

Codification through the 2007 legislative session.

Subchapters 8 and 17:

Board adoption - August 22, 2006

Gubernatorial approval - October 8, 2006

Legislative approval and final adoption - March 27, 2007

Effective date - June 15, 2007

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

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 11. VISIBILITY PROTECTION STANDARDS

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PART 11. VISIBILITY PROTECTION STANDARDS

252:100-8-70. Applicability

This Part applies to any BART-eligible source (existing stationary facility as defined in OAC 252:100-8-71) which may reasonably be anticipated to cause or contribute to visibility impairment at any mandatory Class I Federal area.

252:100-8-71. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise. All terms used in this Part that are not defined in this Subsection shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, 252:100-8-31, or in the Oklahoma Clean Air Act.

"BART-eligible source" means an existing stationary facility as defined in this Section.

"Best Available Retrofit Technology" or **"BART"** means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by a BART-eligible source. The emission limitation must be established on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining

useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

"Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview haze index = $10 \ln_e (b_{\text{ext}}/10 \text{ Mm}^{-1})$; where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

"Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 TPY or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

- (A) Fossil-fuel fired steam electric plants of more than 250 million Btu/hr input,
- (B) Coal cleaning plants (thermal dryers),
- (C) Kraft pulp mills,
- (D) Portland cement plants,
- (E) Primary zinc smelters,
- (F) Iron and steel mill plants,
- (G) Primary aluminum ore reduction plants,
- (H) Primary copper smelters,
- (I) Municipal incinerators capable of charging more than 250 tons of refuse per day,
- (J) Hydrofluoric, sulfuric, and nitric acid plants,
- (K) Petroleum refineries,
- (L) Lime plants,
- (M) Phosphate rock processing plants,
- (N) Coke oven batteries,
- (O) Sulfur recovery plants,
- (P) Carbon black plants (furnace process),
- (Q) Primary lead smelters,
- (R) Fuel conversion plants,
- (S) Sintering plants,
- (T) Secondary metal production facilities,
- (U) Chemical process plants,
- (V) Fossil-fuel boilers of more than 250 million Btu per hour heat input,
- (W) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,
- (X) Taconite ore processing facilities,
- (Y) Glass fiber processing plants, and
- (Z) Charcoal production facilities

"In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by the Department and EPA and either has:

- (A) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or
- (B) entered into binding agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator to undertake a program of construction of the facility to be completed in a reasonable time.

"In operation" means engaged in activity related to the primary design function of the source.

"Integral vista" means a view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.

"Mandatory Class I Federal area" means any area identified in 40 CFR part 81, subpart D.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Reasonably attributable" means attributable by visual observation or any other technique the Department deems appropriate.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a BART-eligible source but do not come from the BART-eligible source. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the BART-eligible source.

"Visibility in any mandatory Class I Federal area" includes any integral vista associated with that area.

252:100-8-72. Incorporation by reference

Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule, of 40 CFR 51 is hereby incorporated by reference as it exists July 6, 2005.

252:100-8-73. BART applicability

(a) Each BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area is subject to BART. This shall be determined using the criteria in Section III of Appendix Y of 40 CFR 51 in effect on July 6, 2005. Thresholds for visibility impairment are set forth in OAC 252:100-8-73(a)(1) and (2).

(1) A source that is responsible for an impact of 1.0 deciview or more is considered to cause visibility impairment.

(2) A source that causes an impact greater than 0.5 deciviews contributes to visibility impairment.

(b) Air pollutants emitted by sources in Oklahoma which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area are NO_x, SO₂, PM-10, and PM-2.5.

(c) The owner or operator of a BART-eligible source may request and obtain a waiver from the Department that a BART determination is not required:

(1) for SO₂ or for NO_x if the BART-eligible source has the potential to emit less than 40 TPY of such pollutant(s),

(2) for PM-10 if the BART-eligible source has the potential to emit less than 15 TPY of such pollutant, or

(3) if the owner or operator of the BART-eligible source demonstrates by modeling, in accordance with a protocol approved by the Director, that a source does not emit any air

pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area.

252:100-8-74. Exemption from BART requirements

- (a) The owner or operator of any BART-eligible source subject to the requirements of this Part to install, operate, and maintain BART may apply to the Administrator for exemption from that requirement.
- (b) Should the owner or operator of a BART-eligible source wish to apply for exemption as provided for in 40 CFR 51.303, such application must be accompanied by a written concurrence from the Director.

252:100-8-75. Visibility standards for existing stationary facilities

- (a) The owner or operator of a BART-eligible source that emits any air pollutant which causes or contributes to visibility impairment in any mandatory Class I Federal area shall establish emissions limitations by the application of BART.
 - (1) The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reduction achievable for each BART-eligible source that is subject to BART.
 - (2) After the level of control that represents BART is determined, an emission limit representing this level of control must be established.
 - (3) BART may be established as design, equipment, work practice, or other operational standards or combination thereof, when limitations on measurement technologies make emission standards infeasible, if such application achieves equivalent results. Such standard, to the degree possible, shall set forth the emission reduction to be achieved and must provide for compliance by means which achieve equivalent results.
- (b) The determination of BART shall be made pursuant to the guidelines in Appendix Y of 40 CFR 51 in effect on July 6, 2005.
- (c) The owner or operator of a BART-eligible source shall submit to the Director by December 1, 2006:
 - (1) an application for a waiver pursuant to OAC 252:100-8-73, or
 - (2) an application for an exemption pursuant to OAC 252:100-8-74.
- (d) A BART-eligible source that has not applied for a waiver pursuant to OAC 252:100-8-73 or an exemption pursuant to OAC 252:100-8-74 shall submit to the Director a BART determination by March 30, 2007.
- (e) The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.
- (f) The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly and continuously operated and maintained.
- (g) The owner or operator of any BART-eligible source that might cause or contribute to visibility impairment in any mandatory Class I Federal area must provide a BART analysis at such times, as determined by the Administrator, as new technology for control of the pollutant becomes reasonably available if:
 - (1) the pollutant is emitted by that BART-eligible source;
 - (2) controls representing BART for the pollutant have not previously been required under this Part; and
 - (3) the visibility impairment in any mandatory Class I Federal area is reasonably attributable to the emissions of that pollutant.

252:100-8-76. Permit requirements

The BART requirements for any BART-eligible source that is subject to BART shall be submitted to the Director in an application for a permit modification pursuant to OAC 252:100-8-7.2 no later than March 30, 2007.

252:100-8-77. Cap and/or trade program

Nothing in this rule precludes the establishment of a cap and/or trade program that will achieve greater reasonable progress than would be achieved through the installation and operation of BART.

252:100-8-78. Modeling

All modeling required by this Part shall be performed in accordance with a protocol approved by the Director.

**REGULAR MEETING/ HEARING AGENDA
AIR QUALITY ADVISORY COUNCIL**

January 18, 2006, 9:00 a.m.
DEQ Building @707 North Robinson
Oklahoma City, Oklahoma

Please turn off your cell phones.

1. Call to Order – Sharon Myers, Chair
2. Roll Call – Myrna Bruce
3. Approval of Minutes – October 19, 2005 Regular Meeting
4. Election of Officers – Calendar Year 2006
5. Public Rulemaking Hearings
 - A. OAC 252:100-1. General Provisions [AMENDED]
OAC 252:100-8. Permits for Part 70 Sources, Parts 1, 5, 7 and 9 [AMENDED]

The Department proposes to amend Subchapter 8 to incorporate the Environmental Protection Agency's revisions to the NSR permitting program under the Federal Clean Air Act. The proposed amendments include revisions to the method of determining if a modification to an NSR source is a major modification and include Plantwide Applicability Limitations (PALs) Exclusions. The Department proposes to update and clarify Parts 7 and 9. This will include federal revisions not previously incorporated by the Department. The Department proposes to move a number of definitions from Section 8-1.1 of Subchapter 8 to Subchapter 1 since these terms are used in more than one subchapter in Chapter 100. The Department also proposes to revise the definition of "insignificant activities" in Section 8-2 of Subchapter 8 due to the recent revision to Subchapter 41 and the promulgation of new Subchapter 42 and to move paragraph (B) of the definition of "begin actual construction" from Section 8-1.1 to Section 8-2.

1. Presentation – Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

B. OAC 252:100-8. Permits for Part 70 Sources, Part 11 [NEW]

The Department proposes a new Part 11, which incorporates the federal Best Available Retrofit Technology (BART) requirements into Chapter 100. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

1. Presentation – Matt Paque
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

6. **Division Director's Report – Eddie Terrill**
7. **New Business** – Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.
8. **Adjournment** – The next regular meeting is proposed for 9 a.m., Wednesday, April 19, 2006, in Tulsa – exact location to be announced at a later date.

Lunch Break, if necessary.

Should you have a disability and need an accommodation, please notify the DEQ Air Quality Division three days in advance at 405-702-4212. Hearing impaired persons may call the text telephone (TDD) Relay Number at 1-800-722-0353 for TDD machine use only.

January 4, 2006

MEMORANDUM

TO: Members of the Air Quality Advisory Council

FROM: Eddie Terrill, *ET for* Director
Air Quality Division

RE: Modifications to OAC 252:100-8, Parts 1, 5, 7, and 9

Enclosed are copies of the proposed amendments to the permitting requirements in OAC 252:100-8, Part 1, General Provisions; Part 5, Permits for Part 70 Permits; Part 7, Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas; and Part 9, Major Sources Affecting Nonattainment Areas. Also enclosed are copies of the rule impact statement for the proposed amendments, a summary of comments and responses, and the results of a study undertaken by the Department to determine the impact of a 5-year look back period for calculating baseline actual emissions compared to the federal 10-year look back.

The Department is proposing amendments to Subchapter 8, Part 70, Sources which will incorporate the Environmental Protection Agency's (EPA) revisions to the New Source Review (NSR) permitting program under the federal Clean Air Act. The proposed amendments contain revisions to the method of determining what should be classified as a modification subject to major NSR and include Plantwide Applicability Limitations (PALs) Exclusions. The proposed amendments also include other NSR revisions not previously incorporated by the Department. The proposed amendment should result in fewer modifications to major NSR sources being considered major and therefore requiring a prevention of significant deterioration (PSD) permit. The Department proposes to revise the definition of "insignificant activities" in Section 8-2 of Subchapter 8 due to the recent revision to Subchapter 41 and the promulgation of new Subchapter 42 and to move paragraph (B) of the definition of "begin actual construction" from Section 8-1.1 to Section 8-2.

The Department held a public workgroup meeting on September 9, 2005, at the DEQ building to hear comments from the public regarding the proposed revisions to Parts 7 and 9 of Subchapter 8. A summary of those comments is included in the enclosed summary of comments and responses.

The Department performed a study comparing the effects of using a 5-year look back period for determining baseline actual emissions to using a 10-year look back period for determining baseline actual emissions. Three major sources were chosen for this study. The results of the Department's study regarding look back periods indicate that if the emissions factors contained in the emissions inventory are used, the baseline actual emissions calculated using the federal 10-year look back period in some cases are significantly higher than the baseline actual emissions calculated using the 5-year look back period proposed by the DEQ. Emission factors from recent permits or permit

applications for the three sources were used to calculate the baseline actual emissions in conjunction with the process rates and hours of operation contained in the emissions inventory. In this case, the differences between the baseline actual emissions calculated using a 5-year look back period does not differ significantly from the baseline actual emissions calculated using a 10-year look back period. The use of such emission factors is consistent with the new language added to paragraph (A) of the definition of "baseline actual emissions."

Notice of the proposed rule changes was published in the Oklahoma Register on December 15, 2005, and comments were requested from members of the public.

In light of the Department's study regarding look back periods, at the January 18, 2006, Air Quality Advisory Council Meeting, staff may ask the Council to continue the hearing to the next Council meeting to allow time for consideration of additional comments.

Enclosures: Proposed OAC 252:100-8, Parts 1, 5, 7 and 9
 Rule Impact Statement
 Summary of comments and responses
 Baseline impact comparison

**DRAFT MINUTES
AIR QUALITY COUNCIL
January 18, 2006
707 North Robinson
Oklahoma City, Oklahoma**

FOR AQC Approval
April 19, 2006
For EQB 2-24-06

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. January 18, 2005 in DEQ Multipurpose Room, 707 North Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on December 5, 2005. Agendas were posted on the entrance doors at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting.

Ms. Beverly Botchlet-Smith convened the hearings by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51, and Title 27A, Oklahoma Statutes, Sections 2-5-201 and 2-5-101 - 2-5-118. Ms. Smith entered the Agenda and the Oklahoma Register Notice into the record and announced that forms were available at the sign-in table for anyone wishing to comment on any of the rules. Ms. Sharon Myers, Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

MEMBERS PRESENT

Sharon Myers
David Branecky
Bob Curtis
Gary Martin
Jerry Purkaple
Laura Worthen

MEMBERS ABSENT

Bob Lynch
Don Smith
Rick Freeman

OTHERS PRESENT

Christy Myers, Court Reporter
Steve Mason, EQB

DEQ STAFF PRESENT

Eddie Terrill
Beverly Botchlet-Smith
Scott Thomas
Joyce Sheedy
Pat Sullivan
Kendal Stegmann
Matt Paque
Dawson Lasseter
Philip Fielder
Myrna Bruce

DEQ STAFF PRESENT

Kent Stafford
Rhonda Jeffries
Max Price
Leon Ashford
Lee Warden
Ray Bishop
Morris Moffett
Heather Bragg
Nancy Marshment
Gail George

Sign-in sheet is attached as an official part of these Minutes

Approval of Minutes Ms. Myers called for approval of the October 19, 2005 Minutes. Hearing no discussion, she called for a motion to approve the Minutes as presented. Mr. Curtis made the motion with Ms. Worthen making the second. Roll call as follows with motion passing.

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

Election of Officers Ms. Myers called for nominees for Chair and Vice-Chair. Mr. Curtis nominated Sharon Myers to be retained as Chair and for David Branecky for Vice Chair. He made that a motion and Mr. Martin made the second. Roll call as follows with motion passing.

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

OAC 252:100-1 General Provisions [AMENDED] Mr. Scott Thomas, Program Manager, Rules and Planning Unit, gave an update on proposed changes in Subchapter 1, Definitions. He noted that the changes were non-controversial in nature and staff had received no comments; therefore, asked Council for approval and to forward to the Environmental Quality Board for adoption. Ms. Myers called for a motion. Mr. Curtis moved to approve as presented and Mr. Purkaple made the second. Roll call as follows with motion passing.

See transcript pages 7-13

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

OAC 252:100-8 Permits for Part 70 Sources, Parts 1, 5, 7 and 9 [AMENDED]

Mr. Scott Thomas stated that the proposed amendments had been presented on July 20, 2005 and again on October 9, 2005. He outlined the changes then fielded questions and comments. After considerable discussion, Council decided to pass the rulemaking as proposed with a stipulation that Council would have additional time to review public comments received. Mr. Terrill agreed that if he received nothing further from the Council by February 3, the rulemaking, as presented, would be forwarded to the Environmental Quality Board for permanent adoption. Dr. Sheedy pointed out an error in the proposed rule where a term 'actual to potential' was swapped around. She advised that it would be corrected before forwarding to the Board. Ms. Worthen made motion to pass the rulemaking with the comment noted by Dr. Sheedy. Mr. Curtis made the second. Mr. Branecky wanted the motion with the stipulation; therefore, Ms. Worthen withdrew her motion and Mr. Curtis withdrew his second. Mr. Branecky then moved for adoption of the rule as presented with the DEQ allowing comments and concerns from the Council until February 3. Mr. Curtis made the second. Roll call as follows with motion passing.

See transcript pages 13 - 76

Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

OAC 252:100-8 Permits for Part 70 Sources, Part 11 [AMENDED]

Mr. Matt Paque, DEQ Attorney, provided staff's recommendation to incorporate Best Available Retrofit Technology (BART) into Chapter 100. He indicated that states are required to submit Regional Haze State Implementation Plans outlining methods for improving visibility to EPA by December, 2007. He detailed the process of establishing BART emission limitations and advised of comments received to date. Staff's recommendation was for Council's approval of proposal as presented and to forward to the Environmental Quality Board for permanent adoption. After comments from Council and public, Ms. Myers called for a motion. Mr. Branecky moved for approval and Mr. Purkaple made the second. Roll call as follows with motion passing.

	<i>See transcript pages 77 - 92</i>		
Gary Martin	Yes	David Branecky	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Sharon Myers	Yes

Division Director's Report Mr. Terrill mentioned that it is again time for receipt of Turnaround Documents providing reporting information. He added that staff would be bringing forth to the Council's April meeting rulemaking clarifying the definition of regulated pollutant. He related that he is the current president of STAPPA-ALAPCO, the national air directors association.

New Business - None

Adjournment -- The meeting adjourned at 11:10 a.m. The next regular meeting is scheduled for April 19 at the OSU/Tulsa.

A copy of the hearing transcript and the sign in sheet are attached and made an official part of these Minutes.

2500 North Lincoln Boulevard, Oklahoma City, Oklahoma, on December 16, 2005.

CONTACT PERSON:

Connie Holland, 405-521-3308

[OAR Docket #05-1436; filed 11-23-05]

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

[OAR Docket #05-1400]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:100-1-3. [AMENDED]

Subchapter 8. Permits for Part 70 Sources

Part 1. General Provisions

252:100-8-1.1. [AMENDED]

Part 5. Permits for Part 70 Sources

252:100-8-2. [AMENDED]

Part 7. Prevention of Significant Deterioration (PSD)

Requirements for Attainment Areas

252:100-8-30. [AMENDED]

252:100-8-31. [AMENDED]

252:100-8-32. [REVOKED]

252:100-8-32.1. [NEW]

252:100-8-32.2. [NEW]

252:100-8-32.3. [NEW]

252:100-8-33. [AMENDED]

252:100-8-34. [AMENDED]

252:100-8-35. [AMENDED]

252:100-8-35.1. [NEW]

252:100-8-35.2. [NEW]

252:100-8-36. [AMENDED]

252:100-8-36.1. [NEW]

252:100-8-36.2. [NEW]

252:100-8-37. [AMENDED]

252:100-8-38. [NEW]

252:100-8-39. [NEW]

Part 9. Major Sources Affecting Nonattainment Areas

252:100-8-50. [AMENDED]

252:100-8-50.1. [NEW]

252:100-8-51. [AMENDED]

252:100-8-51.1. [NEW]

252:100-8-52. [AMENDED]

252:100-8-53. [AMENDED]

252:100-8-54. [AMENDED]

252:100-8-55. [NEW]

252:100-8-56. [NEW]

252:100-8-57. [NEW]

Part 11. Visibility Protection Standards [NEW]

252:100-8-70. [NEW]

252:100-8-71. [NEW]

252:100-8-72. [NEW]

252:100-8-73. [NEW]

252:100-8-74. [NEW]

252:100-8-75. [NEW]

252:100-8-76. [NEW]

252:100-8-77. [NEW]

SUMMARY:

The Department is proposing amendments to Subchapter 8, Permits for Part 70 Sources. The Department proposes to revise Parts 7 and 9 to incorporate the Environmental Protection Agency's revisions to the New Source Review (NSR) permitting program under the Federal Clean Air Act. These proposed amendments include revisions to the method of determining if a modification to an NSR source is a major modification and includes Plantwide Applicability Limitations (PAL) Exclusions. The Department proposes to update and clarify Parts 7 and 9. This will include federal revisions not previously incorporated by the Department. The Department proposes to move a number of definitions from Section 8-1.1 of Subchapter 8 to Subchapter 1 since these terms are used in more than one Subchapter in Chapter 100. Updates to a few definitions in OAC 252:100-1-3 are also being proposed.

The Department proposes to revise the definition of "insignificant activities" in Section 8-2 of Subchapter 8 due to the recent revision to Subchapter 41 and the promulgation of new Subchapter 42 and to move paragraph (B) of the definition of "begin actual construction" from Section 8-1.1 to Section 8-2.

The Department is proposing a new Part 11 which incorporates the federal Best Available Retrofit Technology (BART) requirements into Chapter 100. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201; and Oklahoma Clean Air Act, §§ 2-5-101 *et seq.*

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on January 19, 2006. For comments received at least 5 business days prior to the council meeting, staff will post written responses on the Department's web page at least 1 day prior to the Council meeting and provide hard copy written responses to these comments to the council and the public at that council meeting. Oral comments may be made at the January 19, 2006, council meeting and at the February 24, 2006, Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 19, 2006, at the Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma. Before the Environmental Quality Board on February 24, 2006 in Oklahoma City.

DEQ proposes to submit Subchapter 8 to the EPA for inclusion in the Oklahoma SIP. This hearing shall also serve

Notices of Rulemaking Intent

as the public hearing to receive comments on the proposed revisions to the SIP under the requirements of 40 Code of Federal Regulations (CFR) § 51.102 of the EPA regulations concerning the SIPs and 27A O.S. § 2-5-107(6)(c).

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:

The proposed rules are available for review 30 days prior to the hearing at the Air Quality Division of the Department and on the Department's website (www.deq.state.ok.us), Air Quality Division, What's New, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Joyce Sheedy (e-mail: joyce.sheedy@deq.state.ok.us), Department of Environmental Quality, Air Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, FAX (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4100.

[OAR Docket #05-1400; filed 11-22-05]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 300. LABORATORY ACCREDITATION

[OAR Docket #05-1401]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 5. Laboratory Accreditation Process

252:300-5-1. [AMENDED]

Subchapter 7. General Operations

252:300-7-3. [AMENDED]

Subchapter 17. Quality Assurance/Quality Control

Part 1. Quality Assurance/Quality Control [NEW]

Part 2. Standard Operating Procedures and Methods Manual [NEW]

252:300-17-21. [NEW]

252:300-17-22. [NEW]

252:300-17-23. [NEW]

252:300-17-24. [NEW]

252:300-17-25. [NEW]

Subchapter 19. Classifications

252:300-19-2. [AMENDED]

252:300-19-3. [AMENDED]

Appendix D. Analytes for Petroleum Hydrocarbon Laboratory Category [REVOKED]

Appendix D. Analytes for Petroleum Hydrocarbon Laboratory Category [NEW]

SUMMARY:

The proposed change to Subchapter 5 is a reference to the need for compliance with other DEQ rules chapters. In Subchapter 7, the proposed change is from one edition of the federal rules to more current one. The proposed new rules in Subchapter 17 are designed to be consistent with NELAC provisions about standard operating procedures. Subchapter 19 and Appendices proposed changes were made at the request of the Oklahoma Corporation Commission. Classifications were expanded to include the Oklahoma GRO and DRO methodologies. Accordingly, Appendix D was revoked and rewritten to reflect that change.

