SPECIAL MEETING/HEARING AGENDA
AIR QUALITY ADVISORY COUNCIL
December 6, 2022, 9:00 a.m.
Department of Environmental Quality
707 North Robinson Avenue
Oklahoma City, OK

Please turn off cell phones

1. Call to Order – Laura Lodes, Chair

2. Roll Call – Quiana Fields

3. Approval of Minutes – October 5, 2022 Regular Meeting

4. Public Rulemaking Hearing

A. Chapter 100. Air Pollution Control
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.2 Annual operating fees [AMENDED]

The Department is proposing to amend OAC 252:100, Subchapter 5, Registration, Emission Inventory and Annual Operating Fees, to update the annual operating fee schedule language to include the use of the Consumer Price Index (CPI) in the adjustment of annual operating fees for minor facilities. Part 70 (major) sources are subject to adjusted annual operating fees based on the CPI.

1. Presentation – Christina Hagens, EPS, Rules & Planning Section, AQD
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

B. Chapter 100. Air Pollution Control
Subchapter 49. Oklahoma Emission Reduction Technology Rebate Program [NEW]
252:100-49-1 Purpose and Applicability [NEW]
252:100-49-3 Definitions [NEW]
252:100-49-5 Program criteria and qualification determination [NEW]
252:100-49-7 Sunset provision [NEW]

The Department is proposing to add Subchapter 49, Oklahoma Emission Reduction Technology Rebate Program to OAC 252:100, to implement applicable provisions of the Oklahoma Emission Reduction Technology Incentive Act, 68 O.S. § 55006, et seq. The act created the "Oklahoma Emission Reduction Technology Rebate Program," administered by the DEQ and the Oklahoma

Tax Commission, to provide an incentive for "Emission Reduction Projects" – implementation of new and innovative technologies to reduce air pollutant emissions from oil and gas facilities.

1. Presentation – Brooks Kirlin, P.E., Rules & Planning Section, AQD
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

5. Division Director's Report – Kendal Stegmann, Division Director, AQD

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

7. Adjournment – The next regular meeting is scheduled for Wednesday, January 11, 2023, in Oklahoma City, Oklahoma.

Should you have a disability and need an accommodation, please notify the DEQ Air Quality Division three days in advance at 405-702-4177. Hearing impaired persons may call the text telephone (TDD) Relay Number at 1-800-722-0353 for TDD machine use only.

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.2 Annual operating fees [AMENDED]
Subchapter 49. Oklahoma Emission Reduction Technology Rebate Program [NEW]
252:100-49-1 Purpose and Applicability [NEW]
252:100-49-3 Definitions [NEW]
252:100-49-5 Program criteria and qualification determination [NEW]
252:100-49-7 Sunset provision [NEW]

SUMMARY:

The Department of Environmental Quality (Department or DEQ) is proposing to amend OAC 252:100, Subchapter 5, Registration, Emission Inventory and Annual Operating Fees, to update the annual operating fee schedule language relating to minor facilities. Part 70 (major) sources are subject to adjusted annual operating fees based on the Consumer Price Index (CPI). The gist of this rule proposal and the underlying reason for the rulemaking is to include the use of the CPI in the adjustment of annual operating fees for minor facilities.

The Department is proposing to add Subchapter 49, Oklahoma Emission Reduction Technology Rebate Program to OAC 252:100, to implement applicable provisions of the Oklahoma Emission Reduction Technology Incentive Act, 68 O.S. § 55006, et seq. The act created the "Oklahoma Emission Reduction Technology Rebate Program," administered by the DEQ and the Oklahoma Tax Commission, to provide an incentive for "Emission Reduction Projects" – implementation of new and innovative technologies to reduce air pollutant emissions from oil and gas facilities. The gist of this rule proposal and the underlying reason for the rulemaking is to implement the Department's responsibilities under the Oklahoma Emission Reduction Technology Incentive Act.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201, and 2-5-106.
Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.
Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through 2-5-117.
Oklahoma Uniform Permitting Act; 27A O.S. §§ 2-14-101 through 2-14-304.
Oklahoma Emission Reduction Technology Incentive Act; 68 O.S. § 55011.

COMMENT PERIOD:

Written comments may be submitted to the contact person from November 1, 2022, through December 1, 2022. Oral comments may be made at the December 6, 2022 Air Quality Advisory Council special meeting and at the February 17, 2023 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Tuesday, December 6, 2022, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102.

If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Friday, February 17, 2023, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 and

27A O.S. § 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 C.F.R. Part 70 and 27A O.S. § 2-5-112(B)(9).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, or reviewed online at https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/.

RULE IMPACT STATEMENTS:

Pursuant to 75 O.S. § 303(D), a rule impact statement was prepared and is available on the DEQ website at https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/. Copies may also be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Melanie Foster, Environmental Programs Manager, who can be reached by phone at (405) 702-4100. Please email written comments to AQDRuleComments@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: Melanie Foster.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4177. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

DRAFT MINUTES
AIR QUALITY ADVISORY COUNCIL
October 5, 2022
Department of Environmental Quality
Oklahoma City, Oklahoma

Official AQAC Approved
at December 6, 2022 special meeting

Notice of Public Meeting – The Air Quality Advisory Council (AQAC) convened for its Regular Meeting at 9:00 a.m. on October 5, 2022. Notice of the meeting was forwarded to the Office of Secretary of State on November 3, 2021. The agenda was posted at the DEQ twenty-four hours prior to the meeting. Also, Ms. Beverly 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 if you wish to make a statement when it's time for public comments, complete the form at the registration table and you will be called upon at the appropriate time. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

MEMBERS PRESENT	DEQ STAFF PRESENT
Matt Caves	Kendal Stegmann
Gary Collins	Beverly Botchlet-Smith
Robert Delano	Joe Daniel
Gregory Elliott	Brooks Kirlin
Garry Keele	Melanie Foster
Steve Landers	Phillip Fielder
John Privrat	Travis Couch
Jeffrey Taylor	Jared Milano
Laura Lodes	Cheryl Bradley
	Kathy Aebischer
MEMBERS ABSENT	Ryan Biggerstaff
None	Tom Richardson
	Malcolm Zachariah
	Christina Hagens
	Quiana Fields

Approval of Minutes – Ms. Lodes called for a motion to approve the Minutes of the January 19, 2022 Regular Meeting. Mr. Caves moved to approve and Mr. Keele made the second.

See transcript pages 3 - 4

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Meeting Schedule for Calendar Year 2023 – Ms. Lodes stated the proposed meeting scheduled dates are: January 11 in Oklahoma City, June 21 in Tulsa and October 4 in Oklahoma City. Mr. Taylor moved to approve the proposed dates and Mr. Elliott made the second.

See transcript pages 4 - 5

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes

Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

City of Mustang Ordinance Requiring Air Curtain Incinerators for Land Clearing Operations – Captain Eric Halter, Fire Chief, City of Mustang gave the presentation. Following discussion by the Council, Ms. Lodes called for a motion to approve the proposal, Mr. Privrat made the motion to approve it as to its reasonableness and technical feasibility and Mr. Taylor made the second.

See transcript pages 5 - 18

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Public Rulemaking Hearing

Chapter 100. Air Pollution Control
Subchapter 2. Incorporation By Reference [AMENDED]
Appendix Q. Incorporation By Reference [REVOKED]
Appendix Q. Incorporation By Reference [NEW]

Ms. Christina Hagens, Environmental Programs Specialist of the AQD, stated the Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q. Hearing no questions by the Council or by the public, Ms. Lodes called for a motion, Mr. Elliott moved to approve and Mr. Keele made the second.

