MR. HAUGHT: As is or with -- with the                  5 corrections?                  6 MS. MYERS: With the corrections. With the                  7 corrections as presented.                  8 MR. HAUGHT: With the -- with the corrections                  9 as presented.                  10 CHAIR BUTCHER: We have a motion as proposed                  11 with the corrections and do we have a second?                  12 VICE-CHAIR LODES: I'll second it.                  13 CHAIR BUTCHER: Okay. We have a motion and a                  14 second.                  15 MS. QUIANA FIELDS: Mr. Gamble?                  16 MR. GAMBLE: Yes.                  17 MS. QUIANA FIELDS: Mr. Haught?                  18 MR. HAUGHT: Yes.                  19 MS. QUIANA FIELDS: Ms. Lodes?                  20 VICE-CHAIR LODES: Yes.                  21 MS. QUIANA FIELDS: Ms. Myers?                  22 MS. MYERS: Yes.                  23 MS. QUIANA FIELDS: Mr. Butcher?                  24 CHAIR BUTCHER: Yes.                  25 MS. QUIANA FIELDS: Motion passed.</p>	52
	<p>1 MS. BOTCHLET-SMITH: That concludes the                  2 hearing portion of today's meeting.                  3 (Whereupon, the hearing was concluded.)                  4 Hearing Concluded - 10:09 A.M.                  5                  6                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>	
	<p>1 ** CERTIFICATE **                  2 STATE OF OKLAHOMA )                  ) SS:                  3 COUNTY OF OKLAHOMA )                  4                  5 I, Lynette Wrany, a Certified Shorthand Reporter                  6 within and for the State of Oklahoma, do hereby                  7 certify that I reported all of the foregoing hearing,                  8 and that I later reduced it to typewritten form, as                  9 the same appears herein.                  10 I further certify that I am not a relative of,                  11 nor attorney for, nor clerk or stenographer for any                  12 party to this meeting, and that I am not otherwise                  13 interested in the event of the same.                  14 I further certify that the above and foregoing                  15 typewritten pages contain a full, true and correct                  16 transcript of my stenography notes so taken, during                  17 said hearing.                  18 WITNESS my hand and seal this the 22nd day of                  19 January, 2016.                  20                  21                   22                  23 LYNETTE WRANY, C.S.R.                  Oklahoma Certified Shorthand Reporter                  Certificate No. 1167                  Expiration Date: December 31, 2016                  24                  25</p>	



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**Oklahoma City, Oklahoma**

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Martin R... DEQ	
Jalynn G... DEQ	
Jonathan T... DEQ	
BRIAN M... ONE ENERGY	
Randy Ward DEQ-AQD	
Brooks Kirlin DEQ-AQD	
MARK GIBBS DEQ	
Gerald Butcher WFEC	
MATT PAUL DEQ	
Jennifer Thompson Trinity	
Alyssa Streebin Trinity	
Robin Hamman Trinity	
Jeremy Tommy Trinity	
Michelle Wynn DEQ	
Kent Stafford DEQ	
Deanne Hughes Chad Brach Engineer	
Mark Lawson Spirit AeroSystems	
Andrew W... WFEC	
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Nancy Graham WFEC	
Lynd Wil DEQ	
Nancy Marshment DEQ-AQD	





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Melissa McKibben