AUTHORITY:

Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and Article IV., Laboratory Services and Certification, § 2-4-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from December 15, 2005 through January 17, 2006. Oral comments may be made at the Laboratory Certification Advisory Council meeting on January 19, 2006, or at the meeting of the Environmental Quality Board on February 24, 2006.

PUBLIC HEARINGS:

Before the Laboratory Certification Advisory Council at 1:30 p.m. on January 19, 2006, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

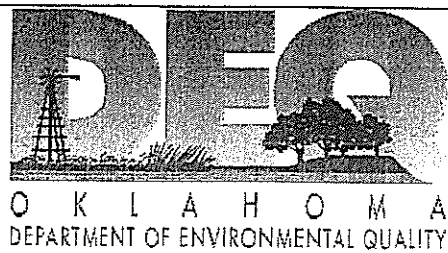
Before the Environmental Quality Board at 9:30 on February 24, 2006, in the Multi-Purpose Room, first floor of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities affected by these proposed rules provide the Department, within the comment period and in dollar amounts if possible, the increase or decrease 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.

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at www.deq.state.ok.us or may be reviewed at the Department



AIR QUALITY COUNCIL

Attendance Record

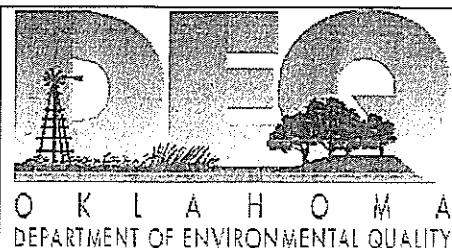
January 18, 2006

Oklahoma City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Mylra Bruce	DEQ	27170
Nancy Marshment	DEQ - AQD	x 4178
Heather Bragg	DEQ	- 4176
WILLIAM CLARK	MCAAP	918-420-6552
MATT PAQUE	DEQ	405-702-7188
John Shriver	VLO	580-221-3110
DON WHITNEY	TRINITY	405-228-3292
Jim HAUGHT	ONEOK	Jim.Haught@oneok.com
TERESA WHEELER	TINKER	
Ada Johnson	TAFB	ada.johnson@linber.af.mil
Wilma Turner	TAFB	wilma.turner@tinker.af.mil
Julia Bevers	OGE	beversjo@oge.com
Bud Ground	PSO	405 841-1322
Kendal Stegmann	DEQ	
John Downs	OGE	Downsjf@oge.com
ANGIE BURCKHALTER	OIPA	ABURCKHALTER@OIPA.COM
Pat Sullivan	DEQ	405 702 4212



AIR QUALITY COUNCIL

Attendance Record

January 18, 2006

Oklahoma City, Oklahoma

<u>NAME</u> and/or <u>AFFILIATION</u>	<u>Address</u> and/or <u>Phone</u> and/or <u>E-Mail</u>
Rhonda Sellers ODEQ	(918) 293-1626
DAVE CAMPING CH2M HILL	405-734-4567
Melody MARTIN OGE	(405) 553-3297
GREGORY BUTCHER WFF	405-247-4341
Gary Keel Hall Estll	(418) 594-0553
Bob Kellogg O/C	
Mark Lawson Spirit Aerosystems	MARK LAWSON being
Tom TARR Cooper Cameron	(405) 616-2598
Greg Hall Cooper Cameron	405-629-0436
JAY ELBANKS MOGA/BP	918 465 4167
Laura Herron QWE	405.553.3057
Andrew Williams Atlas Pipeline	918 629-6172
Betsy Barnes A Res 3/L	918-398-2124
Andrew Hood Sunoco	918 554 6284
Oliver Travis Sunoco	918-584-6572
LEE WARREN ODEQ	405 702 4201
Tracy Rudisill ODEQ	405-702-4167
Steve Moyer Sinclair	918 588 1197
Kathryn Cromwell Weyerhaeuser	580-933-1449
Steve Mason City board	

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS

OF THE AIR QUALITY COUNCIL

OF THE REGULAR MEETING

HELD ON JANUARY 18, 2006, AT 9:00 A.M.

IN OKLAHOMA CITY, OKLAHOMA

* * * * *

MYERS REPORTING SERVICE
Christy Myers, CSR
(405) 721-2882

ORIGINAL

Page 2	Page 4
<p>MEMBERS OF THE COUNCIL</p> <p>DAVID BRANECKY - MEMBER</p> <p>BOB CURTIS - MEMBER</p> <p>BOB LYNCH - VICE-CHAIR</p> <p>GARY MARTIN - MEMBER</p> <p>SHARON MYERS - CHAIR</p> <p>JERRY PURKABLE - MEMBER</p> <p>DON SMITH - MEMBER</p> <p>RICK TREEMAN - MEMBER</p> <p>LAURA WORTHEN - MEMBER</p> <p>STAFF MEMBERS</p> <p>MYRNA BRUCE - SECRETARY</p> <p>EDDIE TERRILL - DIVISION DIRECTOR</p> <p>JOYCE SHEEDY - AQD</p> <p>MATT PAQUE - LEGAL</p> <p>BEVERLY BOTCHLET-SMITH - AQD</p> <p>PHILLIP FIELDER - AQD</p>	<p>Minutes be approved.</p> <p>MS. WORTHEN: Second.</p> <p>MS. MYERS: Okay. Myrna, we have a motion and a second. Would you call the roll, please.</p> <p>MS. BRUCE: Gary Martin.</p> <p>MR. MARTIN: Yes.</p> <p>MS. BRUCE: Jerry Purkable.</p> <p>MR. PURKABLE: Yes.</p> <p>MS. BRUCE: Laura Worthen.</p> <p>MS. WORTHEN: Yes.</p> <p>MS. BRUCE: David Branecky.</p> <p>MR. BRANECKY: Yes.</p> <p>MS. BRUCE: Bob Curtis.</p> <p>MR. CURTIS: Yes.</p> <p>MS. BRUCE: Sharon Myers.</p> <p>MS. MYERS: Yes.</p> <p>MS. BRUCE: Motion passed.</p> <p>MS. MYERS: The next item on the Agenda is the Election of Officers for Calendar Year 2006. Any discussions, suggestions or whatever from Council?</p> <p>MR. CURTIS: Yes. I would like to make a move that Sharon Myers be considered for Chair and for David Branecky</p>
Page 3	Page 5
<p>PROCEEDINGS</p> <p>MS. MYERS: At this point, I would like to call the meeting to order, please.</p> <p>MS. BRUCE: For roll call, Gary Martin.</p> <p>MR. MARTIN: Yes, here.</p> <p>MS. BRUCE: Jerry Purkable.</p> <p>MR. PURKABLE: Here.</p> <p>MS. BRUCE: Laura Worthen.</p> <p>MS. WORTHEN: Here.</p> <p>MS. BRUCE: David Branecky.</p> <p>MR. BRANECKY: Here.</p> <p>MS. BRUCE: Bob Lynch is absent for now, but we do expect him. Bob Curtis.</p> <p>MR. CURTIS: Here.</p> <p>MS. BRUCE: Sharon Myers.</p> <p>MS. MYERS: Here.</p> <p>MS. BRUCE: And absent, for the record, is Don Smith and Rick Treeman. We do have a quorum.</p> <p>MS. MYERS: At this time, I would like to have discussion for Approval of the Minutes.</p> <p>MR. CURTIS: I move that the</p>	<p>for Vice-Chair.</p> <p>MS. MYERS: Is that a motion?</p> <p>MR. CURTIS: That's a motion -- make a motion.</p> <p>MR. MARTIN: Second.</p> <p>MR. BRANECKY: Can you do that?</p> <p>MS. MYERS: You can do that, if that's what the Council wants to do. We have a motion and a second. Myrna.</p> <p>MS. BRUCE: Gary Martin.</p> <p>MR. MARTIN: Yes.</p> <p>MS. BRUCE: Jerry Purkable.</p> <p>MR. PURKABLE: Yes.</p> <p>MS. BRUCE: Laura Worthen.</p> <p>MS. WORTHEN: Yes.</p> <p>MS. BRUCE: David Branecky.</p> <p>MR. BRANECKY: Yes.</p> <p>MS. BRUCE: Bob Curtis.</p> <p>MR. CURTIS: Yes.</p> <p>MS. BRUCE: Sharon Myers.</p> <p>MS. MYERS: Yes.</p> <p>MS. BRUCE: Motion passed.</p> <p>MS. MYERS: At this point, we're ready to enter into the public hearing portion of the meeting and I will turn that</p>

<p>over to Beverly.</p> <p>MS. BOTCHLET-SMITH: Good morning. I am Beverly Botchlet-Smith, Assistant Director of the Air Quality Division. And as such, I will be serving as the Protocol Officer for today's hearing.</p> <p>These 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, Sections 2-5-101 through 2-5-118.</p> <p>These 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 record along with the Oklahoma Register filing. Notice of meeting was filed with the Secretary of State on December 5, 2005. The Agenda was duly posted 24 hours prior to the meeting on the</p>	<p>Page 6</p> <p>Page 8</p> <p>Madame Chairman, Members of the Council, ladies and gentlemen, in conjunction with the revision proposed to Part 7 and 9 of Subchapter 8, regarding New Source Review Sources, the Department is proposing amendments to Section 3 of Subchapter 1.</p> <p>This is being done as a general cleanup of definitions in Parts 1, 7 and 9 of Subchapter 8 and to reduce redundancy. The definitions the Department proposes to move from Subchapter 8 to Subchapter 1 are used in more than one subchapter in Chapter 100.</p> <p>Several years ago, the Department undertook a project to correct and simplify its Rules and to remove redundant language. The proposed changes to Subchapter 1 are a continuation of that project. We propose to make the following changes to Subchapter 1.</p> <p>One: We propose to move eight definitions from OAC 252:100-8-1.1 to Section 3 of Subchapter 1 without substantive changes. These definitions</p>
<p>Page 7</p> <p>doors at the DEQ.</p> <p>If you wish to make a statement, it's very important you complete the form at the registration table and you'll be called upon at the appropriate time. Audience members, please come to the podium for your comments and please state your name.</p> <p>At this time, we will proceed with what's marked as Agenda Item Number 5 on the Hearing Agenda.</p> <p>OAC 252:100-1 General Provision and OAC 252:100-8 Permits for Part 70 Sources, Parts 1, 5, 7 and 9. Dr. Joyce Sheedy will be doing the staff presentation, and I believe she'll be assisted by Mr. Scott Thomas.</p> <p>MR. THOMAS: I'm Scott Thomas, I'm the Program Manager for the Rules and Planning Section. Today I'll be sort of standing in and being Joyce's voice in reading our presentation, but Joyce and Matt and Phillip are much more expert in the Rule, I think than I am, and they'll be here to answer any questions.</p>	<p>Page 9</p> <p>are:</p> <ul style="list-style-type: none"> a. "act" - moved without modification. b. The "Administrator" - modified to include "unless specifically defined otherwise" which is not a substantive change. c. "EPA" - moved without modification. d. "National Emission Standards for Hazardous Air Pollutants" or "NESHAP" - moved without modification. e. "New Source Performance Standards" or "NSPS" - moved without modifications. f. "Part 70 Permit" - moved without modification. g. "Part 70 program" - moved without modification. h. "Part 70 source" - modified by replacing "of this chapter" by "Subchapter 8" which is not a substantive change. <p>We propose to move the definition of "Lowest Achievable Emissions Rate" or "LAER" from OAC 252:100-8-51 to Section 3</p>

<p>Page 10</p> <p>of Subchapter 1 and update it for consistency with the federal definition of 40 CFR 51.165(a)(xiii).</p> <p>We propose to add the definition of "federally enforceable" as found in 40 CFR 51.166(b)(17). This term is currently used several times in Chapter 100, but it's not defined.</p> <p>We propose to add the definition of "Reasonable Available Control Technology" or "RACT" to Section 3 of Subchapter 1. This definition is currently defined at OAC 252:100-39-47(c), however, it has been updated for consistency with the federal definition found in 40 CFR 52.21(b)(54).</p> <p>We also propose to replace the term "reviewing authority" in the definition of "complete" with "Director" for consistency of terms throughout the Rule.</p> <p>We propose to modify the definition of "stack" to make it clear that a pipe can be a stack, but a flare cannot.</p> <p>Finally, we propose to modify the definition of "stationary source" by adding "subject to OAC 252:100" at the end of the</p>	<p>Page 12</p> <p>from OG&E I guess was on our places when we came in, with a comment on subchapter -- or the definitions section. Has that been addressed?</p> <p>MR. THOMAS: Joyce.</p> <p>DR. SHEEDY: I'm not sure I know what part.</p> <p>MR. BRANECKY: To Part 1, a letter dated January 4th.</p> <p>MS. BOTCHLET-SMITH: Joyce, you might turn your microphone on.</p> <p>MR. BRANECKY: This is -- okay. maybe I'm wrong. This is under a different section. Okay. All right.</p> <p>DR. SHEEDY: David, I think that comment maybe is for 8-1.1.</p> <p>MR. BRANECKY: Okay. Under NSR, right?</p> <p>DR. SHEEDY: Yes.</p> <p>MR. BRANECKY: Yes.</p> <p>MS. BOTCHLET-SMITH: Any other comments on Subchapter 1 from the Council? We haven't received any notice of oral comment from the public.</p> <p>MS. MYERS: If there's no</p>
<p>Page 11</p> <p>definition. This is for clarity.</p> <p>Many of these changes were proposed at the October 19, 2005 Air Quality Council meeting, but were withdrawn because the revision also included a change to the definition of VOC that has concerns that have not yet been resolved.</p> <p>Although these changes are being proposed in conjunction with the changes to NSR proposed in Subchapter 8, they can be made in advance of the proposed Subchapter 8 revision.</p> <p>We have received no written comments regarding the proposed changes to Subchapter 1.</p> <p>Based on what we hope is the non-controversial nature of the proposed changes, we ask the Council to recommend these changes to the Environmental Board for adoption as a permanent Rule. Thank you.</p> <p>Does the Council have any questions?</p> <p>MS. BOTCHLET-SMITH: Do we have questions from the Council?</p> <p>MR. BRANECKY: I have a comment</p>	<p>Page 13</p> <p>additional discussion on comments, then I'll entertain a motion.</p> <p>MR. CURTIS: I move that we adopt the staff's recommendations.</p> <p>MS. MYERS: I have a motion. Do we have a second?</p> <p>MR. PURKABLE: Second.</p> <p>MS. MYERS: Myrna, would you call roll, please.</p> <p>MS. BRUCE: Gary Martin.</p> <p>MR. MARTIN: Yes.</p> <p>MS. BRUCE: Jerry Purkable.</p> <p>MR. PURKABLE: Yes.</p> <p>MS. BRUCE: Laura Worthen.</p> <p>MS. WORTHEN: Yes.</p> <p>MS. BRUCE: David Branecky.</p> <p>MR. BRANECKY: Yes.</p> <p>MS. BRUCE: Bob Curtis.</p> <p>MR. CURTIS: Yes.</p> <p>MS. BRUCE: Sharon Myers.</p> <p>MS. MYERS: Yes.</p> <p>MS. BRUCE: Motion passed.</p> <p>MR. THOMAS: I guess we will go on to the other portions of the hearing now on Subchapter 8, Part 70 Sources.</p>

<p>Page 14</p> <p>Madame Chair, Members of the Council, ladies and gentlemen -- are we going to do BART? Okay. We were planning to do BART first, but we can go ahead and go with NSR. I think we're -- from the discussions I've heard today on NSR, I think we may be trying to take some action on that, so we can go forward with NSR now.</p> <p>Madame Chair, Members of the Council, ladies and gentlemen, the Department is proposing revisions to Parts 1, 5, 7 and 9 of Subchapter 8, Part 70 Sources. They were first proposed at the July 20, 2005 Air Quality Council meeting. The hearing was continued to the October 19, 2005 Air Quality Council meeting to allow changes to the proposed Rule required by the Decision of the U.S. Court of Appeals for the DC Circuit handed down on June 24, 2005.</p> <p>The October 19, 2005 Air Quality Council meeting was continued to give the Department additional time to consider the comments received regarding the definition of "actual baseline emissions" and to allow</p>	<p>Page 16</p> <p>definitions from Section 8-1.1 and one definition from Section 8-51 to Subchapter 1 to reduce redundancy in the Rules.</p>
<p>Page 15</p> <p>additional time for consideration of the recordkeeping requirement.</p> <p>We propose to incorporate the NSR reform update and clarify other portions of the Rules regarding the PSD program and the NSR nonattainment program. Part 5 concerns Permits for Part 70 Sources.</p> <p>The Department proposes to revise the definition of "insignificant activities" in Sections 8-2 of Part 5 to reflect the changes to Subchapter 41 and the new Subchapter 42 regarding toxics air contaminants.</p> <p>We also propose to move Paragraph (B) of this definition of "begin actual construction" from Section 8-1.1 to Section 8-2, since this definition applies only to Part 70 Permitting.</p> <p>Definitions. We are proposing to revise Section 8-1.1 of Part 1 of Subchapter 8. As discussed previously today in the presentation on proposed changes to Subchapter 1, in conjunction with the NSR reform revision, the Department proposes to move eight</p>	<p>We also propose to delete two definitions from Section 8-1.1 because they are essentially the same as the definitions already in Subchapter 1. These terms are: "Building, structure, facility, or installation" and "fugitive emissions".</p> <p>We propose to move eight definitions from Section 8-1.1 to Section 8-31 in Part 7 because they will apply only to Part 7 (PSD) in the revised Rule. These are definitions of:</p> <ul style="list-style-type: none"> a. "allowable emissions" b. "begin actual construction" from Paragraph (A) c. "Best Available Control Technology" or "BACT" d. "commence" e. "construction" f. "emission unit" g. "necessary preconstruction approval of Permits" h. "potential to emit"; and

<p style="text-align: right;">Page 17</p> <p>i. "stationary source"</p> <p>The definitions of "BACT", "emissions unit" and "stationary source" have substantive changes required by NSR reform.</p> <p>We propose to move three definitions from Section 8-31 to Section 8-1.1 because these terms will be also used in the new Part 11 or BART. These are: "adverse impact on visibility", "natural conditions" and "visibility impairment".</p> <p>The NSR reform finalized on December 31, 2002 changes the method of calculation of the emissions baseline for the purposes of determining whether or not a modification of a facility triggers NSR. Under the new Rule, far fewer modifications will be classified as major modifications that require a PSD Permit and installation of up-to-date pollution control equipment determined by BACT.</p> <p>Court decision and EPA appeal. After the promulgation of the NSR reform, a suit was filed challenging the changes as inconsistent with the federal Clean Air</p>	<p style="text-align: right;">Page 19</p> <p>were nonelectric generating sources. The initial results of this study using emission inventory data, emission factors, the baseline actual emissions for case study one calculated using a 10-year look back period were significantly higher than that, using a 5-year look back for PM10, NOx and SOx. There was no significant differences in case study two or case study three.</p> <p>However, using current emissions factors in the hours of operation and production rates for annual emission inventory, the differences in the baseline actual emissions between the 5-year look back and the 10-year look back practically disappear. These results have caused us to review our position on the use of the 10-year look back period for calculating baseline actual emissions, if current emission factors are used.</p> <p>Unfortunately, these results were not available before the proposed Rule was placed on the website and the Council packets were mailed.</p>
<p style="text-align: right;">Page 18</p> <p>Act. The U.S. Court of Appeals for the District of Columbia Circuit on June 24, 2005 vacated the parts of the Rule dealing with cleaning units and PCPs or Pollution Control Projects and remanded the parts concerning recordkeeping.</p> <p>On August 8, 2005 EPA requested the Court reconsider its ruling on the clean unit provision and clarify the ruling regarding PCPs. On December 9, 2006 the D.C. Circuit Court refused EPA's petition. At this time, we do not know whether -- know what further actions, if any, EPA will take on these issues.</p> <p>We did a comparison demonstration. Phillip Fielder of the Air Quality Division has done a study of the effect of using a 5-year look back period for determining baseline actual emissions compared to the effect of using a 10-year look back. A copy of the results of the study were included in the Council packet.</p> <p>Due to time constraints and available resources, only three major NSR sources were chosen for this study. These</p>	<p style="text-align: right;">Page 20</p> <p>Since the October 19, 2005 Air Quality meeting, we have received comments from Julia Bevers of OG&E, on letters dated December 15, 2005 and January 4, 2006; Environmental Protection Agency Region 6, in a letter of comments signed by David Neleigh, received via email on January 10, 2006 from Stanley M. Spruill; and comments from the Oklahoma Independent Petroleum Association by letter dated January 13, 2006, received via email on January 13, 2006 from Angie Burkhalter.</p> <p>These comments and a summary of the comments and our responses will be made as part of the hearing record. Copies of the summary comments and responses have been given to the Council and are available for the public today. Some responses to comments may be supplemented at a later date, because they were received just a few days before the meeting.</p> <p>Based on the comments received and the results of the comparison study Phillip performed, we propose to make the following changes to the proposed Rule contained in</p>

<p>the Council packet and available at this meeting.</p> <p>One: In the definition of "visibility impairment" in Section 8-1.1 on Page 7, we propose to add "light extinction" prior to "visual range".</p> <p>Two: We propose to revise the definition of "baseline actual emissions" in Sections 8-31 on Pages 20 and 21 by adding a new Paragraph (A) which requires that baseline actual emissions be based on current emissions data and defines that term.</p> <p>We propose to separate the requirements for electric utility steam generating units now in Paragraph (B) for nonelectric utility steam generating units now in Paragraph (C), for electric steam generating units (B)(iii) allows the use of a different 24 month period for each pollutant.</p> <p>In Paragraph (C) we propose to replace the 5-year look back with a 10-year look back for nonelectric steam generating units.</p>	<p>Page 21</p> <p>Page 23</p> <p>-- on number four, we propose to revise (B)(ii) of the definition of "regulated NSR pollutant" in Section 8-31 on Page 32 by adding section prior to 112(r) and provided that such pollutant is not otherwise regulated under the Act. This is in response to an EPA comment.</p> <p>In (b)(2) of Section 8-35 on Page 42, we propose to add a comma after "2006" and in (c)(1)(F) on Page 45, we propose to add "on" prior to January.</p> <p>We propose to revise (A)(ii) in the definition of "net emissions increase" in Sections 8-51 on Page 58, by adding "except that (B)(iii) and (C)(iv) of that definition shall not apply".</p> <p>DR. SHEEDY: Excuse me, Scott.</p> <p>MR. BRANECKY: Page 59, I'm trying to catch up.</p> <p>DR. SHEEDY: I'm sorry, I based those numbers on what was in the book because I didn't have this, and so they are maybe about a page or so of what this copy has. They were based on the copy that's not here, so I know that's confusing.</p>
<p>Page 22</p> <p>And in (C)(iv), allow the use of a different consecutive 24 month period for each pollutant.</p> <p>We propose to revise Paragraph (A) of the definition of "net emissions increase" in Section 8-31 on Pages 28 and 29, by adding at end of the paragraph, except that (B)(iii) and (C)(iv) of that definition shall not apply.</p> <p>MR. BRANECKY: Scott.</p> <p>MR. THOMAS: Yes.</p> <p>MR. BRANECKY: Where was that again? Where are you now?</p> <p>MR. THOMAS: In Section 8-31 on Pages 28 and 29.</p> <p>MR. BRANECKY: Are we still in the definitions section?</p> <p>DR. SHEEDY: Yes. This one seems to be on Page 29.</p> <p>MR. BRANECKY: Okay. On 29? Okay.</p> <p>DR. SHEEDY: On Page 30.</p> <p>MR. BRANECKY: Page 30, okay.</p> <p>Thank you.</p> <p>MR. THOMAS: And 30. We propose</p>	<p>Page 24</p> <p>MR. BRANECKY: You might slow down a little bit, Scott, I'm trying to -- I'm getting old and slow, so --</p> <p>DR. SHEEDY: If you didn't -- if you didn't find any of them, just say so and we can tell you which page they are on in this handout.</p> <p>MR. THOMAS: I'll go back over those quickly. We have, in my notes it says Page 7 of the definition of "visibility impairment", we propose to add "light extinction" prior to visual range. That's on 7.</p> <p>We propose to revise the definition of "baseline actual emissions" in Section 8-31 on Pages 20 and 21.</p> <p>DR. SHEEDY: Okay. (Inaudible).</p> <p>MR. THOMAS: We propose to revise the Paragraph (A) in the definition of "net emissions increase" in Section 8-31 on Pages 28 and 29 and I guess that would probably be 30, too?</p> <p>DR. SHEEDY: Yes, it's on 30, I believe. 30.</p> <p>MR. THOMAS: 30. Okay. We</p>

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propose to revise (B)(ii) of the definition of "regulated NSR pollutant" in Sections 8-31 on Page 33 in (B)(ii) of Section 8-35 on Page 42, we propose to add a comma after 2006.