See transcript pages 19 - 22

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

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

See transcript page 22 - 23

Presentation – Mr. Brooks Kirlin, P.E., Rules & Planning Section of the AQD, gave a presentation on Oklahoma Emission Reduction Technology Incentive Act.

Presentation – Ms. Kathy Aebischer, Assistant Division Director of the ASD, gave a presentation on the Fiscal Report.

Presentation – Mr. Michael Ketcham, EPS, Emissions Inventory Section of the AQD, gave a presentation on Emission Inventory Trends.

Division Director's Report – Ms. Kendal Stegmann, Division Director of the AQD, provided an update on other Division activities.

The Council discussed having a Special Meeting on December 6, 2022. Ms. Lodes called for a motion, Mr. Collins moved to approve and Mr. Elliott made the second.

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

New Business – None

Adjournment – Ms. Lodes called for a motion to adjourn the meeting. Mr. Taylor moved to adjourn and Mr. Keele made the second. The next scheduled Special Meeting is on Wednesday, December 6, 2022. Meeting adjourned at 10:20 a.m.

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Transcript and attendance sheet becomes an official part of these Minutes.

REGULAR MEETING/HEARING

AIR QUALITY ADVISORY COUNCIL

OCTOBER 5, 2022, 9:00 AM

MEMBERS PRESENT	DEQ STAFF PRESENT
Laura Lodes	Kathy Aebischer
Garry Keele II	Beverly Botchlet-Smith
Matt Caves	Kendal Stegmann
Gary Collins	Travis Couch
Robert Delano	Melanie Foster
Gregory Elliott	Brooks Kirlin
Stephen Landers	Christina Hagens
John Privrat	Quiana Fields
Jeffrey Taylor	
	OTHERS PRESENT
	Eric Halter
MEMBERS ABSENT	John Miller
(None)	

REPORTED BY: Jenny Longley, CSR

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PROCEEDINGS
CHAIRWOMAN LODES: I'd like to call today's meeting of the Air Quality Advisory Council to order.
Quiana, will you please call roll?
MS. FIELDS: Mr. Caves?
MR. CAVES: Here.
MS. FIELDS: Mr. Collins?
MR. COLLINS: Here.
MS. FIELDS: Dr. Delano?
DR. DELANO: Here.
MS. FIELDS: Mr. Elliott?
MR. ELLIOTT: Here.
MS. FIELDS: Mr. Keele?
VICE-CHAIRMAN KEELE: Here.
MS. FIELDS: Mr. Landers?
MR. LANDERS: Here.
MS. FIELDS: Mr. Privrat?
MR. PRIVRAT: Here.
MS. FIELDS: Mr. Taylor?
MR. TAYLOR: Here.
MS. FIELDS: Ms. Lodes?
CHAIRWOMAN LODES: Here.
MS. FIELDS: We have a quorum.
CHAIRWOMAN LODES: Thank you.

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The next item on today's agenda is approval of the minutes from the January 19, 2022 regular meeting.
Do we have any discussion or comments on the minutes?
Seeing none, do we have a motion to pass the minutes?
MR. CAVES: I'll make a motion.
VICE-CHAIRMAN KEELE: Second.
CHAIRWOMAN LODES: Thank you, Matt. Thank you, Garry.
I have a motion and a second. Quiana, will you please call roll?
MS. FIELDS: Mr. Caves?
MR. CAVES: Yes.
MS. FIELDS: Mr. Collins?
MR. COLLINS: Yes.
MS. FIELDS: Dr. Delano?
DR. DELANO: Yes.
MS. FIELDS: Mr. Elliott?
MR. ELLIOTT: Yes.
MS. FIELDS: Mr. Keele?
VICE-CHAIRMAN KEELE: Yes.
MS. FIELDS: Mr. Landers?
MR. LANDERS: Yes.

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MS. FIELDS: Mr. Privrat?
MR. PRIVRAT: Yes.
MS. FIELDS: Mr. Taylor?
MR. TAYLOR: Yes.
MS. FIELDS: Ms. Lodes?
CHAIRWOMAN LODES: Yes.
MS. FIELDS: Motion passed.
CHAIRWOMAN LODES: Thank you. The next item on today's agenda is the meeting schedule for calendar year 2023. On this -- it's in our packet -- the proposed meeting dates are Wednesday -- or, yeah, Wednesday, January 11th or an alternate inclement weather date as January 18th here in Oklahoma City, June 21st in Tulsa, and October 4th in Oklahoma City.
Do we have any questions or concerns about the dates?
Seeing no questions or concerns, do we have a motion to pass the proposed dates?
MR. TAYLOR: I'll make a motion.
CHAIRWOMAN LODES: Thank you.
MR. ELLIOTT: I'll second.
CHAIRWOMAN LODES: I have a motion and a second. Quiana, will you please call roll?
MS. FIELDS: Mr. Caves?

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MR. CAVES: Yes.
MS. FIELDS: Mr. Collins?
MR. COLLINS: Yes.
MS. FIELDS: Dr. Delano?
DR. DELANO: Yes.
MS. FIELDS: Mr. Elliott?
MR. ELLIOTT: Yes.
MS. FIELDS: Mr. Keele?
VICE-CHAIRMAN KEELE: Yes.
MS. FIELDS: Mr. Landers?
MR. LANDERS: Yes.
MS. FIELDS: Mr. Privrat?
MR. PRIVRAT: Yes.
MS. FIELDS: Mr. Taylor?
MR. TAYLOR: Yes.
MS. FIELDS: Ms. Lodes?
CHAIRWOMAN LODES: Yes.
MS. FIELDS: Motion passed.
CHAIRWOMAN LODES: The next item on today's agenda is the "City of Mustang Ordinance Requiring Air Curtain Incinerators for Land Clearing Operations". We've got a presentation by Captain Eric Halter of the -- the Fire Chief for the City of Mustang.
CAPTAIN HALTER: Good morning. Thank you

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for letting me come up here and talk today. I'm Eric Halter, the Fire Marshal for the City of Mustang, and I'm coming to get your -- the council's approval for the City of Mustang to put in our City Ordinance to require air curtains for land clearing for commercial operations.

The background behind it is we're 6 miles long, 2 miles wide, we have about 23,000 population, and from 2013 to 2021, it was required through the state that they have air curtains for land clearing operations, and then in November of '21, it changed to where the City of Mustang doesn't fall under that state requirement anymore.

We are completely surrounded by Oklahoma City and we butt up to Oklahoma County. So when we do the land clearing operations, the smoke will go into our neighborhoods and our schools and businesses are there because we're such a compact area.

So we're trying to continue on with the same rules that are already there and just waive the 500,000 population that you have to have to fall under that. So we're wanting to continue what has been there, we've never had any issue with using the air curtains from 2013 to 2021, everybody had just

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complied with it, never had any issues.

We did have issues prior to 2013. When air curtains weren't required, we had a burn area that caused some smoke and air quality problems, and that contractor ended up getting sued by some of the citizens. So the history's there that we need it, and then we didn't have any problems with people complying with it for that almost 10 years, so we're just wanting to continue on with that process.

CHAIRWOMAN LODES: Thank you.

And -- and it's the City of Mustang rules that require it to come to us, correct, isn't that the way it's worked, or is it our state rules?

MS. STEGMANN: It's the Oklahoma Clean Air Act that requires this.

CHAIRWOMAN LODES: Okay. It's the Oklahoma -- so everybody else understands, because of the way the Oklahoma Clean Air Act is written, since it's a City Ordinance that is more stringent than our rules, they have to bring this to us. In case you're wondering why they're bringing it outside of the others, because I asked this question last week at the pre meeting because I was a little surprised. So you gentlemen understand why this

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ordinance is coming to us.