MR. BRANECKY: That's Page 43.

MR. THOMAS: 43, correction. We propose to revise the definition of "net emissions increase" in Section 8-51 on Page 59, I'm guessing, (A)(ii) in Section 8-51, Page 59. Sorry for the confusion.

Since we are proposing a number of substantive changes that were not in the Rule published on the website on December 15, 2005, that were contained in the Council packet, staff requests that the Council continue this hearing on the proposed revisions to Part 1, 5, 7 and 9 and Subchapter 8 to the next Air Quality Council meeting, to give interested parties time to evaluate these changes.

This, however, will mean that these proposed revisions to our Rule will not be effective until the summer of 2007. So as a contingency measure, we have made

other, we've been criticized in the past, you know, for having two Rules out and it's confusing to the public.

MR. BRANECKY: Well, maybe not necessarily the Rule, but at least the comments, so I can see what's being discussed.

MR. THOMAS: And a lot of times - not as an excuse, but a lot of times the comments are received very -- like yesterday.

MR. BRANECKY: Well, I would have been happy to get a fax yesterday, at least have some time rather than just seeing these for the first time this morning. I'm talking for myself, not for the rest of the Council.

MS. WORTHEN: I'm with David. I would appreciate if we could have it at least faxed, even if it's like the day before, I mean, that way we can at least look over them the night before and be familiar.

I do actually have a question on the proposed Rule, because I did read through

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Page .

available to the Council and we will make available copies to people in the audience of our new proposal on these Rules. And these were, again, made in the last -- since the 30 day comment period -- comments received and based on work that Phillip has done.

MS BOTCHLET-SMITH: Do we have any questions from the Council?

MR. BRANECKY: I guess I would like to ask the staff, I know you get these things at various times, but is there any way to get this available to the Council and maybe even to the public by posting these comments on the website so that we can see these comments prior than just seeing them for the first time today.

That may help -- I don't feel comfortable, not having read through some of these comments, making a decision at this point. And I just -- is there any way to get these to us earlier? I think it's been a problem.

MR. THOMAS: This is a problem we've always had and we go one way or the

the changes that you have here. Do we want to go ahead and do questions on it?

MR. THOMAS: I do have a statement here I could read that goes over the main changes --

MS. WORTHEN: Okay.

MR. THOMAS: -- but we can answer questions now, too.

MS. WORTHEN: One, thank you for changing to the 10-year look back and the different two years for each pollutant, that is one good point.

On the baseline actual emissions, and I understand why you want the current emissions data for emission factors, I can see that's important with AP 42 because AP 42 does change.

The only thing I'm curious about is using the most recent SIM data and stack test data. Many facilities stack test on a semi-regular basis, maybe every five, six years, it just depends on the facility and on the SIM data. Why not allow, if they have eight year old stack test data when that's when they're establishing their

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baseline data, to use that stack test for that time period. And if they've got new stack test data, use that for the future. Because I can see where facilities, you may get different stack test results because there may have been some change that caused it and SIM data would be the same thing. That would be my question there, is not limiting that.

MR. THOMAS: Joyce, Phillip.

DR. SHEEDY: One of the things that we were concerned with was the accuracy of some of the older emission data in our emission inventory. That's not necessarily those that had stack tests done but a lot of the -- I believe a lot of the data is not really based on stack tests or SIMs or anything like that.

MS. WORTHEN: Well, and I can understand, it's not based -- old emissions inventory data, if it's not based on stack test data or SIMs data, yes, I can see updating it. If a facility at that time when they submitted the emissions inventory was doing it off of the SIM data from that

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year or stack test data from that year or the year before, I don't understand not being able to use that in a baseline calculation.

MR. FIELDER: Yes. What our point was there, was we are not trying to make you use that data after a change. If it's the appropriate data before a particular change occurred that was representative of the emissions at that time, that would be the most current data at that time. That's all we were trying to say there.

If you had a project that changed it, then certainly a change to an emission factor would not be applicable or an emission rate would not be applicable to the emission rate at that time.

MS. WORTHEN: Maybe we need to rework that paragraph a little bit so that it's -- so that some -- so that a Permit writer five years from now doesn't come back and say, well, this says you have to use the most current data, you can't use the SIM data from that year.

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DR. SHEEDY: It says most current and accurate. So might you have an argument that SIMs data from that period is more accurate?

MR. FIELDER: And it's really --

MS. WORTHEN: I would think so.

MR. FIELDER: Really, it's not much different than what we do today. If you were to do a project today and you were doing your baseline actuals, we wouldn't come 10 years later and go back and say, well, this factor has changed, your baseline actuals prior to a project has changed, we don't do that currently and really, that position is not changing.

MR. PURKABLE: Scott, you said you had some prepared comments to make as a follow-up to your presentation. I would be interested in hearing the rest of what you have to say.

MR. THOMAS: This is the differences between the Rule in the packet and the Rule that we now are throwing out before the Council as a possible proposal.

1. The definition of -- I think this

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might be -- I think this one might be part of that earlier on, but the definition of "visibility impairment" in parenthesis added "light extinctions," prior to "visual range". That's part of the changes that we've made to the BART Rule that we will discuss later.

The other ones are in 252:100-8-31, the definition of "baseline actual emissions". We propose to revise this definition to match the federal definition. We have added a new Paragraph (A) which requires a baseline actual emissions be based on current emissions and defines current emissions. We have separated the requirements for the EUSGU, now in Paragraph (B), from those non-EUSGU's, now in Paragraph (C). (B)(iii) allows the use of a different 24 month period for each pollutant. In Paragraph (C), we propose to replace the 5-year look back with the 10-year look back and allow the use of different consecutive 24 month period for each pollutant.

"Net emission increase" is in

<p>Paragraph (A), added at the end of the paragraph, ", except that (B)(iii) and (C)(iv) of that definition shall not apply."</p> <p>3. Regulated NSR (B)(ii), added "section" prior to 112(r) and ", provided that such pollutant is not otherwise regulated under the Act."</p> <p>This is in response to an EPA comment. Joyce may be able to clarify on these a little bit, but they don't read well.</p> <p>252:100-8-35, in (b)(2) we added after "2006", a comma after it, and in (c)(1)(F) we added an "on" in front of January.</p> <p>In 252:100-8-51, "net emissions increase", (A)(ii), we added ", except that (B)(iii) and (C)(iv) of that definition shall not apply".</p> <p>Basically, I think it comes down to the issue of the current emissions data in the determination of a baseline.</p> <p>MS. MYERS: Based on my experience on working with the Agency on</p>	<p>Page 33</p> <p>we think to be the agreements that we had all reached that we felt like were appropriate, and give you all a chance to look at it with the idea that we would get any comments to that, come in with a clean copy in April and pass the Rule at that time, because we knew that we had this issue relative to how we were going to define the most appropriate emission factor and that sort of thing. We weren't sure we were going to get that worked out today.</p> <p>The reality is, if we pass this thing as a regular Rule today, it's got to go to the Board, it's got to go to the Legislature and the Governor, it won't become effective until the end of June, anyway, or thereabout.</p> <p>If we were to pass this thing in April as emergency, if there are sources out there that are -- facilities out there that are waiting on us to get this done, we could pass it as an emergency and it would become effective then and it's essentially a wash as far as timeframe. So that would give you all time to take a look at the</p> <p>Page 35</p>
<p>Page 34</p> <p>various Permits, the burden is still on industry to provide the information to be used. The burden is still on industry to validate their baselines and the projected changes that they have with the project. I don't see that it would be any different. Am I right or wrong, Phillip?</p> <p>MR. FIELDER: No, I would agree that it's the burden to try to determine the best factors that's available or the best emission rates that you can and --</p> <p>MR. TERRILL: Let me just add something right quick so we can kind of clarify this. I know the Council is very sensitive about getting changes to Rules that have been sent out 30 days previously, the day before, the day of. We don't like to do that, either.</p> <p>What we have thought coming into today was, we have not been given any pushback or any indication from industry or anyone else that there was a big hurry to get this Rule passed today. So we felt like that probably the best thing to do was provide a clean copy to get close to what</p>	<p>Page 35</p> <p>Rule between now and April and make sure that we've got a clean copy, dotted all the i's, crossed all the t's, if there's any question about clarifying the emission factor language, we can do that and then come back as an emergency in April.</p> <p>Is that a fair statement, Matt?</p> <p>MR. PAQUE: Yes. It would have to go through the Governor's approval, so it wouldn't exactly go into effect in April, it would take us a little bit longer, but --</p> <p>MR. TERRILL: The timing will be about the same.</p> <p>MR. PAQUE: The timing will be about the same.</p> <p>MR. TERRILL: Yes. And that way it would keep you all from having to --</p> <p>MR. PAQUE: The Department would have to justify an emergency, so we would have to show that there are some facilities that the Rule needs to take effect sooner rather than later.</p> <p>MR. BRANECKY: Can you do that? I know the Governor doesn't like Emergency</p> <p>Page 36</p>

<p>Rules.</p> <p>MR. PAQUE: Well, they do -- they do inquire with the Department on any Emergency Rule, they give us a call and they like to know some examples.</p> <p>MR. BRANECKY: Can we justify it?</p> <p>MR. PAQUE: Well, if we have sources that are looking at maybe performing some projects that these Rules are, you know, can streamline.</p> <p>MR. TERRILL: If not, it may not make any difference. And that's -- my concern has always been -- because theoretically, according to the Rule or statute, we were supposed to have this in place by January. But the feds have said that as long as you're making reasonable progress, which we are, they're not going to complain one way or the other, whether or not we do a SIP call.</p> <p>So it's really just a matter of within Oklahoma, do we have sources that want to take advantage of this sooner rather than later. And if we do, then we need to know that and we'll propose it as</p>	<p>Page 37</p> <p>MS. MYERS: If it does not pass by emergency in April, is the timeframe still the same?</p> <p>MR. TERRILL: No. It would be the end of the session 2007 at that point.</p> <p>MS. MYERS: We can't afford to do that. We're hurting ourselves. I personally do not want to see this Rule carried over into 2007 from a perspective of working for a company that has facilities in multi-states and having to compete for capital money to do any kind of projects. If we're competing against a facility in Texas and they're able to go ahead and do a project based on actual to actual projections, we lose.</p> <p>And I know that there are other industries within the state that are in the same position and we cannot afford to carry this over into 2007. So if you think we can get it passed in April and through as an Emergency Rule to be effective this year, then I'm probably okay with carrying it over. If not, then I want to pass it today and get it through.</p> <p>Page 39</p>
<p>Page 38</p> <p>an emergency in April and come back with a cleaned up Rule, have all this language worked out relative to the emission factor and it should be a fairly easy process to pass it in April. That's what we thought we were going to do this time, otherwise we probably would have recommended to hold it over and not supplied you with a last second copy, because I know that puts you all in a tough spot because this is a fairly complicated Rule. And it wasn't our intention to do that, because we wanted to make sure and we wanted to give Phillip and his folks the time to take a look at these different look back periods to make sure that we were satisfied that it really didn't make any difference, then it just took longer than we thought.</p> <p>So that's our fault and I apologize for that, but we felt like we wanted to give you something to look at today and we really never had intended to pass that until April and we think if we do it by emergency, it will all come out at about the same time, anyway.</p>	<p>Page 40</p> <p>MR. TERRILL: Well, I'm not going to promise you that we'll get it through as an emergency. I mean, we never have had a problem in the past, but I wouldn't want to be on the record as saying that absolutely nothing can go wrong, because you never know. It would be -- I can almost virtually assure you that if we have industry that comes forward saying we've got projects that we're wanting to get done and we can't wait until 2007, that's likely to go a long way in satisfying the Governor, because nobody is against economic development and I don't personally think it's going to be that big a hurdle to overcome. But I'm not going to go on the record and say that absolutely nothing can go wrong, because that wouldn't be true. I mean, because we can have any number of things go wrong, but it's not likely in this case, I wouldn't think.</p> <p>MR. BRANECKY: I guess I would like to ask you, we could come to April and be in the same situation with last minute changes we don't know of, can we have DEQ</p>

get us this information or even post it as on the web as a PDF file, the comments of any last minute changes or comments or is that not --

MR. TERRILL: You mean, if we hold it over?

MR. BRANECKY: Yes, in April. I don't want to get into the same situation in April where we have last-minute changes.

MR. TERRILL: I don't know that we're going to have any changes other than --

MR. BRANECKY: Well, you never know.

MR. TERRILL: Well, I know, but I don't know what that would be. I mean, we don't plan to do any more work on this Rule once we make the changes that we've all agreed to today, other than possibly tweak the language relative to the emission factors. I mean, what you see, we can probably have that posted by end of the week, middle of next week, sometime next week at the latest. And we don't plan on doing

MR. THOMAS: -- well, maybe not so substantial comments but from EPA and others on the morning of the Council Meeting.

MR. BRANECKY: I understand.

MR. TERRILL: But in this case, since we're basically adopting the federal Rule as is, I don't anticipate anything but support from them.

MR. BRANECKY: We have that on record.

MR. TERRILL: That's one thing I can virtually be certain about, is I don't think there will be -- it won't be of a substantive nature, anyway.

MR. PURKABLE: Eddie, are there any changes -- this baseline actual emissions, is there anything here that's a little bit different than the federal Rule, any nuances, any word changes, or is this pretty much the federal language? I didn't -- I haven't compared that.

DR. SHEEDY: There are some differences, the main one being that new Paragraph A that we put in about current

anything more with it. That's what you'll see come to the Council in April.

Because I don't think there's any other issues to resolve. I think we've got everything resolved, it's just a matter of making sure that we've got all the things done and proofing it and those kinds of things that -- and those are minor. The substantive changes, there's not going to be any more. This is it. So it's just a question of whether or not we can justify the emergency.

MR. THOMAS: We would be glad to fax you copies of comments that we receive after the ones that we've had time to work on.

MR. BRANECKY: Well, anything that's not included in the Council packet that comes in after that, I would like to have before the Council Meeting, if possible, either through email or fax, just so I don't -- I'm ready to --

MR. THOMAS: You are aware that sometimes we receive --

MR. BRANECKY: I understand.

emission data. The rest of it, there may be some word differences, but the meaning is basically the same. You know, a 10-year look back for everything except for like the utilities. 32 -- a different 24 consecutive month for each pollutant, if you choose. So the rest of it is pretty much the same, although, as I say, word for word there may be a different word used, but it's --

MR. PURKABLE: So this still represents maybe a little bit of a difference from surrounding states in terms of what they've adopted, if they've adopted the federal Rule as it is?

DR. SHEEDY: Well, you know, it -- it would put this in our Rule, I don't know if it really is an actual difference in what other states might be doing. We just stated it. We think EPA, quite often uses current emission data when they go back and look at things like for compliance enforcement and that sort of thing, so it's not, you know, a brand-new thing to do. So I'm not sure other states aren't doing it.

they may not have put it in their Rule. We just wanted to get it clear so we wouldn't have to argue it over each case or each Permit.

MR. TERRILL: This really just clarifies what we're doing, anyway, and it's what we've always done. And I think there was so much rhetoric about the NSR changes, that there probably wasn't a lot of work actually done to see just exactly what it does and means in the real world.

And that was why we wanted to take a look at this, because we felt like that we owed it to the citizens, from a public health standpoint, to look at what we've done in the state and see if it really made a difference and it turns out it doesn't make that much difference. So to us, it's not worth fighting about.

You can argue whether or not, philosophically, it's a right or wrong thing to do, but at the end of the day if it's not going to make any difference from a public health or emissions standpoint, then it's not worth fighting over. To me,

it's not worth it.

So we really don't think that we're doing anything differently than what we've done in our Rule, we've done forever, it's just a matter of clarifying it.

MR. PURKABLE: The inaccuracies in using emissions data 10 years old in arriving at this baseline, isn't that more or less of a temporary concern? Because this 10-year period is a sliding window and pretty soon the 10th year is 2005. So are we just really concerned about just a -- something that's going to disappear eventually, as emissions data become more accurate just by consequence?

MR. FIELDER: Yes, I think that's correct because right now you go back and look to 1995, you're going to find some very rough emissions data. And so using -- that's why I think part the reason why updating and using current factors on a 10-year look back which is, you know, people haven't done and I'm not so sure they thought about -- EPA thought about putting it in their Rule, really levels it out. I

mean, I think that's what we found by using the new data.

DR. SHEEDY: And in the future, the data is getting better all the time, so the current data and the emission data should be more the same.

MR. PURKABLE: Sharon, I have a question just in terms of meetings. Is it possible to have a meeting before April, if we want to move this forward, or are we left with four times a year? I mean, is that an option for consideration, to move it forward a little bit faster?

MS. MYERS: I would say, yes. Matt, is there time to do that or not?

MR. PAQUE: No. The last Board Meeting that we could pass the Rule and have it go through this Legislative Session, it's too late for us to get the Notices out and do the appropriate procedures to get the Rule effective permanently by June, because the Board Meeting is coming up in February.

MS. MYERS: So basically, we really need -- if we're going to get it

effective as a permanent Rule, do we need to pass it today to go to the Board Meeting in February?

MR. PAQUE: Yes.

MS. MYERS: Correct?

MR. PAQUE: Yes.

MS. MYERS: Let's work out the differences on the current emissions.

MS. WORTHEN: I can be fine with the current emissions data the way it is. I mean, we still -- it's industry's burden of proof, but the rest of it, what I want is in there.

MS. BOTCHLET-SMITH: Before we go to motion, we need to give opportunity for oral comment from the public and I have received one notice of oral comment. I'm not sure if that person wishes to speak.

Julia, did we cover your issues, yet?

MS. BEVERS: I'd like to say something.

MS. BOTCHLET-SMITH: Okay. If you would step to the podium, Julia Bevers from OGE.

MS. BEVERS: This may be the same thing, but I just want to clarify. We've been talking about from the baseline actual emission definition, correct? The current emissions? Okay. We submitted a comment that I think you all have, I saw it on the table, but because it wasn't in the packet, I just wanted to point it out.

And it's in the Section 36.2 about source obligation. And it's the same issue, but it's just a different slant on it. Determining the baseline actual emission before a project is one thing. Then we have this 5 year period we have to monitor or keep records for after a project. So what if after the project, testing done, even maybe for this reason or some other reason, reveals that that emission factor that was used before the project has changed? So the most recent data is going to be a different number.

Our concern in the comment was to address -- we just wanted to make sure the same factor was used, looking retrospectively to compare whether there's

a change or not. And I don't know that we've really resolved that. We made a suggestion and I think there's some concerns with the DEQ on that. We suggested just to -- you know, future calculations would use the same factor.

MS. MYERS: You're saying the same factor that you use for the project, for the project baseline?

MS. BEVERS: Either the same one we used before the project happened to compare baseline to future or use the new one, but apply it retrospectively to the baseline, so the change will be based on the same factors at each end. That's our concern.

DR. SHEEDY: I think our concern with making the language change that you suggested was that there may be a time when the project itself causes an increase in the emission factor. So we wouldn't want to put language in that -- if that were the case, that would say, then go back and recalculate your baseline emission based on these emission factors that were indeed

part of the project and a change and should show up.

MS. BEVERS: But there could be monitoring, say for particulates, that the project did not affect particulates.

DR. SHEEDY: Yes.

MS. BEVERS: But then we find out, oh, that factor has changed. So if you applied the previous factor to baseline, it would look like you made the change in particulates when really your baseline was based on the wrong number.

DR. SHEEDY: And I think that's, hopefully, addressed when we say to use the most current and accurate, so that in this case your project didn't include something that was going to actually increase the emission factor, but the emission factor changed. For some reason that didn't have anything to do with your project exactly, maybe better tests, new emission factor or whatever, then I think it would be appropriate, in that case, to recalculate your baseline actual emissions on that current data.

Do you think so, Phillip?

MR. FIELDER: No, I agree. I mean, it's -- if you have new and better data that's not affected, then you can go back and use or you would recalculate, based on that new data.

DR. SHEEDY: Because you would assume that's what you were emitting back in that day, as well, because this is a better emission factor.

MR. FIELDER: That's correct.