And if you'll recall, as he stated, we have that in our rules and then the legislature made us change them last year, and so that is why the City of Mustang has come to us with this one.

Do we have any questions for him?

MR. LANDERS: And we're saying it's more strict than -- because they're not -- they don't -- currently are not required to have --

CHAIRWOMAN LODES: Because of the 500,000 population requirement. So we have the rule if you were in, I don't remember which counties, that we had to do it, you had to -- huh?

MS. FOSTER: Oklahoma and Tulsa are the only ones now, but before --

CHAIRWOMAN LODES: Right. But before, it was a bigger area that were required to have the air curtain incinerators.

MR. PRIVRAT: All the surrounding counties did.

CHAIRWOMAN LODES: All the surrounding counties did, and then the legislature in 2020 passed a -- I think it was 2020 passed a rule that it had to be a population of 500,000 to require the air curtain incinerators. So that meant only

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Oklahoma County and Tulsa County had to, and we had to do -- if you'll remember, we did a rulemaking last year to change our -- because I'm trying to remember which year we did this -- to change our rules to comply with the state rules, and so because of that, areas like Mustang are no longer required to have the air curtain incinerator.

So they have -- they still want to keep using the air curtain incinerators within the Mustang city limits, and so they've brought this rule to us.

MR. COLLINS: Is there any opposition on record?

MR. CAVES: Has the city heard from any developers? You said prior to '13 there were some issues, but during the time when it was required, it was additional protection. Have any developers or others come before the city and said anything?

CAPTAIN HALTER: Nobody's said anything currently. Since the -- since the rule stopped, to this date we haven't had a land clearing to where it would -- this would have been brought up, so I'm just trying to catch it before because I know some land clearing operations are fixing to come into play here in the next year or so, so I'm trying to

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catch it beforehand.
VICE-CHAIRMAN KEELE: Do you guys have to do notification items when you're -- within the community whenever you're passing an ordinance like this?
CAPTAIN HALTER: We do, we go -- I'll -- so if I get the approval through you guys, I'll go through our city council and we'll have a public hearing with the city council and they'll adopt it into our City Ordinance and then the citizens can -- or contractors can come up and voice their opinion in.
MR. TAYLOR: Is your council behind all this? I know ours is, and ours has talked about doing it, too.
CAPTAIN HALTER: As of right now, I haven't had any complaints or -- to get back to my council.
MR. LANDERS: Do you have to have it approved here before you can go before your city council?
CAPTAIN HALTER: We did this process to approve it here before the City Council because I didn't want to enact a City Ordinance and then have to go back and take it off the board.

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CHAIRWOMAN LODES: Because, yeah, we have to approve it before whatever the city does can go into effect. So they brought it to us first before he takes it because if we denied it, then there's no point going to the city council.
MR. LANDERS: Yeah, I understand, it's just a little backwards for the process we go through of getting public input before, but --
CHAIRWOMAN LODES: That is correct. So I had a lot of these questions, I was very puzzled by this as of last week.
VICE-CHAIRMAN KEELE: Yeah, this is probably the first time this has happened --
CHAIRWOMAN LODES: Yeah.
VICE-CHAIRMAN KEELE: -- something like this, so --
CAPTAIN HALTER: Well, it's my first, as well.
MR. PRIVRAT: I talked to several contractors, some were not even aware that the change had been made, they thought that was required. I didn't get any real feedback from anybody when I checked in to say this would be an issue; so I don't see any issues with this.
MR. COLLINS: I guess the question is

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should it be the council, the city council that brings it before the Air Council, is that a more appropriate entity? I don't know, I'm just asking that question.
CHAIRWOMAN LODES: I don't think the way the rules are written, it matters who brings it before us.
VICE-CHAIRMAN KEELE: It doesn't specify.
CHAIRWOMAN LODES: Yeah.
MR. COLLINS: Okay.
MR. PRIVRAT: And the City Attorney also wrote a letter; so I mean, it's more than just the fire department, but...
CHAIRWOMAN LODES: Sir?
MR. MILLER: I was just going to say, I'm the -- I'm John Miller, I'm the City Attorney for the City of Mustang, if there were any legal-type questions that I could answer. Thank you.
CHAIRWOMAN LODES: Is there -- I mean, I guess does it matter -- it doesn't -- there's nothing in the rules that say it needs to be the city council that would bring it to us?
MR. MILLER: No, it's --
CHAIRWOMAN LODES: No? Okay.
MR. MILLER: The rules say that the city

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brings it, and as a representative of the city, on behalf of the city, the state fire -- or, our municipal fire marshal is the appropriate person to do that.
CHAIRWOMAN LODES: Okay.
MR. MILLER: It's under his bailiwick, the enforcement and the driving force behind the enactment of these ordinances in the City of Mustang.
CHAIRWOMAN LODES: Okay. Any other questions or comments?
VICE-CHAIRMAN KEELE: How quickly is you guys' procedure if it goes whenever you get back in front of your council? How quickly will the ordinance be enacted, I guess?
MR. MILLER: Well, the -- that will depend. The -- if it's passed -- approved by the Air Quality Control Council today, it will go on the November docket for our regularly-scheduled meeting, and if it is passed at that time, it will go into effect 30 days after publication; so it would go into effect in December.
VICE-CHAIRMAN KEELE: Thank you.
MR. MILLER: Thank you.
MR. LANDERS: It sounds like that your

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city council still has the option to not pass the -- I know it sounds unlikely, but to not pass the ordinance; right?

CAPTAIN HALTER: They do.

MR. LANDERS: So I guess even if we pass it today, there's still going to be an -- a hearing for -- an opportunity for public input before they pass it.

CHAIRWOMAN LODES: That is correct.

MS. STEGMANN: I would say that this is not a passing or for y'all to pass this, I think it's just approval from the council to move forward, that's how --

VICE-CHAIRMAN KEELE: Move forward with a rule that's more stringent to address this.

MR. ELLIOTT: Yeah, right, that seems probably a better view.

MS. STEGMANN: Yeah, that's how I would view this.

MR. CAVES: So we're not, you know, ultimately endorsing what they're doing, we're just approving it so they can move forward and then it's their ultimate decision.

CHAIRWOMAN LODES: Yes. We're approving the proposal so that they can move forward with it

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to take it, and then the city will go through their process to actually pass and enact it.

VICE-CHAIRMAN KEELE: Basically, saying this rule -- it's okay for there to be more stringent than the regular rule set that we're dealing with.

MR. ELLIOTT: Then they'll have public comments and a chance for people to have input and --

VICE-CHAIRMAN KEELE: Correct.

CHAIRWOMAN LODES: Any other questions or comment?

MR. LANDERS: Do we know why the legislature passed the bill that they did -- I mean --

CHAIRWOMAN LODES: Yeah, that was --

MR. LANDERS: -- obviously, there was some reason they did that that would -- basically.

MR. PRIVRAT: I think that from what I've seen, there are some rural areas where, truly, the air curtain incinerators are not really required. When you look at the area that encompasses all the surrounding counties, Mustang is really unique. I didn't realize the shape that it was, I thought it was much bigger.

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I mean, to me, it certainly makes sense. I don't think if a larger area would require this, as a -- you know, as a member, I think we could legitimately say if there's a unique situation we could not agree with for a huge area, but Mustang, to me, meets the requirements and makes sense for such a small area not having open burning.

But I think their idea was there's a lot of rural area that was covered under the old bill, and that didn't make as much sense in some of those areas. That's what I saw.

VICE-CHAIRMAN KEELE: Thanks for that, that makes a lot of sense, actually.

CHAIRWOMAN LODES: Any other questions or comments?

So they've requested that we approve this proposed ordinance to go before their city council. Do we have a motion to approve it? I guess this is the right procedures, right?

MR. COUCH: I would make a motion using the statutory language that brought us here today. I would recommend you make a motion to approve it as to its reasonableness and technical feasibility.

CHAIRWOMAN LODES: Okay. Do we have a motion that says what he said?

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MR. PRIVRAT: I make a motion to approve, due to its -- say that again -- reasonableness --

MR. COUCH: Reasonableness and technical feasibility.

MR. PRIVRAT: -- reasonableness and technical feasibility.

MR. TAYLOR: I'll second that.

CHAIRWOMAN LODES: Quiana, will you please call roll?

MS. FIELDS: Mr. Caves?

MR. CAVES: Yes.

MS. FIELDS: Mr. Collins?

MR. COLLINS: Yes.

MS. FIELDS: Dr. Delano?

DR. DELANO: Yes.

MS. FIELDS: Mr. Elliott?

MR. ELLIOTT: Yes.

MS. FIELDS: Mr. Keele?

VICE-CHAIRMAN KEELE: Yes.

MS. FIELDS: Mr. Landers?

MR. LANDERS: Yes.

MS. FIELDS: Mr. Privrat?

MR. PRIVRAT: Yes.

MS. FIELDS: Mr. Taylor?

MR. TAYLOR: Yes.

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MS. FIELDS: Ms. Lodes?
CHAIRWOMAN LODES: Yes.
MS. FIELDS: Motion passed.
CHAIRWOMAN LODES: Thank you.
CAPTAIN HALTER: Thank you.
CHAIRWOMAN LODES: Thank you, gentlemen.
The next item on today's agenda is the "Public Rulemaking Hearing".
Beverly?
MS. BOTCHLET-SMITH: Good Morning: I'm Beverly Botchlet-Smith, I'm the Assistant Director of the Air Quality Division, and as such, I will serve as the protocol officer for today's hearings.
The hearings will be convened by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 of the Code of Federal Regulations, Part 51, as well as the authority of Title 27A of the Oklahoma Statutes, Section 2-2-201 and Sections 2-5-101 through 2-5-117.
Notice of the October 5, 2022 hearings were advertised in the OKLAHOMA REGISTER for the purpose of receiving comments pertaining to the proposed OAC Title 252 Chapter 100 rules as listed on the Agenda and will be entered into each

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record along with the Oklahoma Register filing. Notice of the Meeting was filed with the Secretary of State on November 3, 2021. The Agenda was duly posted 24 hours prior to the meeting at the DEQ.
If you wish to make a statement, it's very important for you to complete the form at the registration table, and then you will be called upon at the appropriate time. Audience members please come to the podium for your comments and please state your name prior to making them.
At this time, we'll proceed with what's marked as Agenda Item 6A on the Hearing Agenda. This is: "Chapter 100, Air Pollution Control"; "Subchapter 2, Incorporation by Reference"; and "Appendix Q, Incorporation by Reference [Revoked]" and "Appendix Q, Incorporation by Reference [New]".
The presentation will be made by Christina Hagens, she's an Environmental Programs Specialist with the Air Quality Division.
Christina?
MS. HAGENS: Good morning. Madam Chair, Members of the Council, my name is Christina Hagens, I'm an Environmental Programs Specialist in the Air Quality Division here at DEQ.

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The department is proposing to update language in Subchapter 2, "Incorporation by Reference", to reflect the new date of incorporation for Appendix Q. In addition, the department is proposing to revoke the current Chapter 100 Appendix Q Incorporation by Reference and adopt a new Appendix Q.
This proposal is part of the annual update of Title 40, Code of Federal Regulations, Incorporation by Reference in Chapter 100. The Oklahoma Rules on Rulemaking dictates the procedure for amending a rule appendix by revoking the old and creating an entirely new appendix.
The proposed changes to Appendix Q reflect federal regulations, mostly New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP), which have been implemented as of June 30, 2022.
The update would incorporate any amendments to standards currently listed in Appendix Q, and a list of the standards that are currently included in Appendix Q which have been modified since July 1st of 2021 was provided in your packet.
A notice of the proposed changes was published in the Oklahoma Register on September 1,

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2022. Written comments from the public and other interested parties was requested in the notice and no comments have been received as of today.
Staff requests that the council recommend this rulemaking to the Environmental Quality Board for permanent adoption. Thank you.
MS. BOTCHLET-SMITH: At this point, we can have discussion by the council. Any questions?
CHAIRWOMAN LODES: Any questions or comments?
MS. BOTCHLET-SMITH: I have not received any forms from anyone in the public, but just to check, is there anyone who wants to ask a question or make a comment on this rule?
Seeing none, if there are no questions from the council, I'll turn it back to you, Laura.
CHAIRWOMAN LODES: Okay. Seeing no questions or comments, the agency has asked that we pass the annual update to Subchapter 100 -- to Chapter 100, Subchapter 2, and Appendix Q, we'll do Incorporation by Reference. Do we have a motion?
MR. ELLIOTT: I'll make a motion to approve the updates to the Subchapter 2 and the Appendix Q.

CHAIRWOMAN LODES: Thank you.
Do I have a second?
VICE-CHAIRMAN KEELE: Second.
CHAIRWOMAN LODES: I have a motion and a second. Quiana, please call the roll.
MS. FIELDS: Mr. Caves?
MR. CAVES: Yes.
MS. FIELDS: Mr. Collins?
MR. COLLINS: Yes.
MS. FIELDS: Dr. Delano?
DR. DELANO: Yes.
MS. FIELDS: Mr. Elliott?
MR. ELLIOTT: Yes.
MS. FIELDS: Mr. Keele?
VICE-CHAIRMAN KEELE: Yes.
MS. FIELDS: Mr. Landers?
MR. LANDERS: Yes.
MS. FIELDS: Mr. Privrat?
MR. PRIVRAT: Yes.
MS. FIELDS: Mr. Taylor?
MR. TAYLOR: Yes.
MS. FIELDS: Ms. Lodes?
CHAIRWOMAN LODES: Yes.
MS. FIELDS: Motion passed.
MS. BOTCHLET-SMITH: And that concludes

the hearing portion of today's meeting.
(HEARING CONCLUDED AT 9:21 AM)

CERTIFICATE

I, Jenny Longley, Certified Shorthand Reporter within and for the State of Oklahoma, do hereby certify that the above and foregoing hearing was by me taken in shorthand and thereafter transcribed; and that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 10th day of October, 2022.