MS. BEVERS: The comment then that we submitted, we were suggesting it be added to (C)(3). But in (C)(7) on my Page 51, does that cause us a problem, because it says, the requirements shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification, including but not limited to emissions data produced after the project is completed.

Like you've got it calculated as though it hasn't happened, but then you've got to use current data if something changes and that -- I'm kind of getting

lost in that.

MR. FIELDER: It could -- that situation, if it were to arise, could cause a problem and it currently causes a problem under the current PSD process. That would be similar as a project occurs and you estimate future potential emissions in that factor, at some later date you find, for stack test purposes or whatever, you find is incorrect, we would typically require that project to be reviewed under the new most current data that's available.

DR. SHEEDY: I believe this is the NSR language. And as Phillip said, that has been a requirement in the past where if you did something that -- well, something similar, if you made a change and a new project became major -- if you had it wrong and it really was major, then you have to go back and look at it as though you never received a Permit. I believe that's current, as well.

MS. BEVERS: So at that point, you would use the same factor to apply it to the baseline and to the emissions after

it changed.

MR. FIELDER: Well, you've got two situations, whether you're talking about an affected pollutant or a nonaffected pollutant. If the project affected a pollutant, the factors would be different. You would have a set baseline factor that you already -- that we already agreed upon and then you would have a future actual factor that would apply.

But if it's an unaffected pollutant, it could possibly be the same factor -- well, it would be the same factor. And if you later determined that that factor was wrong, yes, you would use, again, the same factor for baseline and future actual, because we had assumed since it was unaffected, that would be the appropriate factor during that time span.

MS. BEVERS: So the key there is whether it's really an affected pollutant. If it's not, just because we found out something later, to change like, an AP 42 factor.

MR. FIELDER: But in that case,

you would use the same factor for both.

MS. BEVERS: Okay. So at this point, you're proposing just to leave it like it is and not make any change on the Rule? All right. Thank you.

MR. TERRILL: Okay. After talking to Matt, I think we've got two routes we can go. If you all want to try to pass this today as a permanent Rule, we can make the changes, any additional changes we need to make to what was in the handout that you all had today and post that within the next week, because that would be the Rule that's going to go to the Board. That way, that will give you a little bit of time to take a look at it and if there's something that's been missed inadvertently or whatever that we wouldn't want to pass, then we could either pull it and not take it to the Board or take it to the Board and ask that it be remanded back to the Council to bring back as an Emergency Rule in April, or we could hold it over and bring it back as an Emergency Rule in April.

Matt is fairly confident that this is not going to be that big of a deal. We have to satisfy the Governor's lawyer, the Governor's attorney, that this is indeed an emergency and I tend to agree with him, if we tell him that there are likely to be facilities within the state that want to do expansions between now and June of 2007 that would want to take advantage of that and for them it is an emergency, that's probably going to be enough.

So we don't think that there's going to be an issue if you want to hold it over. But you've got either one of those two, that gives you some time to look at it before it goes to the Board. What we can't do is take a different version to the Board than what comes out of the meeting today.

MR. PAQUE: Also, I think that if the Council wanted to, I was incorrect before, they could hold a Special Meeting, reconvene and hold a Special Meeting and take an action on the Rule, because the Rule almost as proposed has been noticed for the Board Meeting at the end of

February. It was noticed along with the notice for this meeting, so a Special Meeting is a possibility. It is something that could happen, as well.

MR. TERRILL: Timing-wise, when would that have to take place?

MR. PAQUE: Well, and that's what I was incorrect -- the Board has been noticed -- the Board Meeting has been noticed for this NSR package that it would be on the Agenda at that meeting, so timing-wise, it could take place anytime before now and, I believe, the end of February.

DR. SHEEDY: Do we have to be able to get the Board packet ready?

MR. PAQUE: There's some other things that go along with preparations for Board Meetings, that's what I'm unsure of. It couldn't -- it would have to be soon.

MR. BRANECKY: Do you have to give 30 days notice of the Emergency Meeting?

MR. PAQUE: Of an Emergency Council Meeting?

MR. BRANECKY: Yes.

MR. PAQUE: No. A Special Meeting?

MR. BRANECKY: Yes, a Special Meeting.

MR. PAQUE: No, it's just a 48-hour notice.

MR. BRANECKY: 48 hours, okay.

MR. TERRILL: So theoretically, we could meet next week, then, if the Council chose to do that and just take up this issue and then take that, whatever comes out of that to the Board on the 24th of February.

MR. PAQUE: Yes, that's correct. I just -- the only thing I'm unsure of and I apologize, is there are preparations for materials that have to be gathered for the Board, such as comments that we've received and Rule Impact Statements and those types of things and I'm not sure of the deadlines that we have for those items. But next week would probably be appropriate, yes.

MR. TERRILL: Generally, it's a couple of weeks ahead of time, just like

you all, it needs to be in the Board packet. So if you all wanted to have a Special Meeting and can get a quorum next week as opposed to -- but I think any of these will work. I really don't think it will be that big of a deal to get an emergency through, either. We've done it in the past with other Rules.

MR. BRANECKY: I guess I would be concerned about being able to get a quorum on such short notice.

MR. TERRILL: Next week.

MR. BRANECKY: Next week.

MS. MYERS: I think my inclination at this point is to pass it today, post it, have an opportunity to review it. If anybody has any major heartburn, ask the Board to remand it back to us for the April Meeting and then pass it as an emergency then.

MR. BRANECKY: So how would that work again? Who would make the decision to pull it? Does that have to come from the Council or is that something that you guys would --

MR. TERRILL: Well, we could elect not to take it to the Board. But probably what we would do, and I would need to talk to Jimmy and find out what the protocol has been in the past and what the Board would expect, but it would be our decision, the Agency's decision, the Division's decision not to take it. But I would suspect what he would recommend, I'm just guessing, he would recommend we take it, put it on the Agenda, and ask the Board to send it back to the Council, that we weren't ready to pass it.

MR. BRANECKY: Would you get input from the Council in making that decision to pull it? If we pass it today, we're saying, send it --

MS. MYERS: We could pass it with a stipulation. Can we do that?

MR. BRANECKY: -- with a stipulation -- I mean, who makes -- I guess, who makes the final decision not to take it to the Board?

MR. TERRILL: That would be me.

MR. BRANECKY: Okay.

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MR. TERRILL: But I'm going to be reluctant -- if the Board expects to see -- it would kind of be on precedent of what's happened in the past. If the Board expects to see the things that come out of the Council, then we'll probably take it to the Council, explain to them what happened, and ask them to remand it back.

If there really is no precedent, probably what we'll do is not take it at all and just bring it back in April with a revised Final Rule, if you will, and then - as an emergency and then take it to the Board in June, which is their next meeting.

MS. BOTCHLET-SMITH: I haven't received any other notice for oral comment, but I keep seeing a hand out here in the audience. Don, did you wish to make a comment?

MR. WHITNEY: Yes.

MS. BOTCHLET-SMITH: Don Whitney. Could you please step to the podium?

MR. WHITNEY: Don Whitney from Trinity Consultants. Yes, I would like to comment on the urgency of getting the Rule

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applications is that the best way to clarify what the baseline emissions are going to be from past-actual and future-actual emissions is to specify that in the Permit rather than -- hoping to resolve all issues in the exact Rule that's being addressed today is to rely on the Permit writers, frankly, and to suggest that the proper baseline going forward it would be established in the Permit rather than trying to cover all different possibilities of the most appropriate emission factor in the Rule is to rely on that being established in the Permit, what's used in the past and what will be used in the future to determine the compliance. Thank you.

MR. PURKABLE: We have had a number of comments that were made and, of course, I'm just thumbing through these. OGE's, you've addressed yours. Are there any others of these comments that ought to be responded to or addressed before we decide to take action?

For example, I mean, there's one

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passed. And speaking on behalf of several of our clients, we find that a lot of the - what would appear to be rather minor changes, that facilities do get wrapped up in the current PSD NSR Rule, the old traditional way of looking at past-actual to future-potential, brings in for scrutiny a whole lot of projects that seem absolutely trivial to a normal observer, and yet they are wrapped into the PSD issue because of the old current Rule that we have on the books.

And therefore, I would suggest that there is some urgency to get this on the books this summer, either by whatever method it takes, just because of not so much new, truly new PSD projects, but the concern of the current Permit review issue under the old Rule does bring in a lot of Rules -- a lot of issues that make passing minor changes very difficult.

The second comment I would like to make is on the appropriate baseline emission factors. And what we have found with a lot of proposals for Permit

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here, a lot of minor sources in the state, the question is, "This Rule has nothing to do with basically minor sources; is that correct?" And I assume that is correct, there is nothing here anywhere that would affect minor sources.

DR. SHEEDY: That's correct.

MR. PURKABLE: Okay. Are there any other questions here that ought to be responded to before we --

DR. SHEEDY: I think that -- I think that we have made a good number of the changes that were suggested and we have written in our written comments where we didn't do it, we've explained why. But there are 50-something comments, I think, and I don't remember them all.

MR. PURKABLE: I was just referring to the ones that were in our packets that we haven't had a chance to -- these newer ones.

DR. SHEEDY: I think we --

MR. PAQUE: What you're looking at today, those highlights, those are addressing many of those comments. That's

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what started these comments, a lot of them.

DR. SHEEDY: Yes.

MR. PURKABLE: Okay. Thank you.

MR. TERRILL: Yes. We did get some comments that came in after your Council packet went out and it's real difficult to make sure we hit all those. We think we did, but I wouldn't want to -- it goes back to not making a guarantee that we get an Emergency Rule passed, I wouldn't want to guarantee that we didn't miss something, because when you get something in a week or so before the Council meeting, you don't always get it. But we believe the concerns that were in those comments are okay. We've addressed them.

MR. BRANECKY: So let me understand. If we pass this today, we will hold it open for a period of time for comment or how is that going to work?

MR. TERRILL: If you pass it today, what we will do is we will post the version as quickly as we can that we intend to take to the Council or to the Board, rather, that has the changes in it that we

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think we all believe were made today. And if there's not any -- if someone -- if you all don't look at it and give us comments back and say, wait a minute, you didn't catch something or we didn't mean to do this or whatever, that's what is going to the Board.

MR. BRANECKY: Well, I think you need to set a time frame. If we don't hear any comments within a week or two weeks --

MR. TERRILL: Well, it's -- if we don't have any comments by the time the Board packet goes out --

MR. BRANECKY: And when is that?

MR. TERRILL: Generally, two weeks before the Board, give or take, that would mean the --

MR. BRANECKY: I think we need to have a cutoff date.

MR. TERRILL: That would mean the 10th. That would mean the 10th of February, would be --

MR. BRANECKY: Okay.

MR. TERRILL: But it's generally roughly two weeks before the --

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MR. PAQUE: If you give me about ten minutes, fifteen or ten minutes, I can find the date.

MR. BRANECKY: Well, I just think --

MR. PAQUE: We sent someone off to get that date.

MR. BRANECKY: I just think if we're going to do that, we need to set a cutoff date for comments or concerns, otherwise, it will be forever. So we'll all know the Rules of the game.

MR. TERRILL: Well, I would be less than honest with the Council and that is, if we get comments that -- before the Board passes on this that indicates to us that there is an issue, we will ask the Board to send it back to you and we'll have to do it in April as an emergency. Because normally we don't accept any comments. Once it leaves here, that's what goes to the Board and we can't make any changes to it anyway. So if we find that we've done something that's a problem, then there is no way we can fix that without coming back

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in April as an emergency.

MR. PAQUE: By state law, the Rule cannot change from what the Council recommends -- for the Air Quality Council, what they recommend, that Rule text cannot change what was presented to the Board.

Also, the Board packets are being mailed on the 10th. So I would say that a fair deadline would probably be Friday, February 3rd.

MR. TERRILL: And I don't think there will be much change to what you all had in your handout today. We just didn't have enough time to get it to you ahead of time, so there shouldn't be any changes, much to speak of from that, if any.

MR. CURTIS: So to help in my confusion, we're really considering the changes that were presented today and not the one that was sent out with the Council packet?

MR. TERRILL: That would be correct. Because it -- what's in your packet today reflects our taking a look at the work Phillip did, satisfying ourselves

that there wasn't any difference in the 10 and 5-year look back and that's the changes we've made to satisfy the concerns that were raised.

And it also includes the language about emission factors, which we didn't have. That's what we found out was a big issue. So it is a fairly substantive change, but we think it reflects what the concerns of the Council originally were and addresses those.

MS. BOTCHLET-SMITH: I don't have any other oral comments. Is there anything else from the Council?

MR. PURKABLE: Have there been any litigation issues in other states that have essentially adopted the Federal Rule? Has it been pretty clear sailing once it's been adopted?

MR. PAQUE: What it would take for that to happen would be EPA to take action on a SIP, an actual submittal, and EPA has yet to take action on any NSR Rules. Some states had to go back and change their Rules because they went ahead

and adopted it with the clean unit provision and some of those things, but as for litigation, EPA has not approved an NSR SIP yet.

MR. TERRILL: There has been some concerns raised. When the Rules go to the Legislature, there have been some groups that have raised issues at the Legislature in other states because they felt like that the NSR Rules were not -- and these were ones generally where the state passed the Rule, as is, and they raised the issue at the Legislature saying it wasn't appropriate, it's not protecting public health. But I don't think we'll have that, and even if we did, we'll go back to the analysis that we did that shows that there's not any difference to speak of.

MS. MYERS: Are there any other comments or questions from the public? Julia.

MS. BEVERS: This will reveal more about me than I probably want anybody to know, but is there -- are the terms potential to actual, and actual to

potential, synonymous? Because I did submit a comment on the applicability section about major modification, Number 6 on Page 18, actual to potential and then down in the paragraph it refers to the potential to actual test. And if those are the same, then I don't have a problem. But if they aren't the same, I think they should be consistent. Thank you.

DR. SHEEDY: We added this -- Number Six? Actual to potential for projects that -- I think that's the one that we added, isn't it, Matt, that says that if you don't want to use a projected actual test, then you can go ahead and use the test that we have now, which is actual to potential, and then you don't have to do that recordkeeping. I mean, if you were going -- if actual to potential would get you out of PSD, then you don't have to do actual to actual and then get involved with the extra recordkeeping. That's all that Six is doing. It kind of took it out -- I believe it was included in the definition of projected actual emissions, they put it

down in a paragraph in there that you can go ahead and use the old system if you wanted to.

So we just thought we would put it out front so you would be aware that if you didn't need to use projected actual, you could be Non-PSD without it, then you didn't have to use it. If that's confusing, then we might need to think about putting it there again. But it is the Rule, regardless of whether it's there.

MS. BEVERS: My question was just the terminology. It says actual to potential and then down below, it says potential to actual. I'm just wondering if those are the same?

DR. SHEEDY: They're not. I don't think so. Wait a minute.

MS. BOTCHLET-SMITH: Joyce, if you need a minute to look over that, our Court Reporter has requested a short break.

DR. SHEEDY: Okay.

MS. BOTCHLET-SMITH: So if we could take about five, no more than 10 minutes to give her a little bit of a

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break, and then we'll come back to this.

(Off the record)

(Back on the record)

MS. BOTCHLET-SMITH: Joyce, did you want to go ahead and answer that question that you were asked prior to the break?

DR. SHEEDY: Julia pointed out an error in Paragraph (6) on Page 18. Down in about the third line from the bottom of that paragraph where we say owners or operators who use the potential to actual test, that should be "actual to potential test". Just swap those terms around and Julia pointed that out and that needs to be -- that will be changed. So in the Rule that -- if the Council decides to forward this Rule, then that Rule will say -- use the actual to potential in that place, which is correct.

MS. MYERS: Are there any other comments? If not, I'll entertain a motion.

MS. WORTHEN: I make a motion to pass with the comment noted by Joyce.

MR. CURTIS: Second.

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MR. BRANECKY: I would like to add to that, with the stipulation that until February 3rd, that if there's any other concerns from the Council, that those be directed to DEQ and they would consider that in whether to take this to the Board or not.

(Inaudible Conversation)

MS. MYERS: Matt, can we just back up and clarify the Motion?

MR. PAQUE: It's been seconded.

(Inaudible Conversation)

MS. WORTHEN: I'll withdraw the Motion.

MR. PAQUE: Then you withdraw your second.

MR. CURTIS: So be it.

MR. BRANECKY: I would move that we adopt the Rule as presented to us, given to us this morning by DEQ as a permanent Rule with the changes proposed by Ms. Bevers, with the actual to potential language, and also with the understanding that DEQ will accept comments from the Council until February 3rd. And based on

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any of those comments made, opt to withdraw the Rule or opt not to bring the Rule to the Board in the February Meeting.

MR. TERRILL: We will bring the Rule to the Board. I talked to Steve Mason, who is the Board Chair, and he believes and I agree with him, that proper protocol is whatever comes out of the Council needs to go to the Board and then we can explain the circumstances and the Board can send it back. And that's probably -- for transparency in the Rulemaking process, that's probably the right -- that is the right way to do it, so --

MR. BRANECKY: So I need to change that motion, then?

MR. TERRILL: Yes. Because you -

MR. BRANECKY: The whole thing?

MR. TERRILL: You can come to the Council Meeting or the Board Meeting and make any -- raise any concerns there and the Board can decide to send it back.

MR. BRANECKY: Okay. I'll try

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again. I move that the Council adopt the Rules as given to the Council this morning by DEQ with the additional change recommended by Ms. Bevers of OG&E regarding the potential to actual language and that DEQ accept comments from the Council until February 3rd with any concerns -- further concerns of the Rule.

MR. CURTIS: Second, again.

MS. MYERS: Myrna, we have a motion and a second. Would you call roll, please?

MS. BRUCE: Gary Martin.

MR. MARTIN: Yes.

MS. BRUCE: Jerry Purkable.

MR. PURKABLE: Yes.

MS. BRUCE: Laura Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Bob Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

MS. BOTCHLET-SMITH: Okay. The next item on the Agenda is OAC 252:100-8 Permits for Part 70 Sources Part 11. And the presentation will be given by Mr. Matt Paque.

MR. PAQUE: Madame Chair, Members of the Council, ladies and gentlemen, my name is Matt Paque, I'm an attorney for the Department and the Air Quality Division.

For this item of the Agenda, I'll discuss the Department's proposed revision to OAC Title 252, Chapter 100, Subchapter 8, Part 11.

In 1999, the U.S. Environmental Protection Agency announced a major effort to improve air quality in national parks. This effort resulted in the development of the Regional Haze Rule. This Rule calls for State and Federal Agencies to work together to improve visibility in Class I areas which include 156 national parks and wilderness areas. The Wichita Mountains, southeast of Lawton, Oklahoma, is one of these areas.

States are required to submit

type and the level of control for reducing emissions. The level of control is to be established on a case by case basis taking into account the criteria listed in the BART definition, which is in the proposed OAC 252:100-8-71.

The identification of a BART eligible emission unit at a facility involves a 3-step process:

The emission unit must have been in existence prior to August 7, 1977 and begun operation after August 7, 1962.

The emission unit must be located at a facility which falls into one of 26 categories.

The aggregate potential emissions of all emission units identified in Steps 1 and 2 must be greater than or equal to 250 tons per year of any visibility impairing pollutant. The pollutants that reduce visibility include particulate matter, PM10 and PM2.5, and compounds which contribute to PM2.5, such as nitrogen oxides, NOx, and sulfur dioxides, SO2.

DEQ has currently identified 25 BART

Regional Haze State Implementation Plans outlining methods for improving visibility to EPA by December of 2007. One mandatory method states are required to utilize improving visibility is the application of final Best Available Retrofit Technology known by the acronym BART.

The EPA published amendments to the Regional Haze Rule and BART guidelines in the Federal Register on July 6, 2005.

The process of establishing BART emission limitations can logically be broken down into three steps:

First. States identify those sources which meet the definition of a BART-eligible source set forth in the proposed OAC 252:100-8-71.

Second. States determine whether such sources emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I area. A source which fits this description is subject to BART.

Third. For each source subject to BART, States then identify the appropriate

eligible sources and most all of these identified sources have been in contact with the Division regarding their BART status.

Under the proposed Rule, owners or operators of such sources must submit the proposed BART or proposed exemption from BART requirements for these sources to the Department no later than December 1 of 2006.

Notice of the proposed Rule changes was published in the Oklahoma Register on December 15, 2005 and comments were requested from members of the public.

Since the last Air Quality Council Meeting, the Department has received comments from the following:

The EPA Region 6 Air Planning Section submitted comments on December 2, 2005. Based on their comments, some minor changes were made to the Rule and those changes are reflected in the published proposed Rule and the comments are available in your Council packet.

OGE Energy Corporation submitted

comments on December 15, 2005 and again on January 4, 2006 and those comments are available in your Council packet. Based upon those comments, the Department proposes amendments to the published Rule as follows. These amendments were made available to you this morning and we do apologize for the short notice.

Today, the Department would like to amend Sections 252:100-8-70, 8-73 and 8-75 to include a threshold value for visibility impairment. This change will incorporate into the Rule the federal 1.0 and .5 deciview thresholds for determining if a source causes or contributes to visibility impairment in a Class I Area. The Department also proposes to amend the proposed OAC 252:100-8-71 to include the definition of Deciview. Other related amendments for consistency with these changes should be made to the proposed OAC 252:100-8-70, 8-73 and 8-75.

Also, today the Department proposes to amend the proposed OAC 252:100-8-73(b). The Department would like to limit the

pollutants considered for BART to only NOx, SO2, PM-10 and PM-2.5.

Also, today the Department proposes to amend the proposed OAC 252:100-8-72 to reflect the title of "Appendix Y, also be included so that the section would read, Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule."

And finally, today the Department proposes to amend the proposed OAC 252:100-8-75 to reflect that BART must be installed at BART eligible sources that cause or contribute to visibility impairment no later than five years after EPA approves the Oklahoma Regional Haze SIP.

Again, the Department apologizes for bringing these amendments to you before today, but it is the Department's opinion that all of these proposed amendments are nonsubstantive because they are all reflections of the federal Regional Haze Guidelines Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule, as previously proposed to be

incorporated into the Rule.

At this time, staff asks the Council to recommend the proposal with the proposed amendments to the Environmental Quality Board for permanent adoption.

MS. BOTCHLET-SMITH: Questions from the Council.

MR. CURTIS: Yes. Do we have any estimate as to the economic impact of this Rule?

MR. PAQUE: The Rule will require some of those BART eligible sources to install BART, and so there would be an economic impact on some facilities for that reason, that is if they do cause or contribute to visibility impairment.