Jenny Longley, CSR
CSR # 1903

OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY ADVISORY COUNCIL

Attendance Record
October 5, 2022
Oklahoma City, Oklahoma

NAME and/or AFFILIATION		Address and/or Phone and/or E-Mail
MELANIE FOSTER	AQD	
Garry Keele	McAfee & Taft	garry.keele@mcafeetaft.com
Christina Hagens	AQD	
Jane J Milam	AQD	
Cheryl Bradley	AQD	
Kathy Aebischer	DEQ/ASD	
Beverly Botchlet-Smith	DEQ	
Kendal Stegmann	DEQ	
Jeff Taylor	AQD	
Jeremy Jewell	Trinity	
Tom Richardson	AQD	
Gary Collins	AQC	gcollins@cfindustries.com
Brooks Kirkland	AQD	
Craig Carruth	Mustang Fire Dept.	
Eric Halter	Mustang Fire Dept.	
Sam Miller	City of Mustang	
Ryan Biggerstaff	AQD	
Quiana Fields	ODEQ	
Randy Wood	public	Randy1997@yahoo.com
Greg Elliott	AQAC	greg.elliott@valero.com
Bob Delano	AQHC	
John Privrat	AQAC	
Phillip Fielder	AQD	
Travis Couch	AQD	
Joe Duriel	AQD	
Steve Landers	AQC	

OKLAHOMA
DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY ADVISORY COUNCIL

Attendance Record
October 5, 2022
Oklahoma City, Oklahoma

NAME and/or AFFILIATION	Address and/or Phone and/or E-Mail
David Frech ACOG	405 245-4511 dfrech@acogok.org
Bud Ground EFO	
Matt Caves AQAC	
Eric Pollard ACOG	
Malcolm Zachariah	

Scott A. Thompson
Executive Director

OKLAHOMA Environmental Quality

Kevin Stitt
Governor

MEMORANDUM

DATE: November 22, 2022

TO: Members of the Air Quality Advisory Council

FROM: Kendal Stegmann, Director KS
Air Quality Division

SUBJECT: Proposed Update of OAC 252:100-5-2.2

The Department of Environmental Quality (Department or DEQ) is proposing to amend OAC 252:100, Subchapter 5, Registration, Emission Inventory and Annual Operating Fees, to update the annual operating fee schedule language relating to minor facilities. Part 70 (major) sources are subject to adjusted annual operating fees based on the Consumer Price Index (CPI). The gist of this rule proposal and the underlying reason for the rulemaking is to include the use of the CPI in the adjustment of annual operating fees for minor facilities.

Emissions and annual operating fees have been trending down over the last few years. The funding generated from this fee adjustment is needed to offset budgetary shortfalls and aid in the retention of full-time positions in the Air Quality Division. Also, the proposed changes are necessary to cover costs from unfunded mandates.

Copies of the proposed rule changes and the Rule Impact Statement are enclosed. Notice of the proposed rule changes was published in the *Oklahoma Register* on November 1, 2022. The notice requested written comments from the public and other interested parties. No comments have been received as of November 22, 2022. At the December special meeting, staff will ask the Council to continue discussion of the proposed rule changes to the following Air Quality Advisory Council meeting in order to allow for additional input from stakeholders and the public prior to adoption as permanent rules.

Enclosures: Proposed Amendments to OAC 252:100-5-2.2
Rule Impact Statement

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL
SUBCHAPTER 5. REGISTRATION, EMISSION INVENTORY AND ANNUAL OPERATING FEES

252:100-5-2.2. Annual operating fees

(a) **Applicability.**

(1) OAC 252:100-5-2.2 applies to all facilities that are sources of air pollution, including government facilities, regardless of whether the source is currently permitted or whether an emission inventory has or has not at any time been submitted for the facility. The owners or operators of Part 70 sources shall pay annual fees that are sufficient to cover the Part 70 program costs. The permitting authority shall ensure that the fees required by OAC 252:100-5-2.2(b)(2) will be used solely for Part 70 program costs.

(2) OAC 252:100-5-2.2 does not apply to de minimis facilities or to permit exempt facilities.

(b) **Fee schedule.**

(1) **Minor facilities.** Beginning July 1, 2008, annual operating fees invoiced for minor facilities shall be $25.12 per ton of regulated air pollutant (for fee calculation). Starting July 1, 2024, the annual operating fees for minor facilities shall be adjusted each year based on the CPI pursuant to (b)(3) of this section. The invoiced, CPI-adjusted annual operating fees shall be discounted appropriately in any given year if the Department determines that other revenues, including appropriated state general revenue funds, have increased sufficiently to adequately fund the air program. Any discount would not affect CPI adjustments.

(2) **Part 70 Sources.** Beginning July 1, 2008, annual operating fees invoiced for Part 70 sources shall be $32.30 per ton of regulated air pollutant (for fee calculation) and shall be adjusted each year pursuant to (b)(3) of this section. The invoiced, CPI-adjusted annual operating fees shall be discounted appropriately in any given year if the Department determines that other revenues, including appropriated state general revenue funds, have increased sufficiently to adequately fund the air program. Any discount would not affect CPI adjustments.

(3) **Use of Consumer Price Index (CPI) to adjust annual operating fees.** Annual operating fees for minor facilities (starting July 1, 2024) and Part 70 sources shall be adjusted automatically each year by the percentage, if any, by which the CPI for the most recent calendar year ending before the beginning of such year differs from the CPI for the calendar year 2007. The CPI for any calendar year is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year.

(c) **Payment.**

(1) Fees are due and payable on the invoice due date(s). Fees shall be considered delinquent 30 days after the invoice due date(s). Within five (5) years but not before a grace period of 120 days from the invoice due date, the DEQ may issue an administrative order to recover such fees and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*, to an owner or operator of a facility who has failed to pay or has underpaid such fees.

(2) If an owner or operator has failed to submit the required annual emission inventory, the DEQ may issue an administrative order to recover fees that would have been invoiced had the emission inventory been submitted when due. The DEQ may issue such order within five (5)

years from the date of billing and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*

(3) When a fee overpayment has been made as a result of an error, an owner or operator may seek a credit for such fee overpayment within five years from the date on which payment of the fee was received by the DEQ.

(d) **Basis for annual operating fees.**

(1) Operating fees shall be calculated on a source-specific basis and based on actual emissions of regulated pollutants (for fee calculation) as set forth in the facility emission inventory unless the owner or operator elects to pay fees on allowable emissions.

(2) Regulated pollutants (for fee calculation) in excess of 4,000 tons per year per pollutant for a Part 70 source shall not be considered in the calculation of the annual fee.

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL

Before the Air Quality Advisory Council on December 6, 2022
Before the Environmental Quality Board on February 17, 2023

RULE IMPACT STATEMENT

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.2 Annual operating fees [AMENDED]

DESCRIPTION: The Department of Environmental Quality (Department or DEQ) is proposing to amend OAC 252:100, Subchapter 5, Registration, Emission Inventory and Annual Operating Fees, to update the annual operating fee schedule language relating to minor facilities. Part 70 (major) sources are subject to adjusted annual operating fees based on the Consumer Price Index (CPI). The gist of this rule proposal and the underlying reason for the rulemaking is to include the use of the CPI in the adjustment of annual operating fees for minor facilities.

CLASSES OF PERSONS AFFECTED: The classes of persons affected are the owners and operators of minor facilities that are sources of air pollution, regardless of whether the source is currently permitted or whether an emission inventory has or has not at any time been submitted for the facility.

CLASSES OF PERSONS WHO WILL BEAR COSTS: The classes of persons who will bear costs are the owners and operators of minor facilities that are sources of air pollution subject to annual operating fees.

INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES: The Department has not received any information on cost impacts as of this date.

CLASSES OF PERSONS BENEFITTED: The citizens of Oklahoma and the owners and operators of the minor facilities subject to these regulations will benefit from an adequately funded air pollution control program that is in place to protect public health and welfare. The owners and operators will benefit from consistency within state rules.

PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS: Annual operating fees will increase for owners and operators of minor source facilities.

PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The Department anticipates no economic impact on political subdivisions.

POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS: For owners and operators of small businesses that are minor sources of air pollution, annual operating fees will be increasing.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The proposed rule would adjust the minor source annual operating fee

from a fixed rate (currently $25.12 per ton of regulated air pollutant) to an annually adjusted rate based on the Consumer Price Index (CPI). This fee adjustment is needed to offset budgetary shortfalls, cover ongoing staff deficits, and aid in the retention of full-time employees.

PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE: The Department anticipates there will be no significant increased costs associated with the implementation and enforcement of these proposed amendments. The Department will benefit from the proposal financially as it would allow the air pollution control program to be adequately funded thereby protecting air quality in the State of Oklahoma.

PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE: There are none. No other agencies will be implementing or enforcing these regulations.

SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE: Fees and federal grants will continue to be used to implement and enforce these regulations.

PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED: The Department estimates that the proposed rule would generate $1,566,767 in additional revenue for 2024, when the changes would go into effect. This is the greatest single-year revenue gain that would result from this rule change. Since emissions and collected fees are trending down, this generated revenue is needed to offset budgetary shortfalls, cover ongoing staff deficits, and aid in the retention of full-time employees.

COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE: None is required. The Department will be responsible for all aspects of implementation and enforcement of these regulations.

EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS: The Department has identified underfunded portions of the air pollution control program and estimated current and future costs associated with those functions. Use of the CPI to annually adjust the fee beginning July 1, 2024, will provide minor sources reasonable lead-time to budget for the fee increases. Regardless of the fee increase, the proposed rule change would not have an impact on the cost of compliance with program requirements.

DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE: The Department has determined that there are no less costly or nonregulatory or less intrusive methods of achieving the purpose of the proposed rule.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The proposed changes will have a positive effect on public health, safety, and the environment by funding the existing air pollution control program; adequately funded programs can better serve and protect the State of Oklahoma.

IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK: The Department has identified underfunded portions of the air pollution control program and estimated current and future costs associated with those functions. The proposed changes will minimize the future costs that would result from underfunded programs. The proposed changes will have a positive effect on public health, safety, and the environment by adequately funding the existing air pollution control program that was established to protect public health and welfare.

DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED: If the proposed changes are not implemented, the lack of funding would likely cause a reduction in services intended to protect the public health and environment from the effects of air pollution.

PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE): The owners and operators of businesses subject to these fees will benefit from a better funded air pollution control program that was established to protect the public health and environment. The impact on business entities that are minor facilities will be an increased annual operating fee based on the proposed CPI adjustment.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: November 1, 2022
MODIFIED ON:

Scott A. Thompson
Executive Director

OKLAHOMA Environmental Quality

Kevin Stitt
Governor

MEMORANDUM

DATE: November 22, 2022

TO: Members of the Air Quality Advisory Council

FROM: Kendal Stegmann, Director KS
Air Quality Division

SUBJECT: Proposed New Subchapter 49. Oklahoma Emission Reduction Technology Rebate Program

The Department is proposing to add Subchapter 49, Oklahoma Emission Reduction Technology Rebate Program to OAC 252:100, to implement applicable provisions of the Oklahoma Emission Reduction Technology Incentive Act, 68 O.S. § 55006, *et seq*. The act created the "Oklahoma Emission Reduction Technology Rebate Program," ("Rebate Program") administered by the DEQ and the Oklahoma Tax Commission (OTC), to provide an incentive for "Emission Reduction Projects" – implementation of new and innovative technologies to reduce air pollutant emissions from oil and gas facilities. The gist of this rule proposal and the underlying reason for the rulemaking is to implement the Department's responsibilities under the Oklahoma Emission Reduction Technology Incentive Act.

The statute requires DEQ to review each rebate claim submitted, approve or disapprove the claim, and notify the OTC. The Oklahoma Tax Commission will pay out the rebates from the newly created Oklahoma Emission Reduction Technology Incentive Revolving Fund. The SC 49 rule proposal includes a fee to help offset the costs for DEQ to administer the review of rebate claims, since no funding is provided in the statute for implementation of the program. Copies of the proposed rule and the Rule Impact Statement are enclosed, as well as a copy of the enabling statute.

Notice of the proposed rules was published in the *Oklahoma Register* on November 1, 2022. The notice requested written comments from the public and other interested parties. Comments from one individual have been received as of November 22, 2022 (copy included). At the December special meeting, staff will ask the Council to continue the proposed rules to a subsequent Air Quality Advisory Council meeting to allow for additional input from stakeholders and the public prior to adoption as permanent rules.

Enclosures: Proposed OAC 252:100-49 [NEW]
Rule Impact Statement
Oklahoma Emission Reduction Technology Incentive Act, 68 O.S. § 55006, *et seq*.
Emailed Comments from Howard L. (Bud) Ground, The Petroleum Alliance of Oklahoma, 11/15/2022

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL
SUBCHAPTER 49. OKLAHOMA EMISSION REDUCTION TECHNOLOGY REBATE PROGRAM [NEW]

Section
252:100-49-1. Purpose and applicability [NEW]
252:100-49-3. Definitions [NEW]
252:100-49-5. Program criteria and qualification determination [NEW]
252:100-49-7. Sunset provision [NEW]

252:100-49-1. Purpose and applicability [NEW]

(a) The purpose of this Subchapter is to implement applicable provisions of the Oklahoma Emission Reduction Technology Incentive Act, 68 O.S. § 55006, *et seq*. The act created the "Oklahoma Emission Reduction Technology Rebate Program," administered by the Department of Environmental Quality and the Oklahoma Tax Commission, to provide a rebate of up to 25% of expenditures for implementation of a qualified "Emission Reduction Project." The program is intended to encourage implementation of new and innovative technologies for reduction of emissions from oil and gas activities, specifically those listed in subsection (b).

(b) This program applies only to emissions from upstream and midstream oil and gas production, exploration, completions, gatherings, storage, processing, and transmission activities. Activities in the following SIC codes are generally considered to qualify within the scope of eligibility for this program: 1311, 1321, 1381, 4612, 4613, 4922, 4923, 4924, and 4925. DEQ may determine whether an activity identified by a particular NAICS code would qualify under an equivalent SIC code.

252:100-49-3. Definitions [NEW]

The term "Emission Reduction Project" as defined in 68 O.S. §§ 55008 shall apply under this Subchapter, and used in determining eligibility. For the purposes of this subchapter, "Emission Reduction Projects" do not include projects that are required to address an enforcement action or undertaken as a supplemental environmental project to offset an enforcement penalty.

In addition, the following words and terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Emission Reduction Technology Incentive Act, 68 O.S. § 55006, *et seq*.

"**Commission**" or "**OTC**" means the Oklahoma Tax Commission or its successor entity.

"**Department**" or "**DEQ**" means the Oklahoma Department of Environmental Quality.

"**Rebate claim**" means the package submitted to DEQ documenting all criteria for a rebate has been met. Upon approval by DEQ, the package is forwarded to OTC as the formal request for OTC to issue a rebate under the Rebate Program.

"**Rebate Program**" or "**OERTRP**" means the Oklahoma Emission Reduction Technology Rebate Program, 68 O.S. § 55009, *et seq*.

252:100-49-5. Program criteria and qualification determination [NEW]

(a) **Applying for rebate eligibility.** An applicant responsible for the implementation of a qualified Emission Reduction Project may submit a rebate claim to DEQ for review and determination whether the project qualifies under the program.

(1) The rebate claim shall be submitted on forms provided for this purpose, or as otherwise specified by DEQ.

(2) The rebate claim shall be submitted to DEQ no later than six (6) months after the end of the fiscal year in which the expenditures were made. The fiscal year ends on June 30 each year.

(3) Project documentation shall include:

(A) a project description that provides information in sufficient detail to determine that it qualifies as an Emission Reduction Project as defined in 68 O.S. §§ 55008;

(B) an estimation of actual resulting emission reductions;

(C) a statement that the project implementation is complete; and

(D) an itemization of expenses, with invoices, for all equipment installed to implement the project.