MR. CURTIS: So any of the comments that you received thus far, have they indicated any sort of economic impact?

MR. PAQUE: We haven't received any comments that indicated economic impact. But it should be noted that, as I mentioned before, when you are looking at BART and what's the appropriate BART for your facility, economic feasibility is part

of that determination -- economic feasibility of those controls is part of that criteria.

DR. SHEEDY: And there will be some costs for modeling.

MR. PAQUE: Yes, I'm sorry. Costs --

MR. BRANECKY: Right.

MR. PAQUE: Costs for modeling.

MR. BRANECKY: I can address that a little bit, Bob. We have some BART-eligible sources and we are preparing to do modeling. If that modeling shows an impact on visibility in a Class I Area, SO2 and NOx reductions are substantial. You're talking scrubber on a coal unit, we're talking 75 million in capital costs and several million operating costs per year.

MR. CURTIS: So it's a substantial impact. I had a --

MR. PURKABLE: Has the modeling protocol been established, since I think the Rule says established by the Director. Is that well established?

MR. FIELDER: The modeling

protocol is close to being finalized. I think the last I heard, within a week. They've been working on it for quite some time now and it's -- the CENRAP group, if you're more interested in that, you can get some information from them, but within the next week or so, I think they're supposed to be finalizing that.

MR. BRANECKY: Is trading being considered as far as BART?

MR. TERRILL: We don't have any plans to propose a trading Rule at this time. We left an option in here in case at some later date we can do that. But that's just mainly a placeholder in case -- we never could -- we had a lot of discussion and we never could figure out how to do it and do it where it made economic and practical sense. So we don't have any plans to do any trading program relative to BART right now, but we do have the ability to do that if someone proposes an idea that we think can work. And then, as with all this, we would have to come back to the Council with Rules and all that.

MS. BOTCHLET-SMITH: Do we have any more comments or questions from the Council? I have received one notice of oral comment from Mr. Bud Ground with PSO.

MR. GROUND: Thank you, very much, for this opportunity. And really, I had the same question that Dave brought up about the (inaudible) trade or the trading program.

And so Eddie, you said that you don't have any plans at this time to come up with any type of a trading program. And I guess just to add onto that, if you don't have any plans to do it, are you waiting on CENRAP to develop something or are you waiting on another, you know, private industry to develop a trading program, or are you just not planning on ever trying to implement a trading program?

MR. TERRILL: Well, we've had discussions internally and also with some of the stakeholders. In fact, we've had two presentations as part of our policy oversight group meetings that we have, from a group that's pushing a trading program.

But it's a group that's pushing -- it's not within the CENRAP region and we think they may have other reasons for wanting a trading program, because there's money to be made off one.

We just never could put together a plan that we felt like was workable for us, because there's associated cost with it. You would have to figure out who could trade, would it be intrastate, would it be interstate, we're not part of the CARE -- we're not a CARE state, so we don't have that option to trade there. So we just felt like it was just too complicated to figure out at this point. We just didn't feel like there was anything to be gained from it at this point. But if at some later date as this process progresses and we feel like there's a need that arises that we need to do a trading program, then we would entertain that at that point.

We also didn't feel like we could get anything through in time to include it as part of our 2007 SIP. That really drove it more than anything else because every

time we thought we had answered one question, we'd have three more that would come up and we just abandoned it because we're really concentrating now on trying to get the work done so we can submit a SIP in 2007. And if it turns out after we do that that we need to do a trading program, if a stakeholder comes in and says we want to discuss it, we think here's why we need that, then we'll look at it at that point.

MR. GROUND: Okay. Well, I do appreciate you keeping it in there. But I do also think that it would be very beneficial to the state of Oklahoma and I hate it that we don't have one just because we're not a CARE state, because it can be a lot less costly to comply with the trading program.

And just as a follow-up question, is there any time limit that you would say that it's too late to put a trading program in? I know for us we have to do a lot of preplanning and there's going to be a time when we either have to install or rely on our trading program, but I didn't know if

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there was a time limit where you would say

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MR. TERRILL: I think you've answered your own question. It really becomes, can you get one in place before decisions have to be made by those that are going to install BART that allows them to take advantage of it. You know, I don't think we care one way or the other whether we have a trading program as long as we don't get stuck with having to administer it with no way to fund it. We don't have any experience with this. We would have to figure out how to do it and I don't know that having a third party do this is a good way to do it, because inevitably your costs are higher. So we would have to figure out how to do it.

But if the stakeholders, the folks that are involved in this want to sit down with us and try to put together a trading program, we may miss our 2007 deadline, but I don't know that we couldn't put something in place that would work for you to make your plans before you have to make a

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commitment as far as what you're going to have to install.

MR. BRANECKY: Don't we have to have those -- those facilities have to have those plans in to you by December of this year?

MR. TERRILL: I believe that's right.

MR. BRANECKY: So --

MR. TERRILL: It would be tough. Again, I don't want to preclude it, that's the reason we left the language in here and -- yes, we had some discussions early on and we really never got a lot of positive feedback from the folks that we had in that it was worth pursuing and we had other things that were keeping us busy, so we didn't pursue it, either. But we're not closing the door on it. I mean, if you all -- Bud, if you think there's a groundswell out there of enough folks that are interested in doing it that make it worth our while, we would sit down and try to develop the resources to do it.

MR. GROUND: Okay. So you're not

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opposed to us getting together a group,

because you did submit a list today of BART-eligible sources, if we were to get together and come to you and talk about this?

MR. TERRILL: Absolutely not.

MR. GROUND: Okay. We really appreciate it. Thank you.

MS. BOTCHLET-SMITH: I didn't receive any other comment -- Notice of Comment from the public. I'm not seeing any hands up. But do we have any questions? It doesn't look like it, Sharon.

Any other comments from the Council?

MS. MYERS: If there's no further comments from the public or from the Council, we'll entertain a motion for this Rule.

MR. BRANECKY: I'll make a motion we move -- we approve as given to us this morning by DEQ.

MR. PURKABLE: I'll second.

MS. MYERS: We have a motion and

Page

a second to approve this Rule.

Myrna, would you call roll, please?

MR. BRANECKY: Do I need to specify a permanent Rule? Is that necessary? Can I amend my motion or do I need to specify that?

MR. PAQUE: The Rule is only noticed as a permanent Rule.

MR. BRANECKY: All right. Thank you.

MS. MYERS: Myrna.

MS. BRUCE: Gary Martin.

MR. MARTIN: Yes.

MS. BRUCE: Jerry Purkable.

MR. PURKABLE: Yes.

MS. BRUCE: Laura Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Bob Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

MS. BOTCHLET-SMITH: That concludes the hearing portion of today's meeting. Sharon.

MS. MYERS: At this time I'll turn it over to Eddie.

MR. TERRILL: I'll be short. I've only got a couple of things.

As most of you who have emissions inventory turnaround documents to submit, that time has arrived to start doing that again. And a question has come up about Permits that contain pollutants that aren't defined as regulated pollutants in our Rule, but they're contained in the old toxics Rule and whether or not those have to be submitted as part of the emissions inventory.

Well, theoretically, yes, they do. But what we're proposing is and we'll put this up on our website and we'll be taking this to the workgroups that we're conducting, but what we're going to propose is that if it's a -- if it's not a regulated pollutant but it's a VOC, then lump that in as a VOC when you do your

reporting and not as an individual pollutant that's found in Subchapter 41. I hope that makes sense.

But we're going to be coming back to the Council in April clarifying our definition of regulated pollutant and so you guys will have an opportunity to take a look at that and we'll be cleaning up some stuff. But as it is right now, if you've got Permit language that includes toxics under the old Rule that can be considered as VOCs, lump that into your VOC when you do your emissions inventory reporting. If it's not a VOC, there's going to be a few of those, Kendall probably doesn't want me saying this, don't report it because we don't have a way to make it fit and that is contrary to our Rule, but we're going to fix it in April and we don't think it's going to be that much of a big issue anyway. So it will confuse our Redbud system if you try to report it and we don't have time to modify the system so --

UNIDENTIFIED: Eddie, we just wanted to mention that we also wanted to

include that under the PM situation.

MR. TERRILL: I'm sorry. Right. If it can be included as a PM, report it as PM, as well. So if you've broken it out and it could be reported as a PM or a toxic or VOC, please do so. Otherwise, we'll clarify the definition of regulated pollutant in April and do the -- we knew there would be some cleanup relative to the Subchapter 41 at some point and we're in the process of starting that.

MS. BEVERS: Eddie.

MR. TERRILL: Yes.

MS. BEVERS: A question to clarify that. Since I'm probably the one who asked the question -- actually, I did ask the question on the last one, if -- you're saying if it's -- if it would be classified as a VOC but it's a non-hap, then we're just going to lump it into non-hap VOC option and then just lump into the straight nonHap PM?

MR. TERRILL: Isn't that where you want it, Ray? Yes. You are correct. The other thing I mentioned, I've

gotten two or three calls from -- well, actually, I've gotten several calls over the last -- and emails over the last two or three months about comments that I have made that show up in various publications. For those of you that don't know, I am the current President of STAPPA/ALAPCO and that's our national air directors association. And as part of that, there is going to be times where I'm going to comment on things that are going on nationally because that's what we do, that are going to show up and the question has become, if I make a comment on something, does that mean that's what we're going to do here in Oklahoma. Well, it may or may not mean that's what we're going to do here in Oklahoma because everything we do comes through the Council as a Rule change. So hopefully the concerns that have come up, you won't have them but there are going to be times because we represent all 50 states and we come to our conclusions or consensus based on a consensus that may or may not be a majority, there may be some things that

we comment on, as far as federal Rules are concerned, that may not be applicable to what we'll do here in Oklahoma. An example of that was, I got a call yesterday and there will probably be an article that will appear in one of the papers about the federal Rule that came out yesterday with course -- relative to course PM and the fact that EPA decided to exempt two large sectors from regulation if you have an area that is nonattainment under the new course PM standard, whatever that happens to be.

And my comment was that it was probably inappropriate for EPA to do that, because what that does is, if we do analysis, we do have areas that are in nonattainment with a new course PM standard, which we don't anticipate that to happen, but if we were to and we're already hamstrung by the fact that we can't look at two large emission sectors that more than likely are contributing to the problem, then that means everybody else has got to figure out what we're going to do to get us back into attainment and we don't think

will go through the process and it will be vetted just like all of our other Rules, so.

MS: (Inaudible).

MR. TERRILL: Yes, that's right. Anyway, that's all we've got. I appreciate everyone's attendance. Do we have any new business? Yes, Bud.

MR. GROUND: (Inaudible)

MR. TERRILL: We've seen a few blips, but nothing that we really could tie to the fires. What we think have been an issue is blowing dust, but we haven't seen anything yet that are high enough of a concern to us that would indicate that we would have some attainment issues.

Now, you know, EPA has proposed new PM fine standards that came out a few weeks ago and I guess yesterday they produced -- proposed their PM course and there's going to be an urban standard and right now there's not going to be a rural standard relative to PM course, but that could change, too, depending on comments.

So if you have a source that's a PM,

that's EPA's role. EPA's role is to provide a standards, national federal standards that have a margin of safety that are protective of public health and it's up to us to figure out how to get there and all that comes through the Council and that's the opportunity for us to show whether or not the decisions we made relative to what we should control to get to where we need to get for attainment is correct or not.

So I'm not going to say what sectors were out there that got exempted, but I'm sure there's going to be some folks that are concerned about my comment and my comment, I think, is a fair one. I don't think that was appropriate for EPA to do that and we will make those comments later.

But I mainly want to let you know that you may very well, if you get trade publications, that we will have comments that quote me. And just because I made a statement, that doesn't necessarily mean that's exactly what we're going to do here in Oklahoma. We may propose that, but it

a large PM source, you might want to keep an eye on what's going on relative to the PM fine standard, because I suspect that EPA is going to lower it to some degree. But the proposed levels that they've suggested, we don't have any problems with the annual or the 24 hour standard at this point.

We have copies of the Annual Report that were available. If anyone wanted one and didn't get one, let us know and we'll get you one before you leave today. I forgot that we were handing these out and I apologize.

So I guess our next meeting will be at Tulsa, at the OSU-Tulsa facility on Greenwood, the same place we've met for the last two or three years. So by that time, we'll be ready to talk about ozone season and we'll have a few additional Rule changes that we're going to propose. Any questions from anybody? Thank you for attending today.

MS. MYERS: We are adjourned.

(END OF PROCEEDINGS)

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TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL
[OAR Docket #06-855]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

252:100-1-3. [AMENDED]

Subchapter 8. Permits for Part 70 Sources

Part 1. General Provisions [AMENDED]

252:100-8-1.1. [AMENDED]

Part 5. Permits for Part 70 Sources [AMENDED]

252:100-8-2. [AMENDED]

Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas [AMENDED]

252:100-8-30. [AMENDED]

252:100-8-31. [AMENDED]

252:100-8-32. [REVOKED]

252:100-8-32.1. [NEW]

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252:100-8-32.3. [NEW]

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252:100-8-34. [AMENDED]

252:100-8-35. [AMENDED]

252:100-8-35.1. [NEW]

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252:100-8-36. [AMENDED]

252:100-8-36.1. [NEW]

252:100-8-36.2. [NEW]

252:100-8-37. [AMENDED]

252:100-8-38. [NEW]

252:100-8-39. [NEW]

Part 9. Major Sources Affecting Nonattainment Areas [AMENDED]

252:100-8-50. [AMENDED]

252:100-8-50.1. [NEW]

252:100-8-51. [AMENDED]

252:100-8-51.1. [NEW]

252:100-8-52. [AMENDED]

252:100-8-53. [AMENDED]

252:100-8-54. [AMENDED]

252:100-8-55. [NEW]

252:100-8-56. [NEW]

252:100-8-57. [NEW]

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Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-5-101, *et seq.*

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None

INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR 51.166(w) with some exceptions
40 CFR 51.165(a)(1) with some exceptions
40 CFR 51.165(a)(3) except (a)(3)(ii)(H) and (I)
40 CFR 51.165(b)
40 CFR 51.165(a)(4)
40 CFR 51.165(a)(5)
40 CFR 51.165(a)(6)(i) through (v)
40 CFR 51.165(a)(7)
40 CFR 51.165(f) with exceptions

Incorporating rules:

252:100-8-38
252:100-8-50.1
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252:100-8-51.1
252:100-8-52(1)
252:100-8-53(a)
252:100-8-55(b)
252:100-8-55(c)
252:100-8-55(d)
252:100-8-56

Availability:

The rules are available to the public for examination at the Department of Environmental Quality office at 707 North Robinson, 4th Floor, Oklahoma City, Oklahoma.

ANALYSIS:

The Department of Environmental Quality (DEQ) is proposing amendments to Subchapter 8, Part 70 Sources. DEQ proposes to revise Parts 7 and 9 of Subchapter 8 to incorporate the Environmental Protection Agency's (EPA) revisions to the New Source Review (NSR) permitting program under the Federal Clean Air Act. These proposed amendments contain revisions to the method of determining what should be classified as a modification subject to major NSR and includes Plantwide Applicability Limitations (PAL) Exclusions. These proposed amendments should result in fewer modifications to major NSR sources being considered major and therefore requiring a Prevention of Significant Deterioration (PSD) permit and the use of Best Available Control Technology (BACT). The proposed amendments also include other NSR revisions not previously incorporated by DEQ and some changes in location of some definitions to reduce redundancy. As part of the revision DEQ proposes to make the following changes to Section 8-1.1 in Part 1: 1) move 8 definitions to Subchapter 1; delete 2 definitions from Section 8-1.1 because they are the same as those in Subchapter 1; move paragraph (B) of the definition of "begin actual construction" to Section 8-2 in Part 5; move 8 definitions to 8-31 in Part 7; and move 3 definitions that were previously located in Section 8-31 to Section 8-1.1. In 8-2 of Part 5, DEQ proposes to revise the definition of "insignificant activities" to reflect the changes made to Subchapter 41 and the new Subchapter 42.

CONTACT PERSON:

Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 794-6800

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"Act" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

"Administrator" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"Air contaminant source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated, or person contributing to emission of air contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

"Air pollution abatement operation" means any operation which has as its essential purpose a significant reduction in:

- (A) the emission of air contaminants, or
- (B) the effect of such emission.

"Air pollution episode" means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion. Other factors such as humidity may also affect the episode conditions.

"Ambient air standards" or "Ambient air quality standards" means levels of air quality as codified in OAC 252:100-3.

"Atmosphere" means the air that envelops or surrounds the earth.

"Best available control technology" or "BACT" means the best control technology that is currently available as determined by the Division Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

"Catalytic cracking unit" means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

"Combustible materials" means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

"Commence" means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

"Complete" means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the ~~reviewing authority~~ Director from requesting or accepting any additional information.

"Construction" means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

"Crude oil" means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

"Division" means Air Quality Division, Oklahoma State Department of Environmental Quality.

"Dust" means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

"Existing source" means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

"Facility" means all of the pollutant-emitting activities that meet all the following conditions:

- (A) Are under common control.
- (B) Are located on one or more contiguous or adjacent properties.
- (C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

"Fuel-burning equipment" means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

"Fugitive dust" means solid airborne particulate matter emitted from any source other than a stack or chimney.

"Fugitive emissions" means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Fume" means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

"In being" means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

"Incinerator" means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

"Installation" means an identifiable piece of process equipment.

"Lowest achievable emissions rate" or "LAER" means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new

or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

"Major source" means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Mist" means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

"Modification" means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

"National Emission Standards for Hazardous Air Pollutants" or "NESHAP" means those standards found in 40 CFR Parts 61 and 63.

"New installation", "New source", or "New equipment" means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

"New Source Performance Standards" or NSPS" means those standards found in 40 CFR Part 60.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Open burning" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"Owner or operator" means any person who owns, leases, operates, controls or supervises a source.

"Part 70 permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Part 70 program" means a program approved by the Administrator under 40 CFR Part 70.

"Part 70 source" means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

"PM-10 emissions" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured during a stack test of the source's emissions.

"PM-10 (particulate matter - 10 micrometers)" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a federal reference method based on Appendix J of 40 CFR Part 50.

"Particulate matter" means any material that exists in a finely divided form as a liquid or a solid.

"Particulate matter emissions" means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

"Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of significant deterioration" or "PSD" means increments for the protection of attainment areas as codified in OAC 252:100-3.

"Process equipment" means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

"Process weight" means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

"Reasonably available control technology" or "RACT" means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

"Reconstruction" means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

- (i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);
 - (ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,
 - (iii) the extent to which the components being replaced cause or contribute to the emissions from the source.
- (B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

"Refinery" means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Refuse" means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

"Refuse-burning equipment" means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

"Shutdown" means the cessation of operation of any process, process equipment, or air pollution control equipment.

"Smoke" means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

"Source operation" means the last operation preceding the emission of an air contaminant, which operation:

(A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,

(B) is not an air pollution abatement operation.

"Stack" means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

"Standard conditions" means a gas temperature of 68 degrees Fahrenheit (20°Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

"Startup" means the setting into operation of any process, process equipment, or air pollution control equipment.

"Stationary source" means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

"Total Suspended Particulates" or "TSP" means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

"Temperature inversion" means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

"Visible emission" means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

"Volatile organic compound" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonates, which participates in atmospheric photochemical reactions. Any organic compound listed in 40 CFR 51.100(s)(1) will be presumed to have negligible photochemical reactivity and will not be considered to be a VOC.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 1. GENERAL PROVISIONS

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this section, terms used in this Subchapter retain the meaning accorded them under the applicable requirements of the Act.

"A stack in existence" means for purposes of OAC 252:100-8-1.5 that the owner or operator had:

(A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

(B) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

~~"Act" means the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.~~

"Actual emissions" means, except for Parts 7 and 9 of this Subchapter, the total amount of regulated air pollutants emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

~~"Administrator" means the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.~~

~~"Allowable emissions" means, for purposes of Parts 7 and 9 of this Subchapter, the emission rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:~~

- ~~(A) the applicable standards as set forth in 40 CFR Parts 60 and 61;~~
- ~~(B) the applicable State rule allowable emissions; or,~~
- ~~(C) the emissions rate specified as an enforceable permit condition.~~

"Adverse impact on visibility" means, for purposes of Parts 7 and 11, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made by the DEQ on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

~~"Begin actual construction" means:~~

- ~~(A) for purposes of Parts 7 and 9 of this Subchapter, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.~~
- ~~(B) for purposes of Part 5 of this Subchapter, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.~~

~~"Best available control technology" or "BACT" means the control technology to be applied for a major source or modification is the best that is available as determined by the Director on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternate control systems.~~

~~"Building, structure, facility, or installation" means, for purposes of Parts 7 and 9 of this Subchapter, all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two digit code), as described in the Standard Industrial Classification manual, 1972, as amended by the 1977 Supplement.~~

~~"Commence" for purposes of Parts 7 and 9 of this Subchapter means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and either has:~~

- ~~(A) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or,~~

~~(B) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.~~

~~"Construction" means, for purposes of Parts 7 and 9 of this Subchapter, any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.~~

"Dispersion technique" means for purposes of OAC 252:100-8-1.5 any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height; varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters or combining exhaust gases from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include:

(A) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.

(B) The merging of exhaust gas streams where:

(i) the source owner or operator documents that the facility was originally designed and constructed with such merged streams;

(ii) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from "dispersion technique" applicability shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(iii) before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation existed prior to the merging, there was an increase in the quantity of pollutants actually emitted prior to the merging, it shall be presumed that merging was primarily intended as a means of gaining emissions credit for greater dispersion. Before such credit can be allowed, the owner or operator must satisfactorily demonstrate that merging was not carried out for the primary purpose of gaining credit for greater dispersion.

(C) Manipulation of exhaust gas parameters, merging of exhaust gas streams from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise in those cases where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emission limitations and emission standards" means for purposes of OAC 252:100-8-1.5 requirements that limit the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous reduction.