(4) Project documentation shall state the amount of expenditures made in this state directly related to the implementation of the qualified Emission Reduction Project.

(5) The applicant shall certify that the project is not required to address an enforcement action or undertaken as a supplemental environmental project to offset an enforcement penalty.

(6) The applicant shall provide a certification from OTC that it has filed all Oklahoma tax returns and tax documents which are required by the laws of this state.

(7) The applicant shall provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars ($1,000,000.00) and a workers' compensation policy pursuant to the laws of this state which shall include coverage of employer's liability.

(8) The rebate claim shall include a certification, signed and sealed by a Professional Engineer (PE) licensed to practice engineering in Oklahoma, attesting that the project has been designed, installed, and operated as described in the claim, and in accordance with good engineering practices and the requirements of this Chapter.

(9) The rebate claim shall include certification, signed by a responsible official, attesting to the truth, accuracy, and completeness of the claim. This certification shall contain the following language: "I certify that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

(10) The applicant will be assessed a one-time fee of $1,000 that must accompany the rebate claim. A rebate claim without the appropriate fee is incomplete.

(b) **DEQ review of rebate claim.** DEQ will review the rebate claim information to determine if the described project is a qualified Emission Reduction Project, and will the notify the applicant and OTC of its approval or disapproval of the claim for a rebate payment.

(c) **Effect on OTC authority.** Nothing in this section shall limit or otherwise affect OTC's authority or responsibilities under the Act, including the authority to request submittal of additional information by the claimant.

252:100-49-7. Sunset provision [NEW]

This Subchapter shall cease to be in effect if and when the Oklahoma Emission Reduction Technology Rebate Program ceases on July 1, 2027, or as otherwise stipulated in 68 O.S. § 55012 or its successor.

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL

Before the Air Quality Advisory Council on December 6, 2022
Before the Environmental Quality Board on February 17, 2023

RULE IMPACT STATEMENT

Subchapter 49. Oklahoma Emission Reduction Technology Rebate Program [NEW]
252:100-49-1 Purpose and Applicability [NEW]
252:100-49-3 Definitions [NEW]
252:100-49-5 Program criteria and qualification determination [NEW]
252:100-49-7 Sunset provision [NEW]

DESCRIPTION: The Department is proposing to add Subchapter 49, Oklahoma Emission Reduction Technology Rebate Program to OAC 252:100, to implement applicable provisions of the Oklahoma Emission Reduction Technology Incentive Act, 68 O.S. § 55006, et seq. The act created the "Oklahoma Emission Reduction Technology Rebate Program," administered by the DEQ and the Oklahoma Tax Commission (OTC), to provide an incentive for "Emission Reduction Projects" – implementation of new and innovative technologies to reduce air pollutant emissions from oil and gas facilities. The gist of this rule proposal and the underlying reason for the rulemaking is to implement the Department's responsibilities under the Oklahoma Emission Reduction Technology Incentive Act.

CLASSES OF PERSONS AFFECTED: The classes of persons affected are the owners and operators of facilities that have implemented a qualifying Emissions Reduction Project and are potentially eligible for a rebate for associated expenses.

CLASSES OF PERSONS WHO WILL BEAR COSTS: The classes of persons who will bear costs are the owners and operators of facilities that prepare and submit a rebate claim under the program.

INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES: The Department has not received any information on cost impacts as of this date.

CLASSES OF PERSONS BENEFITTED: The citizens of Oklahoma will benefit from implementation of qualifying Emissions Reduction Projects, and owners and operators of facilities that have implemented a qualifying Emissions Reduction Project will benefit if they are eligible for a rebate for associated expenses.

PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS: There should be positive economic impacts on affected classes of persons potentially eligible for a rebate under this program.

PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The Department anticipates no economic impact on political subdivisions.

POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS: The Department anticipates no adverse effect on small business.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: The Department is proposing a $1,000 fee to help offset costs for DEQ to administer the review of a rebate claim under this rule. This fee is comparable to those charged for similar actions.

PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE: The Department anticipates there will be increased costs associated with the implementation of the program associated with the proposed amendments. The proposed fee will help offset costs for DEQ to meet its statutory obligations under the rebate program. The Department may benefit from any emissions reductions that result from projects that are potentially eligible under the rebate program associated with the proposal.

PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE: Although no other agencies will be implementing these proposed DEQ regulations, OTC will likely incur costs in meeting its statutory obligations under the rebate program. DEQ did not evaluate any possible benefits to the OTC.

SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE: The Department is proposing a $1,000 fee to help offset costs for DEQ to administer the review of rebate claims under this rule. Other program fees and federal grants will be used to fund the remaining costs to implement these regulations.

PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED: The Department has not attempted to estimate a net change in revenues from these proposed rules for either DEQ or OTC, because it does not have data to project how many rebate claims are likely to be received in a given year.

COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE: None is required. The Department will be responsible for all aspects of implementation regarding its obligations under these regulations.

EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS: The proposed rule will entail a minimal cost for facilities to document implementation of potentially eligible projects, including the associated expenditures and the actual emissions reduction achieved.

DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE: The Department has determined that there are no less costly or nonregulatory or less intrusive methods of achieving the purpose of the proposed rule.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The proposed rule will have a positive effect on public health, safety, and the environment if the rebate program serves as an incentive for facilities to implement Emission Reduction Projects.

IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK: The proposed rule will have a positive effect on public health, safety, and the environment if the rebate program serves as an incentive for facilities to voluntarily implement new Emission Reduction Projects, but is not designed to reduce specifically identified risks.

DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED: If the proposed rule is not implemented, facilities will have less certainty of required documentation, qualifications, and procedures under the Act. That could result in implementation of fewer new voluntary Emission Reduction Projects, and loss of any potential benefits of such projects on the public health, safety and environment.

PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE): There will be a positive impact on business entities, since the proposed rule will assist in implementing a 25% rebate program for the costs of eligible voluntary Emission Reduction Projects that have been completed.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: November 1, 2022
MODIFIED ON:

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 2 - Miscellaneous Tax Provisions

Oklahoma Emission Reduction Technology Incentive Act

Section 55006 - Short Title

Cite as: 68 O.S. § 55006 (OSCN 2022), Oklahoma Emission Reduction Technology Incentive Act

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Sections 1 through 7 of this act shall be known and may be cited as the "Oklahoma Emission Reduction Technology Incentive Act".

Historical Data

Laws 2022, HB 3568, c. 346, § 1, emerg. eff. July 1, 2022.

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 2 - Miscellaneous Tax Provisions

Oklahoma Emission Reduction Technology Incentive Act

Section 55007 - Purpose

Cite as: 68 O.S. § 55007 (OSCN 2022), Oklahoma Emission Reduction Technology Incentive Act

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The Legislature hereby finds that the reduction of emissions from upstream and midstream oil and gas production, exploration, completions, gatherings, storage, processing, and transmission activities serves the interests of the citizens of Oklahoma and such emission reduction activities with new and innovative technologies should be encouraged and incentivized.

Historical Data

Laws 2022, HB 3568, c. 346, § 2, emerg. eff. July 1, 2022.

Citationizer© Summary of Documents Citing This Document

Cite	***Name Level***

None Found.

Citationizer: Table of Authority

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None Found.