~~"Emissions unit" means, for purposes of Parts 7 and 9 of this Subchapter, any part of a source which emits or would have the potential to emit any pollutant subject to regulation.~~

~~"EPA" means the United States Environmental Protection Agency.~~

~~"Fugitive emissions" means, for purposes of Parts 7 and 9 of this Subchapter, those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.~~

~~"National Emission Standards for Hazardous Air Pollutants" or "NESHAP" means those standards found in 40 CFR Parts 61 and 63.~~

"Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~"Necessary preconstruction approvals or permits" means, for purposes of Parts 7 and 9 of this Subchapter, those permits or approvals required under all applicable air quality control laws and rules.~~

~~"New Source Performance Standards" or "NSPS" means those standards found in 40 CFR Part 60.~~

~~"Part 70 permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.~~

~~"Part 70 program" means a program approved by the Administrator under 40 CFR Part 70.~~

~~"Part 70 source" means any source subject to the permitting requirements of Part 5 of this Subchapter, as provided in OAC 252:100-8-3(a) and (b).~~

~~"Potential to emit" means, for purposes of Parts 7 and 9 of this Subchapter, the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.~~

"Secondary emissions" means, for purposes of Parts 7 and 9 of this Subchapter, emissions which occur as a result of the construction or operation of a major stationary source or modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- (A) emissions from trains coming to or from the new or modified stationary source; and,
- (B) emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or modification.

"Stack" means for purposes of OAC 252:100-8-1.5 any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

~~"Stationary source" means, for purposes of Parts 7 and 9 of this Subchapter, any building, structure, facility or installation which emits or may emit any air pollutant subject to OAC 252:100.~~

"Visibility impairment" means any humanly perceptible reduction in visibility (light extinction, visual range, contrast, and coloration) from that which would have existed under natural conditions.

**REGULAR MEETING AGENDA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OKLAHOMA ENVIRONMENTAL QUALITY BOARD**

A Public Meeting: 9:30 a.m., Friday, February 24, 2006
DEQ Multipurpose Room
707 North Robinson
Oklahoma City, Oklahoma

Please silence cell phones.

1. **Call to Order** – Steve Mason, Chair
2. **Roll Call** – Myrna Bruce, Secretary, Board & Councils
3. **Approval of Minutes** of the November 15, 2005 Regular Meeting
4. **Election of Officers** – Election of Chair and Vice-Chair for calendar year 2006
5. **Rulemaking – OAC 252:20 Emergency Planning and Community Right to Know**
The proposed amendments generally require Tier II forms to be submitted to the DEQ electronically via the DEQ website and require inclusion of latitude/longitude information on the forms. Additional amendments clarify that submitting a paper Tier II report to the appropriate Local Emergency Planning Committee and the local Fire Department is no longer necessary since the DEQ will make the information available to those entities. Fee rules have been restructured to more closely reflect potential risk to the community, to fund DEQ costs for providing one-stop filing as requested by the regulated community and to provide funds to assist LEPCs in using Tier II data.
 - A. Presentation – Judy Duncan, Director, Customer Services Division
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption
6. **Rulemaking – OAC 252:100 Air Pollution Control**
 - The proposed amendments to Subchapter 4 incorporate by reference federal New Source Performance Standards (NSPS) in 40 CFR Part 60.
 - The proposed amendments to Subchapter 41 incorporate by reference National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR Part 61 and Part 63.
 - Proposed amendments to Subchapter 8 incorporate EPA's revisions to the NSR permitting program under the federal Clean Air Act. The amendments include revisions to the method of determining if a modification to an NSR source is a major modification. Other amendments update and clarify language and move definitions to more appropriate locations within Chapter 100.
 - Proposed new Part 11 of Subchapter 8 incorporates the federal Best Available Retrofit Technology (BART) requirements. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

- A. Presentation – Sharon Myers, Chair, Air Quality Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

7. Rulemaking – OAC 252:300 Laboratory Accreditation

The proposed changes relate to clarification of the accreditation exception for certified laboratory operators; update of method references for drinking water laboratories; addition of new detailed requirements for standard operating procedures and methods manuals; and addition of methods for the petroleum hydrocarbon laboratory category.

- A. Presentation – Brian Duzan, Chair, Laboratory Services Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

8. Rulemaking – OAC 252:305 Laboratory Services

The proposed changes relate to the fees for laboratory analysis which are charged by the DEQ's State Environmental Laboratory. DEQ has proposed changes based upon a review of actual costs, comparison of similar fees in other states and in the private sector and projections of equipment needs for the future.

- A. Presentation – Brian Duzan, Chair, Laboratory Services Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

9. Rulemaking – OAC 252:410 Radiation Management

The proposed rulemaking changes the fee schedule for radiation machines. Some of the fees would be reduced while others would be increased. The new fees are designed to vary based on risk posed by the machine.

- A. Presentation – David Gooden, Chair, Radiation Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

10. Rulemaking – OAC 252:515 Solid Waste Management

Proposed amendments include:

- minor language clarifications, corrections of legal citations and typographical errors;
- proposed waste tire rule changes; and
- a five-year update, as required by rule, of the unit costs and worksheets in Appendices H and I related to annual estimated financial assurance costs for closure and post-closure of solid waste facilities.

- A. Presentation – Bill Torneten, Chair, Solid Waste Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

11. Rulemaking – OAC 252:606 Oklahoma Pollutant Discharge Elimination System

The Department proposes to update the incorporation by reference of certain federal regulations to July 1, 2005. The update includes the adoption of the Phase II Cooling Water Intake Rules.

- A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

12. Rulemaking – OAC 252:611 General Water Quality

The Department proposes to update the incorporation by reference of certain federal regulations to July 1, 2005.

- A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

13. Rulemaking – OAC 252:616 Industrial Wastewater Systems

A change is proposed to the requirements for sand and gravel mining operations to obtain a permit.

- A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

14. Rulemaking – OAC 252:631 Public Water Supply Operation

The Department proposes to update the incorporation by reference of certain federal regulations to July 1, 2005.

- A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

15. Rulemaking – OAC 252:690 Water Quality Standards Implementation

The Department proposes to update the incorporation by reference of certain federal regulations to July 1, 2005. The update includes the adoption of the Phase II Cooling Water Intake Rules.

- A. Presentation – Lowell Hobbs, Chair, Water Quality Management Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

16. Rulemaking – OAC 252:710 Waterworks & Wastewater Works Operator Certification

The proposed amendments reflect language clarifications and corrections of typographical errors. Included is clarification of the certification requirement for plumbing contractors.

- A. Presentation – Allen McDonald, Chair, Waterworks & Wastewater Works Advisory Council
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote on permanent adoption

17. Briefing on and discussion of current Board vacancy and factors affecting candidate field

- A. Background – Steve Mason, Chair, and Steve Thompson, Executive Director
- B. Discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible resolution or other action by the Board

18. Discussion of need for four regularly scheduled Board meetings per year

- A. Background – Steve Mason, Chair, and Steve Thompson, Executive Director
- B. Discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and possible action by the Board, which may include roll call vote to direct DEQ staff to initiate rulemaking action

19. New Business (any matter not known about and which could not have been reasonably foreseen prior to the time of posting of agenda)

20. Executive Director's Report – Steve Thompson

21. Adjournment

Next Meetings: June 20 in Weatherford; August 22 in Ardmore; November 14 in Stillwater.

Public Forum (after adjournment): The Board meets at different locations across the State to hear the views and concerns of all Oklahomans about environmental issues. This opportunity is informal, and we invite you to sign the register to speak.

If you desire to attend but need an accommodation due to a disability, please notify the DEQ three days in advance at 405-702-7100. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

Some members of the Board and senior staff members from DEQ will meet for dinner in Oklahoma City the evening of February 23. This is a social occasion. It is uncertain whether a majority of the Board will be present, but no Board or DEQ business will be conducted.

SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO SUBCHAPTER 1 AND SUBCHAPTER 8,
PARTS 1, 5, 7 AND 9

COMMENTS RECEIVED PRIOR TO OR AT THE
JULY 20, 2005, AIR QUALITY COUNCIL MEETING

Written Comments

Trinity Consultants – Letter dated July 1, 2005, signed by Donald C. Whitney, P.E.
Consulting Manager

1. **COMMENT:** The terms "Part 70 permit", "Part 70 program", and "Part 70 source" have been moved from Section 8-1.1 of Subchapter 8 to Subchapter 1 as general terms which could affect other Subchapters within OAC 252:100. These terms should be replaced with the commonly used terms "Title V permit", "Title V program", and "Title V source".

RESPONSE: "Part 70" is the appropriate term. Title V refers to the enabling Act (the Federal Clean Air Act) requiring EPA to promulgate a major source permitting program (the Part 70 permitting program). EPA has delegated the Part 70 program for Oklahoma to DEQ.

2. **COMMENT:** The title of Subchapter 8 should be changed to "Permits for Major Sources."

RESPONSE: After due consideration, the DEQ has determined that "Permits for Part 70 Sources" is the more appropriate title since some Part 70 sources are not major sources.

3. **COMMENT:** The definitions for "affected source" and "affected unit" should be removed from OAC 252:100-8-2. This is an obsolete usage that needs to be purged from the rules. There is no reason to exclusively apply the term "affected source" or "affected unit" to the Acid Rain Program. The term is widely used in other regulations including the NSPS and NESHAP Programs. The title of paragraph 252:100-8-5.3 should be changed from "Special provision for affected (acid rain) sources" to "Special provisions for acid rain sources."

RESPONSE: OAC 252:100-8-2 specifically limits the definitions contained therein to use in Part 5 of 252:100-8. That being the case the definitions of "affected source" and "affected unit" in OAC 252:100-8-2 have no bearing on the use of these terms in other rules, regulations, or programs. While these terms may be widely used in other regulations including the NSPS and NESHAP programs, they are usually defined in those programs. For example, NSPS uses and defines the term "affected facility". The terms "affected unit" and "affected source" are still defined in 40 CFR 70.2 and used in Part 70. The terms are also defined in 40 CFR 72.2 and used in Part 72. Therefore, the terms are not obsolete and do not need to be purged from the rule. Neither OAC 252:100-8-2 or

252:100-8-5.3 is part of the NSR reform revisions and was not included in the Notice for the July 20, 2005, Air Quality Council meeting.

4. **COMMENT:** On June 24, 2005, the DC Circuit Court of Appeals rejected the "Clean Unit" and "Pollution Control Project" exemptions under the EPA proposed NSR Reforms. Both of these terms are used extensively in the proposed version of the AQD draft and thus will likely need to be revised.

RESPONSE: The proposed modifications to Parts 7 and 9 of Subchapter 8 have been revised to reflect the Court decision.

5. **COMMENT:** Several sections of the proposed rule contain references to exemption procedures that apply to sources with applications submitted around 20 years ago and seem to have no relevance in current rules. These should be eliminated unless there is some way in which these provisions could apply to new construction or modifications. For historical references these exemptions will still be available in previous versions of the rules, but there is no reason to burden the current rules. The following subsections fall in this category: OAC 252:100-8-33(d) through (g); and 252:100-8-35(c)(1)(E)(i); and (ii).

RESPONSE: The requirements in OAC 252:100-8-33(d) through (g) and 252:100-8-35(c)(1)(E)(i) and (ii) are still contained in 40 CFR 51.166 and/or 52.21(i)(7). Since there may be facilities in existence that relied on these exemptions, the exemptions shouldn't be deleted from the rule.

6. **COMMENT:** OAC 252:100-8-34(a) contains general requirement to comply with rules and regulations under 40 CFR Parts 60 and 61. Why only mention these two parts? What about Parts 63, 64, 68, 72, 75, 82 etc.? It seems that this paragraph is unnecessary since it is widely understood that compliance is expected with all applicable regulations.

RESPONSE: This language is exactly the same as that in 40 CFR 51.166(j)(1). OAC 252:100-8-30(a)(4) states that the requirements of 252:100-8, Parts 1, 3, and 5 also apply to the construction of all new major stationary sources and major modifications. This means that Part 70 requirements apply to the PSD construction permit and therefore the permit will require compliance with all applicable state and federal rules.

Environmental Protection Agency, Region 6 – e-mail received July 13, 2005, from Stanley M. Spruill

7. **COMMENT:** On June 24, 2005, the D.C. Circuit Court of Appeals released its decision on NSR Reform. The court vacated the provisions for Clean Units and Pollution Control Projects and remanded the recordkeeping provisions to EPA to provide an acceptable explanation for its "reasonable possibility" standard or to devise an appropriate alternative. The DEQ should not adopt the vacated provisions into its program. EPA is currently evaluating the court decision and their next step regarding the remanded recordkeeping provisions.

RESPONSE: DEQ is aware of the Court's decision and has revised the proposed

rule accordingly.

8. **COMMENT:** ODEQ proposes to remove the definitions of "Act," "Administrator," "EPA," "NESHAP," "NSPS," "Part 70 permit," "Part 70 program," "Part 70 source," and "secondary emissions" from OAC 252:100-8-1.1. ODEQ should provide clarification of its reasons for removing these definitions. If the terms are defined elsewhere in the ODEQ program they should specify where.

RESPONSE: DEQ proposes to move the definitions in question to OAC 252:100-1-3. These definitions are general in nature and the terms are used in more than one subchapter in Chapter 100, therefore, they should be in Subchapter 1.

9. **COMMENT:** The State should correct a typographical error in OAC 252:100-8-30(a)(1) as follows: "The requirements of this Part shall apply to the construction of any new major stationary source or major modification of any project..."

RESPONSE: The proposed revision states "The requirements of this Part shall apply to the construction of any new major stationary source or major modifications or any project at an existing major stationary source in an area designated as attainment or unclassifiable under...". In the December 31, 2002, Federal Register (67 FR 80260), 40 CFR 51.166(a)(7)(i) states "The requirements of this section apply to the construction of any new major stationary source (as defined in paragraph (b)(1) of this section) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under sections 107(d)(1)(A)(ii) or (iii) of the Act." "Major modification" was added to that statement because it is not clear that "project" and "major modification" are the same. DEQ's proposed rule is referring to the "major modification" of the facility not the major modification of a project (project is defined as "...a physical change in, or change in method of operation of, an existing major stationary source."). OAC 252:100-8, Part 7 is applicable to major stationary sources, major modifications to major stationary sources, and to projects at major stationary sources. This being the case, there is no typographical error in OAC 252:100-8-30(a)(1).

10. **COMMENT:** The definition of "baseline actual emissions" in OAC 252:100-8-31 differs from the Federal definition as follows:
- (a) The proposed definition does not distinguish between the baseline actual emissions of an electric utility steam generating unit (EUSGU) and an emissions unit that is not an EUSGU.
 - (b) Paragraph (A) of the proposed definition requires use of a 24-month period within the last five years to determine the baseline actual emissions for non-EUSGU emissions units while the Federal definition allows the use of a 24-month period within the last ten years for this purpose.
 - (c) Paragraph (A) of the proposed definition also allows use of a different time period within the last 10 years for non-EUSGU emissions units if it is demonstrated to be more representative of baseline actual emissions.
 - (d) Paragraph (A)(i) of the proposed definition requires a source to include

authorized emissions associated with start-ups and shutdowns in the baseline actual emissions, and to exclude excess emissions or emissions associated with upsets or malfunctions from the baseline actual emissions. The Federal rule requires inclusion of emissions from startups, shutdowns, and malfunctions in the determination of baseline actual emissions.

- (e) The proposed definition has no provision corresponding to 40 CFR 51.166(b)(47)(ii)(c) which requires that the baseline actual emissions for a non-EUSGU be adjusted downward to exclude emissions that exceed any currently applicable emissions limitation.
- (f) Paragraph (C) of the proposed definition requires that the baseline actual emissions for a PAL be determined as described in paragraph (A) of the definition. In order for paragraph (C) to meet Federal requirements, the DEQ must address the items of concern identified for paragraphs (A)(i) and the lack of provision corresponding to 40 CFR 51.166(b)(47)(ii)(c).

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

11. **COMMENT:** The definition of "baseline area" in OAC 252:100-8-31 refers to "interstate areas" whereas the Federal rule refers to "intrastate areas".

RESPONSE: The term should be "intrastate areas". This typographical error has been corrected.

12. **COMMENT:** The definition of "low terrain" refers to "high terrain", but there is no definition of "high terrain" in OAC 252:100-8-31.

RESPONSE: The term "high terrain" is defined in OAC 252:100-8-31.

13. **COMMENT:** The proposed definition of "net emissions increase" in OAC 252:100-8-31 differs from the Federal definition. The DEQ proposes to remove the word "replacement" from paragraph (G). This change would make the 180-day shakedown period provided in 40 CFR 51.166(b)(3)(vii) available to all emissions units. DEQ needs to show that the rule with this revised definition is at least as stringent as the Federal requirement.

RESPONSE: The word "replacement" has been replaced in paragraph (G) of the definition of "net emissions increase".

14. **COMMENT:** The proposed definition of "projected actual emissions" in OAC 252:100-8-31 differs from the Federal definition. DEQ omitted in paragraph (A) the provision that projected actual emissions are based upon full utilization of the unit if full utilization would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

RESPONSE: The suggested language has been added to the definition of "projected actual emissions".

15. **COMMENT:** The proposed definition of "regulated NSR pollutant" states that any pollutant regulated under § 112(r) of the Act is not a regulated NSR pollutant. This is not in the Federal definition.

RESPONSE: The preamble to the NSR Reform states on Page 80340 that pollutants listed under section 112(r) of the Act are not included in the definition of regulated NSR pollutant (67 FR 80240). These pollutants may still be subject to PSD provisions if the pollutant is otherwise regulated under the Act. The contents of the preambles to EPA rules are often given equal weight with the actual rules. That being the case, it is appropriate to add this exclusion to the definition of regulated NSR pollutant.

16. **COMMENT:** The proposed definition of replacement unit has no language corresponding to 40 CFR 51.166(b)(32)(iii), possibly because the Federal rule refers to paragraph (v)(2) which is part of the routine maintenance repair and replacement provisions which are currently stayed. DEQ could address this concern by omitting the reference to paragraph (v)(2) and proposing the following language: "The replacement unit does not alter the design parameters of the process unit."

RESPONSE: The suggested language has been added to the definition of "replacement unit" as paragraph (C).

17. **COMMENT:** DEQ did not propose definitions of the following terms which are in 40 CFR 51.166(b): "building, structure, facility, or installation"; "federally enforceable"; "secondary emissions"; "volatile organic compounds"; "reviewing authority"; or "lowest achievable emission rate (LAER)". If these terms are defined elsewhere in the regulations DEQ must identify where.

RESPONSE: The definitions of "building, structure, facility, or installation" and "volatile organic compounds" or "VOC" are currently located in OAC 252:100-1-3. The DEQ proposes to move the definition of "secondary emissions" from OAC 252:100-8-1.1 to 252:100-1-3 and the definition of "lowest achievable emission rate" or "LAER" from 252:100-8-51 to 252:100-8-1-3 and to add the definition of "federally enforceable" to 252:100-1-3. These definitions are general in nature and the terms appear in more than one subchapter in Chapter 252:100, therefore, they should be in Subchapter 1. The term reviewing authority is not used in OAC 252:100-8, Parts 7 and 9.

18. **COMMENT:** OAC 252:100-8-35(b)(2) differs from 40 CFR 51.166(l)(1). The proposed rule does not provide that when an air quality model as specified under (b)(1) is inappropriate, the use of a modified or substituted model must have written approval from the EPA Administrator and that such modified or substituted model must be subject to notice and opportunity for public comment under § 51.102.

RESPONSE: OAC 252:100-8-35(b)(2), which is currently 252:100-8-35(e)(2), is not Part of the NSR Reform. The requirement that when an air quality model as specified under (b)(1) is inappropriate, the use of a modified or substituted

model must have written approval from the EPA Administrator and that such modified or substituted model must be subject to notice and opportunity for public comment under § 51.102, is not in our existing rule. DEQ proposes to add these requirements in 252:100-8-35(b)(2).

19. **COMMENT:** OAC 252:100-8-35.2 regarding additional impact analysis has no provisions which correspond to 40 CFR 51.166(o)(2) which requires an analysis of the air quality impact projected for the area as the result of general commercial, residential, industrial, and other growth associated with the source or modification.

RESPONSE: OAC 252:100-8-35.2(a) requires permit applications to contain an analysis of the projected air quality impact and impairment to visibility, soils, and vegetation as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

20. **COMMENT:** The proposed revision does not contain provisions that correspond to 51.166(r)(7) that provide that the "owner or operator of a source shall make information required to be documented and maintained pursuant to paragraph (r)(6) of § 51.166 available for review upon request for inspection by the reviewing authority or the general public pursuant to the requirements contained in § 70.4(b)(3)(viii) of this Chapter."

RESPONSE: OAC 252:100-8-36.2(c)(6) requires the owner or operator of the source to make the information required to be documented and maintained by 252:100-8-36.2(c) available for review upon request for inspection by the Director or the general public. OAC 252:100-8-36.2(c) contains the requirements that are in 40 CFR 51.166(r)(6).

21. **COMMENT:** In OAC 252:100-8-40(a) ODEQ proposes to incorporate by reference the requirements of § 51.166(w), as promulgated 12/31/2002. EPA revised § 51.166(w) on November 7, 2003, and this should be included in the rule.

RESPONSE: The incorporation by reference date has been changed to January 2, 2006.

22. **COMMENT:** In OAC 252:100-8-40(d) it is not clear what DEQ means by stating that the definitions of "major modification", "pollution control project", and "projected actual emission" are synonymous with the definitions of these terms in OAC 252:100-8-31.

RESPONSE: This means that for the DEQ NSR program, when these terms are used in 40 CFR 51.166(w), which is incorporated by reference in OAC 252:100-8-38(a), the meaning of said terms will be that in OAC 252:100-8-31 or 51 and not that in 40 CFR 51.166(b).

23. **COMMENT:** DEQ should provide its reasons for deleting the term "lowest

achievable emissions rate" from OAC 252:100-8-51. If this term is defined elsewhere in DEQ's program, they should specify where.

RESPONSE: DEQ proposes to move the term "lowest achievable emissions rate" or "LAER" to OAC 252:100-1-3 since this term is used in more than one subchapter of Chapter 252:100.

24. **COMMENT:** Paragraph (A)(i) of The definition of "major modification" in OAC 252:100-51 identifies VOC as the only precursor to ozone. Section § 182(f)(1) of the Federal Clean Air Act provides that plan provisions for nonattainment areas required for VOC "shall also apply to major sources... of nitrogen oxides." DEQ should revise this provision to identify both VOC and NO_x as ozone precursors.

RESPONSE: (A)(i) of the definition of "major modification" in OAC 252:100-8-52 has been revised to include oxides of nitrogen.

25. **COMMENT:** The proposed definition of "net emissions increase" in OAC 252:100-8-51 differs from the Federal definition. DEQ proposes to remove the word "replacement" from paragraph (F). This change would make the 180-day shakedown period provided in 40 CFR 51.165(a)(1)(vi)(F) available to all emissions units. DEQ needs to show that the rule with this revised definition is at least as stringent as the Federal requirement.

RESPONSE: The word "replacement" has been replaced in the definition of the definition of "net emissions increase".

COMMENTS RECEIVED AT THE SEPTEMBER 9, 2005 PUBLIC WORKGROUP MEETING

Oral Comments

A workgroup meeting was held on September 9, 2005, at the DEQ building to hear comments from the public regarding the proposed revisions to Parts 7 and 9 of Subchapter 8 to incorporate the NSR Reform requirements. The majority of the comments received concerned the differences between the proposed State rule and the Federal rule in 40 CFR 51 Parts 165 and 166 regarding the definition of "actual baseline emissions". The attendees made the following comments.

26. **COMMENT:** Regarding the 10-year look back period in the definition of "actual baseline emissions":
- (a) Several commenters proposed that the 10-year look back provided by the Federal rule for all sources except EUSGU be added to the DEQ's definition. This would allow the owners or operators of a source to use any consecutive 24-month period within the 10 years immediately preceding the beginning of actual construction as the actual baseline emissions.
 - (b) Commenters stated that many companies already had adequate records for this 10-year look back, and in a few years most companies could have adequate records.

- (c) Because of turn-arounds and scheduled shutdowns, a five-year look back might not allow a company to use the most representative data. Also economic downturns could necessitate a look-back period longer than 5 years in order to use representative data.
- (d) Although the DEQ rule allows the use of a different time period, not to exceed 10 years immediately preceding the date that a complete application is received by the Division, commenters were concerned that this was not automatic and therefore subject to bias of the Division.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

27. **COMMENT:** Regarding the definition of "actual baseline emissions" commenters noted that the Federal definition allows the owner or operator to use a different consecutive 24-month period for each pollutant. The DEQ rule requires the owner or operator to use the same consecutive 24-month period for each pollutant. Several commenters proposed that the definition in OAC 252:100-8-31 be changed to allow the use of a different consecutive 24-month period for each pollutant stating that among other things, this would be useful for the development of a PAL at a facility.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

**COMMENTS RECEIVED PRIOR TO OR AT THE
OCTOBER 19, 2005, AIR QUALITY COUNCIL MEETING**

Written Comments

Trinity Consultants – Letter dated October 6, 2005, signed by Donald C. Whitney, P.E. Consulting Manager

28. **COMMENT:** OAC 252:100-1-3 contains the definitions of "Part 70 Permit/Program/Source." In actual practice among EPA, industry, other states, and even within DEQ, the term "Title V" is used in preference to "Part 70". If the DEQ staff feels that it is necessary to continue with the Part 70 rule terminology, perhaps a clarification could be added to the effect that "Part 70" is synonymous with "Title V." Similar wording is used elsewhere in DEQ rules such as OAC 252:100-8-38(c).

RESPONSE: As stated before (see the Response to Comment #1 of this document), the DEQ feels that "Part 70" is the proper term. "Part 70" refers to the permitting and regulatory scheme as set forth in 40 CFR Part 70. "Title V" refers to Title V of the Federal Clean Air Act which authorizes the development of the Part 70 program.

29. **COMMENT:** OAC 252:100-8-30(b)(4) describes the actual-to-potential test for

new emissions units. Potential emissions are to be compared to "...baseline actual emissions of these units before the project..." How can previous emissions be other than zero for a new unit? If this is what is meant, perhaps a parenthetical note could be added for clarification.

RESPONSE: The Paragraph (B) of the definition of "baseline actual emissions" states that, "For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes shall equal the unit's potential to emit."

30. **COMMENT:** OAC 252:100-8-38(a) incorporates by reference 40 CFR 51.166(w) as it exists on January 6, 2006. Previous and current DEQ rules incorporating Federal regulations by reference have always used past dates. Is there a reason to use a future date rather than a past date?

RESPONSE: Since staff does not anticipate forwarding the proposed revision to the Environmental Quality Board until after the January 2006 Air Quality Council Meeting, the January 6, 2006, date will be a past date.

31. **COMMENT:** Since the current Oklahoma DEQ rules do not specifically mention the past-actual to future-potential test for PSD/NSR, it should be possible to immediately implement the new past-actual to future-actual test for existing units (modification).

RESPONSE: The "past actual to future actual" test is a significant change from DEQ's current PSD/NSR permitting process. Such a substantive change requires a rulemaking action with public notice and the opportunity for comment.

32. **COMMENT:** OAC 252:100-8-8 contains the rules governing review of Tier II permits by EPA and affected states. This section allows EPA Region 6 to review and comment on draft/proposed permits for up to 45 days. In practice or by policy EPA has maintained that their 45-day period begins after the 30-day public comment period. On a case-by-case basis, EPA has allowed permit applicants to request (through DEQ) concurrent review by EPA. This extended process of sequential EPA review is unnecessary and should be terminated for the following reasons:

- (a) There seems to be no basis in State or Federal rules for sequential EPA review of permits after the public review.
- (b) EPA has very rarely provided objections or any comments on permits from Oklahoma.
- (c) EPA has maintained that they want to be able to consider any comments from public review and how DEQ addressed those comments when they make their review. As a practical matter, very few permits submitted to public review receive any written comments at all and even fewer substantive comments. Any public comments must be received within 30 days of the public notice. DEQ can in most cases rapidly respond to those and still leave EPA with about 15 days for further review of the comments.

An extra 45 days of the review process for EPA has been shown by experience to have no beneficial environmental or public review effect while significantly

delaying the start of all Tier II and Tier III projects. DEQ could eliminate needless permit processing delays by informing EPA Region 6 that henceforth all permits with public review will be concurrent with EPA review. In the case of the few permits which receive comments. EPA could be given extra review time if necessary.

RESPONSE: At this time OAC 252:100-8-8 is not undergoing revision. The DEQ does not agree with the comments. It is the DEQ's position that both State and Federal rules require the sequential EPA review of the permits after the public review.

Environmental Protection Agency, Region 6 – e-mail received October 11, 2005, from Stanley M. Spruill

33. **COMMENT:** OAC 252:100-8-55(c) requires compliance with the requirements of 40 CFR 51.165(a)(6) as they exist on January 2, 2006. As it currently exists, 40 CFR 51.165(a)(6) provides that its requirement apply to "projects at existing emissions units at a major stationary source (other than projects at a Clean Unit or at a source with a PAL)" DEQ needs to revise OAC 252:100-8-55(c) to remove the reference to "Clean Unit."

RESPONSE: The DEQ intends to ask that the hearing on the proposed revisions to Parts 7 and 9 of Subchapter 8 be continued to the January 2006 Air Quality Council meeting so that staff can address this problem.

34. **COMMENT:** The Court remanded the recordkeeping provisions, but ODEQ proposes to retain the "reasonable possibility" provisions in OAC 252:100-8-36.2(c) and 252:100-8-55(c). OAC 252:100-8-55(c) requires a major stationary source to comply with 40 CFR 51.165(a)(6) in existence on January 2, 2005. 40 CFR 51.165(a)(6) currently contains the "reasonable possibility" program. To date, EPA has not responded to the court's remand on the recordkeeping issue. In promulgating its final rule, EPA urges Oklahoma to consider the issues discussed in the Court's opinion. If DEQ is aware of provision in its rules that address concerns of the Court, it should identify these provisions and explain how they address the issues identified by the Court.

RESPONSE: The DEQ is preparing a revision that will resolve the recordkeeping problem and intends to ask that the hearing be continued to the January 2006 Air Quality Council meeting to allow time for this revision to be completed and to allow for public comments.

35. **COMMENT:** States may adopt regulations that are different from but equivalent to, the Federal rule. In such cases, the State must demonstrate that such provision is at least as stringent as the revised base Federal program. The DEQ rule proposed on September 15, 2005 contains two definitions that differ from the Federal rule: the definition of "baseline actual emissions" and the definition of "regulated NSR pollutant".

(a) The definition of "baseline actual emissions" differs from the Federal rule in the following manner.

- (i) The draft rule does not distinguish between the baseline actual emissions of an electric utility steam generating unit (EUSGU) and an emissions unit that is not an EUSGU. The draft State rule requires use of a 24-month period within the last five years to determine the baseline actual emissions for non-EUSGU. The Federal rule provides for use of a 24-month period within the last ten years to determine the baseline actual emissions for non-EUSGU.
- (ii) The draft State rule allows use of a different time period (within last 10 years) for non-EUSGU if it is demonstrated to be more representative of baseline actual emissions. The Federal rule does not provide use of a "more representative" time period to establish baseline actual emissions at non-EUSGU.
- (iii) The draft State rule includes "authorized emissions associated with start-ups and shutdowns" in the baseline actual emissions and excludes emissions from malfunctions from the baseline actual emissions. The Federal rule requires the baseline actual emissions to include emissions associated with malfunctions, startups and shutdowns. How does DEQ define these "authorized emissions"? How do "authorized emissions" compare with the requirements of 40 CFR 51.166(b)(47)(i)(b) and (ii)(b)-(c)?
- (iv) The draft State rule has no provision corresponding to 40 CFR 51.166(b)(47)(ii)(c) that provides that the baseline actual emissions for a non-EUSGU must be adjusted downward to exclude emissions that exceed any currently applicable emissions limitation
- (v) Paragraph (C) of the ODEQ definition requires that the baseline actual emissions for a PAL be determined as described in paragraph (A) of the definition of baseline actual emissions. In order for paragraph (C) to meet the Federal requirements, the ODEQ must address the items of concern identified above in items (a)(i) through (iv).
- (b) In the definition of "regulated NSR pollutant" the draft State rule provides that any pollutant regulated under §112(r) of the Act is not a regulated NSR pollutant. This is not in the Federal definition of "regulated NSR pollutant" in 40 CFR 51.166(b)(49).

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

36. **COMMENT:** DEQ should provide clarification of its reasons for removing the following definitions from 252:100-8-1.1. If these terms are defined elsewhere, DEQ should specify where they are defined. The terms are: act, administrator, EPA, National Emissions Standards for Hazardous Air Pollutants or NESHAP, New Source Performance Standards or NSPS, Part 70 permit, part 70 program, part 70 source, and secondary emissions.

RESPONSE: See the Response to Comment # 8.

37. **COMMENT:** DEQ does not propose definition of the following terms which are in 40 CFR 51.166(b): building, structure, facility, or installation; federally

enforceable; secondary emissions; volatile organic compounds; reviewing authority; and lowest achievable emission rate (LAER). DEQ must identify where these terms are defined in its regulations or demonstrate that its program is at least as stringent as the Federal requirements.

RESPONSE: See the Response to Comment # 17.

38. **COMMENT:** DEQ must explain why it is removing the definition of lowest achievable emissions rate from 252:100-8-51 or specify where it is located.

RESPONSE: See the Response to Comment # 23.

39. **COMMENT:** DEQ should correct a typographical error in OAC 252:100-8-30(a)(1) as follows: "The requirements of this Part shall apply to the construction of any new major stationary source or major modification of any project ..."

RESPONSE: This is not a typographical error. See Response to Comment # 9.

40. **COMMENT:** It is not clear what the provision in OAC 252:100-8-40(d) means. This provision cites several terms and states that their use is synonymous with the term in another section. DEQ needs to make clear how these terms relate to PAL. For example: use of "major modification" in OAC 252:100-8-31 is different from how "modification" is used under the PAL provisions.

RESPONSE: OAC 252:100-8-40(d) has been renumbered 252:100-8-38(c). The DEQ understands that the term "PAL major modification" is defined and used in 40 CFR 51.166(w). It is not our intention in 252:100-8-38(c) to replace the use of "PAL major modification" with the definition of "major modification" contained in 252:100-8-31.

Terra Nitrogen, Limited Partnership – Letter dated October 14, 2005, received via e-mail on October 17, 2005, signed by Jim Schellhorn. Director Environmental, Health & Safety

Holcim (US) Inc. – Letter dated October 14, 2005, received via e-mail, dated October 17, 2005, signed by Meg Garakani, PhD, P.E., Environmental Affair Department

Since the concerns expressed by Terra Nitrogen, Limited Partnership and by Holcim (US) Inc., were similar, they have been combined in the following comments.

41. **COMMENT:** As currently proposed, the revisions to the NSR requirements in Part 7 of Subchapter 8 are significantly more stringent than corresponding provisions in the revised NSR regulations promulgated by the U.S. EPA. As a result, industry located in Oklahoma could be placed in a competitive and economic disadvantage with industry located in neighboring states depending on how those states revise their NSR regulations. Further this disadvantage could likewise negatively impact future industrial development and employment in the State as a result of industry electing to locate or move outside of Oklahoma.

RESPONSE: The original proposal was given further analysis and

consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

42. **COMMENT:** The definition of "baseline actual emissions" is more stringent than the corresponding EPA definition and removes needed flexibility to account for cyclical operations, market fluctuations, economic factors, etc, and potentially subjects industry in Oklahoma to an undefined determination of what emissions are or are not "more representative of normal source operation" further confusing (rather than clarifying) the permit process. There are three distinct and significant differences between the definition proposed by the DEQ as the EPA definition.

- (a) Reduction of the "look back" period from ten to five years. The DEQ definition allows the use of a 10-year period preceding the submittal of a complete permit application if the Director determines the 10-year period if more representative of normal operation.
- (b) Requirement that the same 24-month period be utilized for all pollutants. The NSR Reform specifically authorizes the use of a different consecutive 24-month period for each regulated pollutant. The DEQ definition will required the same 24-month period be used for all pollutants, regardless of whether multiple emissions units are involved with the project. This change is believed to result in the DEQ's regulations being more stringent than the NSR Reform counterpart with no specific reason or basis being identified.
- (c) Removal of upset/malfunction emissions from the "average rate". The language in the DEQ definition is somewhat confusing and differs from the language used by EPA. Specifically, emissions from start-ups and shutdowns are included if they are "authorized", however excess emissions or emissions associated with upsets or malfunctions are not included, regardless of whether or not they result in noncompliant emissions. Pursuant to EPA's definition of "baseline actual emissions" in 40 CFR 51.166(b)(47)(i)(a) and (ii)(a), emissions associated with startups, shutdowns, and malfunctions are to be included in the determination of the "average rate" of past emissions so long as the average rate of emissions is adjusted downward to exclude any non-compliant emissions. As written, it appears the DEQ is seeking to prevent the use of "unauthorized" and/or excess emissions (i.e., those which are not specifically authorized by permit or applicable requirements). However, the proposed language goes further and excluded "emissions associated with upsets or malfunctions". An emissions unit can experience an upset or "malfunction" but remain in compliance with the permit and/or applicable requirements. As emissions from upsets and malfunctions represent actual emissions which are potentially quantifiable, there does not appear to be any reason to exclude them from the determination of the "average rate" of emissions. Further, to the extent an upset or malfunction results in excess emissions, paragraph (A)(ii) of the definition of "baseline actual emissions" specifically excludes such noncompliant emissions from the "average rate" of emissions. Based on the above, the definition of "baseline actual emissions" should be revised.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

43. **COMMENT:** The definition of "adverse impact on visibility" specified in OAC 252:100-8-1.1 does not indicate that the relevant determination must be made by the DEQ as is specified in the current definition in OAC 252:100-8-31.

RESPONSE: This was a typographical error. It was not DEQ's intention to make a substantive change to the definition of "adverse impact on visibility" when moving it to OAC 252:100-8-1.1. The definition will be corrected to indicate that the determination must be made by the DEQ.

44. **COMMENT:** Regarding the applicability of the NSR requirements under OAC 252:100-8-30(a)(1), the proposed rule lists the following three categories of activities that are indicated as triggering NSR applicability: (1) any new major stationary source, (2) any major modification, and (3) any project at an existing major stationary source. This language is inconsistent with 40 CFR 52.166(a)(7)(i) which lists (1) any new major stationary source or (2) any project at an existing major stationary source. What is DEQ's rationale/reasoning for inclusion of "any major modification" in the DEQ's proposed rule?

RESPONSE: See the Response to Comment # 9.

45. **COMMENT:** The proposed definition of "best available control technology" specified in OAC 252:100-8-31 references emissions limitations and specifically identifies "visible emissions standards". Notwithstanding such reference, please confirm that a BACT determination for visible emissions standards will not be required for a new "major stationary source" or a "major modification". Visible emissions are not defined as a regulated NSR pollutant and no significance level has been set for them. Therefore, "visible emissions and/or opacity" should not be considered to be a "regulated NSR pollutant" for purposes of BACT requirements and the proposed definition of "best available control technology" in OAC 252:100-31 should be modified to delete this requirement. The definition of "Regulated NSR pollutant" should be amended to specifically exclude any reference to opacity and/or visible emissions.

RESPONSE: The definition of "best available control technology" contained in 40 CFR 51.166(b)(12) also references emissions limitations and specifically identifies "a visible emissions standard". The reference to "visible emissions standards" specified in 40 CFR 51.166(b)(12) has been a part of EPA's definition of "best available control technology" since 1977.

46. **COMMENT:** Throughout the proposed revision to Parts 7 and 9 of Subchapter 8, whenever there is an incorporation by reference of federal rules, the date used is January 2, 2006. Since this date is in the future and no one can be sure of what, if any, changes may be forthcoming from EPA or result from ongoing litigation over the NSR Reform, how can the Air Quality Council make an informed decision to approve the incorporation of certain federal regulations while not knowing what those regulations will provide.

RESPONSE: See the Responses to Comments #21 and # 30.

47. **COMMENT:** The State of Oklahoma is currently classified as "attainment" or "unclassified" regarding the National Ambient Air Quality Standards; therefore, a thorough review of the proposed revisions to Part 9 (nonattainment provisions) of Subchapter 8 was not made. To the extent the proceeding comments are equally applicable to Part 9, DEQ is requested to amend the proposed Part 9 provisions as well.

RESPONSE: Any changes to the proposed revision to Part 7 of Subchapter 8 that also apply to Part 9 of Subchapter 8 will be made.

Oklahoma Independent Petroleum Association (OIPA) – e-mail received on October 17, 2005, from Angie Burchalter, VP of Regulatory Affairs

48. **COMMENT:** Overall, the proposed NSR rules appear to be very onerous and complex. It would be very helpful to the regulated community if DEQ could simply this rule as much as possible and include information in the rule instead of requiring the regulated community to go to the Clean Air Act or other sources to obtain information or determine how to comply with the rule.

RESPONSE: Because of EPA's strict adherence to the requirement that State NSR regulations closely resemble the Federal regulations DEQ is unable to extensively simplify to proposed rule. Staff agrees that the NSR rule is onerous and complex and regrets being unable to simplify them to any great extent.

49. **COMMENT:** If portions of Oklahoma were to become non-attainment for a specific pollutant in the future, how would minor sources such as oil and gas production sites be impacted by the proposed NSR rules? Would an additional rulemaking be required to address those types of sources?

RESPONSE: This will depend on many factors including the severity of the nonattainment. In some instances the definition of minor source may change. The impact on oil and gas production sites would depend on among other things, the nonattainment pollutant, the severity of the noncompliance with the NAAQS, and the quantity of the nonattainment pollutant emitted. Since nonattainment indicates that existing rules are not sufficient to prevent exceeding the NAAQS, it is likely that additional rulemaking will be required to address the issue.

50. **COMMENT:** 252:100-8-2, definition of "begin actual construction": It is not clear what construction means, for example, does this include moving dirt or moving equipment on site? In other parts of DEQ's rule it appears this definition is clearer. In DEQ's proposed rules, why are there so many varying definitions for the same term?

RESPONSE: The definition of "begin actual construction" in Section 8-2 has not been changed, it has only been moved from Section 8-1.1 to Section 2 because it only applies to Part 70 permitting. Section 8-31 contains definitions of "begin actual construction" and "construction" that apply to PSD (NSR). In general when DEQ's rules contain varying definitions for the same term, it is

because the Federal programs the rules are based on contain different definitions for the same term.

51. **COMMENT:** 252:100-8-31, baseline actual emissions, (A) & (B): What happens if previous baseline information for an existing source is not known for one reason or another? How will this be addressed? Is it a federal requirement for new emissions unit's baseline actual emissions to be equal to the PTE? Why not use actual emissions after an established testing period?

RESPONSE: (A)(iv) of the definition of "baseline actual emissions" states that "The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (A)(ii) of this definition." Paragraph (B) of the definition of "baseline actual emissions" states that for a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero, and thereafter, for all other purposes shall equal the unit's potential to emit. A new emissions unit is defined in Section 8-31 in the definition of "emissions unit" in as any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated. Until an emissions unit has been operating for two years or more there is no continuous 24-month record of emissions on which to calculate "actual baseline emissions".

52. **COMMENT:** 252:100-8-31, Baseline area (A): Please clarify Part A. Also, is the citation to section 107(d)(1)(D) or (E) correct? Area re-designations are located under Section 107(d)(3) of the CAA.

RESPONSE: These citations are the same as those contained in the Federal definition of "Baseline area" at 40 CFR 51.166(b)(15)(ii).

53. **COMMENT:** 252:100-8-31, Baseline area (B): It doesn't appear that TSP been defined prior to its use in this section.

RESPONSE: TSP is defined in Subchapter 1.

Oral Comments Made at The Council Meeting

54. **COMMENT:** Bud Ground, representing EFO stated that he didn't feel that studies such as the Integrity Project should be used as a basis for not allowing a 10-year look back. He also expressed his hope that if a 10-year look back versus a 5-year look back or using a different two year period for each pollutant would benefit the economy of the State, the rule would be written to allow the latitude and flexibility that is now in EPA rule.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

**COMMENTS RECEIVED PRIOR TO THE
JANUARY 18, 2006, AIR QUALITY COUNCIL MEETING**

OG&E Energy Corp – letter received via e-mail received on December 15, 2005, dated December 15, 2005, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst [These comments were based on the September 15, 2005, revision of the proposed rule, rather than the December 15, 2005, revision]

55. COMMENT: The definition of "baseline actual emissions" in 252:100-8-31 should be revised to mirror the Federal requirements which allow the use of a 24-month period within the last ten years for non electric utility steam generating units (EUSGU) and a different 24-month period for each NSR regulated pollutant. To require the same time period for all pollutants may have unintended consequences. Individual pollutants in the stack exhaust do not necessarily change proportionately when operating parameters change. For example, NO_x and CO emissions from a coal-fired boiler are produced by combustion, a major factor being the Btu rating of the fuel and generated load requirements while SO₂ emissions are also influenced by the sulfur content of the fuel. To enable the selection of representative time periods that allow accurate comparisons between baseline actual and future actual emissions, we request that the reference to a single time period be replaced in both the definition of baseline actual emissions contained in 252:100-8-31(A) and in (A)(iii) with language that allows a different consecutive 24-month period to be used for each regulated NSR pollutant.