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 2 - Miscellaneous Tax Provisions

Oklahoma Emission Reduction Technology Incentive Act

Section 55008 - Definitions

Cite as: 68 O.S. § 55008 (OSCN 2022), Oklahoma Emission Reduction Technology Incentive Act

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As used in the Oklahoma Emission Reduction Technology Incentive Act, "Emission Reduction Project" means and includes, but is not limited to:

1. Existing and new technology projects that reduce emissions of regulated pollutants from stationary sources; and

2. Existing and new technology projects that reduce emissions from upstream and midstream oil and gas exploration, production, completions, gathering, storage, processing, and transmission activities through the following:

a. the replacement, repair, or retrofit of stationary compressor engines,

b. the installation of systems and/or equipment to reduce or eliminate the loss of gas, venting of gas, flaring of gas, or burning of gas using other combustion control devices, or

c. the installation of emissions monitoring equipment or devices.

Historical Data

Laws 2022, HB 3568, c. 346, § 3, emerg. eff. July 1, 2022.

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Cite ***Name Level***

None Found.

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None Found.

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 2 - Miscellaneous Tax Provisions

Oklahoma Emission Reduction Technology Incentive Act

Section 55009 - Oklahoma Emission Reduction Technology Rebate Program

Cite as: 68 O.S. § 55009 (OSCN 2022), Oklahoma Emission Reduction Technology Incentive Act

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A. Upon the effective date of this act, there is hereby created the Oklahoma Emission Reduction Technology Rebate Program. There is hereby created a rebate in the amount of up to twenty-five percent (25%) of documented expenditures made in this state directly attributable to the implementation of a qualified Emission Reduction Project.

B. The rebate program shall be administered by the Department of Environmental Quality and the Oklahoma Tax Commission, as provided in the Oklahoma Emission Reduction Technology Incentive Act.

C. To be eligible for a rebate payment:

1. The applicant responsible for the implementation of a qualified Emission Reduction Project in this state shall submit documentation to the Department of Environmental Quality no later than six (6) months after the end of the fiscal year in which the expenditures were made stating the amount of expenditures made in this state directly related to the implementation of the qualified Emission Reduction Project;

2. The applicant has filed all Oklahoma tax returns and tax documents which are required by the laws of this state; and

3. The applicant shall provide evidence of a certificate of general liability insurance with a minimum coverage of One Million Dollars ($1,000,000.00) and a workers' compensation policy pursuant to the laws of this state which shall include coverage of employer's liability.

D. The Department of Environmental Quality shall approve or disapprove all claims for a rebate payment and shall notify the Oklahoma Tax Commission. The Tax Commission shall, upon notification of approval from the Department of Environmental Quality, issue a rebate payment for all approved claims from funds in the Oklahoma Emission Reduction Technology Incentive Revolving Fund created in Section 5 of this act. Rebate payments from the fund shall not exceed Ten Million Dollars ($10,000,000.00) in any fiscal year. If the amount of approved claims exceeds the amount specified in this subsection in a fiscal year, payments shall be made proportionately to all of the parties making a claim prior to the deadline which is approved by the Department of Environmental Quality with the amount to be paid to each approved party being product of the individual claim amount times the percentage resulting from Ten Million Dollars ($10,000,000.00) divided by the total amount of approved claims for the period. If an approved claim is not paid in whole or in part, the unpaid claim or unpaid portion shall be paid in the following fiscal years in the order in which the claims are approved by the Department.

E. Approved claims for rebate that exceed the balance of the Oklahoma Emission Reduction Technology Incentive Revolving Fund created in Section 5 of this act may be paid in part and the unpaid portion shall be paid upon the fund reaching a sufficient balance in the order in which the claims are approved by the Department.

Historical Data

Laws 2022, HB 3568, c. 346, § 4, emerg. eff. July 1, 2022.

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None Found.

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 2 - Miscellaneous Tax Provisions

Oklahoma Emission Reduction Technology Incentive Act

Section 55010 - Oklahoma Emission Reduction Technology Incentive Revolving Fund

Cite as: 68 O.S. § 55010 (OSCN 2022), Oklahoma Emission Reduction Technology Incentive Act

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There is hereby created in the State Treasury a revolving fund for the Oklahoma Tax Commission to be designated the "Oklahoma Emission Reduction Technology Incentive Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Tax Commission from any public or private donations, contributions, and gifts received for the benefit of the fund and any amounts appropriated by the Oklahoma Legislature designated for deposit in the fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Tax Commission for the purpose of paying rebates as provided in this act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment. Any remaining unencumbered balance upon the cessation of the Oklahoma Emission Reduction Technology Rebate Program, as provided in Section 7 of this act, shall be transferred to the General Revenue Fund of the State of Oklahoma.

Historical Data

Laws 2022, HB 3568, c. 346, § 5, emerg. eff. July 1, 2022.

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None Found.

Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 2 - Miscellaneous Tax Provisions

Oklahoma Emission Reduction Technology Incentive Act

Section 55011 - Promulgation of Rules

Cite as: 68 O.S. § 55011 (OSCN 2022), Oklahoma Emission Reduction Technology Incentive Act

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The Department of Environmental Quality and the Oklahoma Tax Commission shall promulgate rules necessary to implement the provisions of this act.

Historical Data

Laws 2022, HB 3568, c. 346, § 6, emerg. eff. July 1, 2022.

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Oklahoma Statutes Citationized

Title 68. Revenue and Taxation

Chapter 2 - Miscellaneous Tax Provisions

Oklahoma Emission Reduction Technology Incentive Act

Section 55012 - Termination Date of Rebate Program

Cite as: 68 O.S. § 55012 (OSCN 2022), Oklahoma Emission Reduction Technology Incentive Act

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The Oklahoma Emission Reduction Technology Rebate Program shall cease on July 1, 2027.

Historical Data

Laws 2022, HB 3568, c. 346, § 7, emerg. eff. July 1, 2022.

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None Found.

[EXTERNAL] Allow In-House Engineers with Expertise

Bud Ground <bud@okpetro.com>

Tue 11/15/2022 3:15 PM

To: Melanie Foster <melanie.foster@deq.ok.gov>

Melanie, it has been point out to me that the new OOOOa pre-proposed regulations allow for in-house engineers with knowledge of the design and operation of the reduction project can sign-off on the certification instead of requiring to use a PE from the State of Oklahoma.

252:100-49-5. Program criteria and qualification determination

(8) The rebate claim shall include a certification, signed and sealed by a Professional Engineer (PE) licensed to practice engineering in Oklahoma, attesting that the project has been designed, installed, and operated as described in the claim, and in accordance with good engineering practices and the requirements of this Chapter.

The proposed OOOOa regulations allow for a "an in-house engineer with relevant expertise". The EPA concluded to allow the flexibility to allow in-house engineers.

There are several instances in this hierarchical structure of the proposed NSPS OOOOb where less stringent requirements may apply if it is determined that the more stringent requirement is technically infeasible. The proposed rule requires that these demonstrations be made by a qualified professional engineer or an in-house engineer with relevant expertise. While several commenters stressed that in-house engineers should be allowed to make required certifications and determinations, other commenters expressed concerns that only certified professional engineers should be allowed to certify technical infeasibility. The EPA concluded that the flexibility to allow in-house engineers to make these determinations and certifications is warranted, especially given the potential shortage of professional engineers with specific expertise required for these determinations (that is, expertise in solar-powered pneumatic pumps or routing pneumatic pump emissions to a process).

There are several references in the pre-proposed regulations to "either a qualified professional engineer or an in-house engineer with expertise".

We ask that the DEQ give the same flexibility as the EPA especially considering the number of oil & gas companies located outside of the State of Oklahoma.

THE PETROLEUM ALLIANCE OF OKLAHOMA

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