RESPONSE: The Department has undertaken a study to determine the effects on air pollutant emissions of the use of a 10-year look back period versus a 5-year look back period in determining baseline actual emissions. Based on the results of the study, the Department considered the use of a 10-year look back period in conjunction with the use of current emissions data as required in paragraph (A) of the definition of "baseline actual emissions". The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

56. COMMENT: The term "very clean" as it applies to coal-fired ESGU used in (A)(ii)(X) of the definition of "major modification" is not defined in the proposed rule. It is described in 40 CFR 52.21(b)(38) and the reference or definition should be included in the proposed Subchapter 8.

RESPONSE: The definition of "reactivation of a very clean coal-fired electric steam generating unit" found at 40 CFR 52.21(b)(38) is identical to the definition of "reactivation of a very clean coal-fired electric steam generating unit" in 252:100-8-31.

57. COMMENT: The 3 year contemporaneous period in paragraph (B) of the definition of "net emission increase" should be change to 5 years to reflect the federal requirement, or the basis for a more restrictive time period should be explained to the regulated community.

RESPONSE: The 3-year contemporaneous period has been in the DEQ's PSD rule from its adoption. The shorter time period is not necessarily more restrictive. The Department will give this comment further consideration at a later date since this is not part of the NSR Reform.

58. **COMMENT:** The last 3 words of 252:100-8-32.2(1) ("shall be excluded") should be deleted because they are redundant.

RESPONSE: These last three words were added to make 252:100-8-32.2(1) a complete sentence.

OG&E Energy Corp – letter dated January 4, 2006, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst

59. **COMMENT:** In the second sentence in the definition of "adverse impact on visibility" in 252:100-8-1.1, "DEQ" should be replaced by "the Director". The term "DEQ" is too ambiguous.

RESPONSE: Staff agrees and will propose this change.

60. **COMMENT:** In OAC 252:100-8-30(b) to provide clarity subsection (b) regarding major modifications should be reorganized to place the information that applies to the determination of "significant emissions increase" under one heading and group according to the type of emissions units, *i.e.* whether they are existing or new units.

RESPONSE: Staff will give this suggestion further consideration.

61. **COMMENT:** Paragraph (A) of the definition of "baseline actual emissions" in 252:100-8-31 needs clarification. There are two sentences that seem to contradict each other by referring to two different time periods for determining emissions. The first sentence refers to "any consecutive 24-month period" while the second sentence states "shall be based on current emissions data". It is unclear what is meant by "current emission data". For example, does current mean the most recent available emissions data obtained from either a stack test or other means; and if so, over what time period is the data considered current?

RESPONSE: Staff agrees that use of the term "current emissions data" was unclear and proposed a revision of paragraph (A) to eliminate this confusion. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

Environmental Protection Agency, Region 6 – letter of comments signed by David Neleigh, Chief, Air Permits Section, received via e-mail on January 10, 2006 from Stanley M. Spruill

62. **COMMENT:** Overall most of the provisions of the Federal NSR Regulations have been incorporated in the proposed revisions provided in the DEQ letter dated December 14, 2005. However, there the definitions of "baseline actual

emissions" and "regulated NSR pollutant" in 252:100-8-31 differ from those in 40 CFR 51.166(b)(47) and (49) respectively. If EPA's comments regarding these two definitions are not incorporated in DEQ's rule, DEQ must demonstrate that the final regulation is at least as stringent as the Federal program.

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

63. **COMMENT:** The definition of "baseline actual emissions" in 252:100-8-31 differs from the definition in 40 CFR 51.166(b)(47). Paragraph (A) of the definition provides the same procedure for determining baseline actual emissions for electric utility steam generating units (EUSGU) and non-EUSGU. Although the proposed definition appears to be more stringent than the Federal definition, it may lack the flexibility that is provided in the Federal definition. The DEQ must demonstrate that its proposed definition is at least as stringent as the definition in 40 CFR 51.166(b)(47).

RESPONSE: The definition of "baseline actual emissions" was given further analysis and consideration. Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

64. **COMMENT:** Paragraph (B)(ii) of the definition of "regulated NSR pollutant" in 252:100-8-31 provides that any pollutant regulated under section 112(r) of the Clean Air Act is not a regulated NSR pollutant. Although it is not in the Federal definition of regulated NSR pollution in 40 CFR 51.166(b)(49), the preamble of our final NSR Reform regulation at 67 Federal Register 80240 (December 31, 2002) states that pollutants listed under section 112(r) of the Clean Air Act are not included in the definition of regulated NSR pollutant. The preamble further states that substances that are regulated under 112(r) of the Clean Air Act may still be subject to PSD if they are regulated under other provisions of the Act. As proposed, the definition would exclude all pollutants regulated under section 112(r), including such pollutants that are regulated under other provisions of the Clean Air Act. The DEQ must clarify that PSD applies if such pollutants are otherwise regulated under the Clean Air Act. One way to do this would be to revise paragraph (B)(ii) to read as follows: "any pollutant that is regulated under section 112(r) of the Clean Air Act, provided that such pollutant is not otherwise regulated under the Clean Air Act."

RESPONSE: Staff revised its proposal prior to the January 18, 2006 Air Quality Council meeting to reflect the Federal requirements.

Oklahoma Independent Petroleum Associates – letter dated January 13, 2006, received via e-mail on January 13, 2006, from Angie Burckhalter, V.P. of Regulatory Affairs

65. **COMMENT:** It appears that the proposed revision to Parts 7 and 9 of Subchapter 8 as currently written would not apply to minor sources. We assume that before these rules could apply to minor sources, ODEQ would have to conduct another rulemaking. Is this correct?

RESPONSE: That is correct.

OG&E Energy Corp – e-mail dated January 16, 2006, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst

66. COMMENT: If stack testing conducted during the five year period following a project that is not subject to PSD based on the actual to projected actual test results in a different emission factor, we want to make sure the baseline actual emissions and the annual emission will be based on the same factor or data. The following sentence should be added at the end of 252:100-8-36(c)(3): "For calculating annual emissions as required by this section, the methodology and/or emission factor shall be the same for calculating both the baseline actual emissions and the annual emissions."

RESPONSE: The Department doesn't feel it would be appropriate to add this language to the rule. There may be a time when the project itself causes an increase in the emission factor. However, if the project does not affect the emission factor, but better emission factors are available at the end of five years, the new emission factors would be used to calculate both the baseline actual emissions and the annual emissions.

Oral Comments Made at The Council Meeting

67. COMMENT: Julia Bevers, OG&E. Regarding 252:100-8-36(c)(3), determining the baseline actual emissions before a project is one thing. Then we have a five year period we have to monitor or keep records for after a project. So what if after the project, testing is done that reveals that the emission factor has changed. So the most recent data is going to be a different number. Our concern is to make sure the same factor is used.

RESPONSE: See response to Comment # 66.

68. COMMENT: Julia Bevers, OG&E. There is an error in 252:100-8-30(b)(6) on Page 18. The rule states that owners or operators can use the potential to actual test. Should this be actual to potential test instead?

RESPONSE: Yes, it should be "actual to potential test". This will be corrected.

OGE Energy Corp

PO Box 321
Oklahoma City, Oklahoma 73101-0321
405-553-3000
www.ogs.com



December 15, 2005

Joyce Sheedy
Air Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

Re: OGE Energy Corp. Comments on Proposed Rules OAC 252:100-8, Parts 7 and 11

Dear Ms. Sheedy:

OGE Energy Corp along with its subsidiaries OG&E Electric Services and Enogex Inc. offers the following comments with respect to the September 15, 2005 revision of the proposed rules cited above.

Part 7

252:100-8-31. Definitions.

... "Baseline actual emissions" (A) and (A)(iii)

The draft rule does not distinguish between the baseline actual emissions of an electric utility steam generating unit (EUSGU) and an emissions unit that is not an EUSGU. The Federal rule provides for use of a 24-month period within the last ten years to determine the baseline actual emissions for non-EUSGU. When State and Federal rules are not consistent it places an extra burden on the regulated community. We request that the language in the State definition for baseline actual emissions mirror the Federal requirements.

The last sentence of paragraph (A) proposes that the same 24-month period must be used to determine baseline actual emissions "for all pollutants", and the concept is repeated in (A)(iii). This language differs substantially from Federal requirements described in 40 CFR 51.166 (47)(c):

"For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant."

pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I area. ODEQ should clarify this exemption, as discussed on page 39117 of the 7/6/05 rule, is limited to sources at levels between de minimis and 250 tons. In addition, ODEQ may wish to clarify the term "BART determination." The following language is suggested:

(c) The owner or operator of a BART-eligible source may request and obtain a waiver from the Department that a BART determination **under Section III of Appendix Y of 40 CFR 51** is not required:

(1) for SO₂ or for NO_x if the BART-eligible source has the potential to emit less than 40 TPY of such pollutant(s),

(2) for PM-10 if the BART-eligible source emits less than 15 TPY of such pollutant, or

(3) if the owner or operator of the BART-eligible source **that emits less than 250 tons of a visibility-impairing air pollutant**, demonstrates by modeling, in accordance with a protocol approved by the Director, that a source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area.

ODEQ may wish to separate out Section 252:100-8-73(c) into new a Section 252:100-8-74 entitled "De Minimis BART Exemption" (and renumber successive paragraphs), in order to emphasize the de minimis aspect of the exemption. In addition, ODEQ is encouraged to submit the modeling protocol contemplated above to EPA Region 6 for concurrence, prior to submission of the regional haze SIP.

7. The term "Administrator," which appears in 252:100-8-74(a), should be defined using the definition in 40 CFR 51.100(b):

"Administrator" means the Administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

8. ODEQ may wish to define the term "subject to BART" as a "BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area." That term can then be substituted for the language in Section 252:100-8-73(a), and woven into Section 252:100-8-74, 252:100-8-75(f), and the first part of 252:100-8-75(a).
9. As discussed on page 39172 of the 7/6/05 rule, it is important that sources employ techniques that ensure compliance on a continuous basis. Therefore the following clarification to 252:100-8-75(e) is suggested:

252:100-8-32.2 Exclusion from increment consumption.

The last three words at the end of the sentence in 252:100-8-32.2(1) should be deleted because they are redundant:

The following cases are excluded from increment consumption.

- (1) *Concentrations from an increase in emissions from any stationary source converting from the use of petroleum products, natural gas, or both by reason of any order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act shall be excluded.*

Part 11

252:100-8-71 Definitions.

..."Secondary emissions"

The last sentence of the definition of "Secondary emissions" should be made consistent with the definition provided in OAC 252:100-1-3:

252:100-8-71 ... "Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the BART-eligible source.

252:100-1-3 ... "Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel."

252:100-8-75(a).

There appears to be a typographical error. There are two subparagraphs identified as number (3); both seem to reflect the same requirements and one of them should be deleted.

!!

252:100-8-75(d).

The proposed language states that BART installation and operation must occur "no later than five years after the Department has approved the proposed BART". It is unclear how the date of "five years after the Department has approved..." will be determined. It is our understanding that a source will first submit a proposed BART to the Director by December 1, 2006 [252:100-8-75(c)] following which the Director will submit the SIP to EPA for their approval. There appears to be at least four options that could determine the date BART is approved by the Department:

- 1) the date the source submits a proposed BART to the Director;
- 2) the date the SIP is submitted to the EPA;

Joyce Sheedy, ODEQ
OGE Energy Corp Comments on Proposed Rules OAC 252:100-8
December 15, 2005

- 3) the date the EPA approves the SIP; or,
- 4) some other date that has not been defined.

The date BART installation and operation must occur should be clarified in the rule and be consistent with Federal requirements that allow five years after EPA approves the SIP before installation and operation are required [40 CFR 51 Appendix Y Section V.]:

...(d) The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after the ~~Department~~ has approved the proposed BART EPA approval date of the proposed SIP.

OGE Energy Corp appreciates this opportunity to comment on the proposed rule. If you have any questions you may contact me at 553-3439 or by email at beversjo@oge.com.

Sincerely,



Julia Bevers, CIH
Sr. Regulatory Environmental Analyst



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

July 13, 2005

Mr. Scott Thomas
Environmental Program Manager
Air Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Dear Mr. Thomas:

Thank you for the opportunity to comment on the proposed revisions to Oklahoma's Air Pollution Control Rules OAC 252:100, as listed below:

Subchapter 1	General Provisions
Subchapter 5	Registration, Emission Inventory and Annual Operating Fees
Subchapter 8	Permits for Part 70 Sources
Subchapter 37	Control of Emission of Volatile Organic Compounds (VOCs)
Subchapter 39	Control of Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Appendix E	Primary Ambient Air Quality Standards
Appendix F	Secondary Ambient Air Quality Standards

Subchapter 1. General Provisions

Our comment on VOCs is the same as provided for Subchapter 37 below. The Air Permits Section will provide comments on permit-related issues, as necessary, in a separate communication.

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

The Air Permits Section previously reviewed this Subchapter and had no comments, per our letter dated April 12, 2005. Should Air Permits have additional comments, they will be provided in a separate communication.

Subchapter 8. Permits for Part 70 Sources

The Air Permits Section will provide comments as necessary in a separate communication.

Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)

EPA supports the ODBQ revision to exempt tert-butyl acetate (tBAc) from VOC emissions limitations. We, however, cannot support the exemption of tBAc from emissions

reporting and recordkeeping requirements. EPA made clear in its revisions to 40 CFR Part 51-Requirements for Preparation, Adoption and Submittal of Implementation Plans that tBAC was not being exempted for the purposes of recordkeeping and reporting (§51.100(s)(5)) and, as you know, our Federal Register of November 29, 2004 (69 FR 69298) provides details of why exemption from reporting and recordkeeping could not be allowed. We will be glad to work with you in drafting revised language to require reporting and recordkeeping for tBAC; however, we will not be able to approve a revision to the plan that exempts tBAC from reporting and recordkeeping requirements.

Subchapter 38. Control of Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas

Our comment on VOCs is the same as provided for Subchapter 37 above.

Appendix E Primary Ambient Air Quality Standards

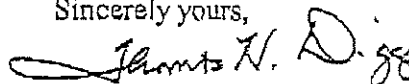
This action revokes the 1-hour National Ambient Air Quality Standard (NAAQS) for ozone in Oklahoma, as was promulgated nationally under the Final Rule to Implement the 8-Hour Ozone Ambient Air Quality Standard - Phase I (69 FR 23951). We support this action.

Appendix F Secondary Ambient Air Quality Standards

Our comment is the same as provided for Appendix E above.

We appreciate the opportunity to review and comment on the proposed rules prior to the public hearing on July 20, 2005. If you have questions regarding any of these comments, please feel free to contact me or Carrie Paige at (214) 665-6521.

Sincerely yours,



Thomas H. Diggs
Chief
Air Planning Section

cc: Mr. Leon Ashford
Environmental Program Specialist (ODEQ)

Mr. Max Price
Environmental Program Specialist (ODEQ)

Ms. Joyce Sheedy
Engineer (ODEQ)

Sullivan, Pat

From: Thomas, Scott
Sent: Friday, July 15, 2005 8:54 AM
To: Sullivan, Pat; George, Gail
Subject: FW: Comments on Proposed Regulations



ODEQcmnts.12jul05.doc
ODEQcmnts.12jul05.wpd

for council mtg

got a fax from Tom Diggs group also

-----Original Message-----

From: Spruiell.Stanley@epamail.epa.gov
[mailto:Spruiell.Stanley@epamail.epa.gov]
Sent: Wednesday, July 13, 2005 4:45 PM
To: Thomas, Scott
Cc: Barrett.Richard@epamail.epa.gov; Jones.Lynde@epamail.epa.gov;
Neleigh.David@epamail.epa.gov; Paige.Carrie@epamail.epa.gov
Subject: Comments on Proposed Regulations

Below are comments from EPA Region 6 Air Permits Sections concerning:

- NSR Reform Revisions, and
- Revisions to Definition of Volatile Organic Compounds (VOC)

NSR Reform. Prepared by Stanley Spruiell, Air Permits Section:

Attached below the EPA Air Permit Section's comments on your draft regulations for New Source Review Reform. These draft regulations incorporate the Federal requirements for New Source Review Reform. Overall, you have incorporated most of the provisions of the Federal NSR Regulations. We have made the attached comments to ensure that your program meets all the requirements of the Federal program.

If you prefer to adopt regulations which differ from the Federal regulations, we encourage you to discuss your proposed program with us. We believe that such discussions will be beneficial in facilitating communications between ODEQ and EPA and help to ensure that ODEQ adopts regulations the EPA can approve.

EPA Comments on NSR Reform
Microsoft Word WordPerfect
(See attached file: ODEQcmnts.12jul05.doc) (See attached file:
ODEQcmnts.12jul05.wpd)

If you have questions, please call Stanley M. Spruiell at (214) 665-7212.

Definition of VOC. Prepared by Richard Barrett, Air Permits Section.

ODEQ proposes to change their rule regarding the VOC known as t-butyl acetate (TBAC).

EPA published a final rule modifying the definition of VOC regarding TBAC on November 29, 2004.

TBAC is still considered a VOC, but will not be considered a VOC for purposes of emissions limitations or content requirements, due to its negligible contribution to tropospheric ozone formation.

However, it will still continue to be a VOC for all recordkeeping, emissions reporting, dispersion modeling and inventory requirements. Industry will now be required to track and report TBAC emissions as a distinct class of emissions, separate from non-exempt VOC.

ODEQ proposes to exempt TBAC specifically as a VOC for all purposes, including inventories and reports.

EPA published a final rule on November 29, 2004, which revised the definition of VOC regarding the VOC known as t-butyl acetate (TBAC). In this action, TBAC is still considered a VOC, but will not be considered a VOC for purposes of emissions limitations or content requirements, due to its negligible contribution to tropospheric ozone formation. However, it will still continue to be a VOC for all recordkeeping, emissions reporting, dispersion modeling and inventory requirements. One effect is that industry will now be required to track and report TBAC emissions as a distinct class of emissions, separate from non-exempt VOC. (See 69 FR 69298-69304). This rule is reflected in the amended 40 CFR Part 51, section 51.100 (s)(5).

ODEQ proposes to now adopt this revision; however, the ODEQ proposal will exempt TBAC as a VOC for all purposes, including inventories and reports. As this proposal is incompatible with the final rule which became effective on December 29, 2004, the ODEQ must justify and document how its proposal is equivalent to the final rule, prior to its approval into the State rules.

If you have questions, please call Richard Barrett at (214) 665-7227.

Thank you,

Stanley M. Spruiell
Air Permits Section (6PD-R)
Telephone: (214) 665-7212
Fax: (214) 665-7263
E-mail: spruiell.stanley@epa.gov

Comments on Oklahoma's Draft Regulations for NSR Reform.
Subchapter 8. Permits for Part 70 Sources

I. General Comments.

1. On June 24, 2005 the D.C. Circuit Court of Appeals, *New York v. EPA*, No. 02-1387, released its decision on NSR Reform. In the decision, the court
 - vacated the provisions of the 2002 rule regarding Clean Unit applicability test and Pollution Control Projects Clean Unit applicability test and Pollution Control Projects; and
 - remanded the recordkeeping provisions to EPA to provide an acceptable explanation for its "reasonable possibility" standard or to devise an appropriately alternative.

Concerning the court's decision to vacate the Clean Unit applicability test and the Pollution Control Project exclusion, the Oklahoma Department of Environmental Quality (ODEQ) should not adopt these provisions into its program. The provisions identified below either implement or refer to the Clean Units or Pollution Control Projects, that the court vacated. These provisions include, but are not limited to the following:

- OAC 252:100-8-30(b)(5) and (d);
- OAC 252:100-8-30(b)(6);
- OAC 252:100-8-31 – the following definitions:
 - Clean Unit
 - major modification – paragraph (A)(ii)(VIII)
 - net emissions increase – paragraphs (C)(iii) and (F)(iv); and
 - pollution control project or PCP;
- OAC 252:100-8-36.2(c);
- OAC 252:100-8-38;
- OAC 252:100-8-39;
- OAC 252:100-8-51 – the definition of major modification – paragraph (A)(ii)(VIII);
- OAC 252:100-8-56; and
- OAC 252:100-8-57.

Concerning the court's remand of recordkeeping provisions to EPA, we ask that ODEQ consider this in its final decision when it adopts its final regulations.

We are currently evaluating the court decision and possible next steps, and we will inform you of any guidance that we receive concerning how the court's decision will affect your program.

2. General Comment relating to equivalency when the State's rule is different from the Federal requirement. The ODEQ has generally proposed to adopt the nonattainment new source review (NNSR) requirements and the prevention of significant deterioration (PSD) requirements from the Federal rules located in 40 CFR 51.165 and 51.166. In many cases, the ODEQ proposed provisions which differ from the Federal requirements. The State may adopt regulations that are different from, but equivalent to, the Federal rule. In the following comments, we have identified areas in which the State's draft regulation is not the same as the corresponding Federal requirement. In such cases, the State must demonstrate that such provision is at least as stringent as the revised base Federal program. See 67 FR 80241 (December 31, 2002). If you desire to adopt provisions that differ from the base Federal program, we encourage you to discuss your proposed program with us. We believe that such discussions will be beneficial in facilitating communications between ODEQ and EPA and help to ensure that ODEQ adopts regulations that EPA can approve.

II. Part 1. General Provisions

OAC 252:100-8-1.1. **Definitions.** ODEQ proposes to remove the following definitions:

- ▶ Act;
- ▶ Administrator;
- ▶ EPA,
- ▶ National Emissions Standards for Hazardous Air Pollutants or NESHAP;
- ▶ New Source Performance Standards or NSPS;
- ▶ Part 70 permit;
- ▶ Part 70 program;
- ▶ Part 70 source; and
- ▶ Secondary emissions.

ODEQ should provide clarification of its reasons for removing these definitions from 252:100-8-1.1. If these terms are defined elsewhere in ODEQ's program, ODEQ should specify where these terms are defined.

III. Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas

1. OAC 252:100-8-30. **Applicability.** The State should correct a typographical error in Paragraph (a)(1) as follows" "The requirements of this Part shall apply to the construction of any new major stationary source or major modification of any project ..."
2. OAC 252:100-8-31. **Definitions.**

A. Definition of "baseline actual emissions." The draft regulation differs from the Federal definitions as follows:

- i. Paragraph (a) of the definition differs from 40 CFR 51.166(b)(47)(i) and (ii) as described below:
 - a. The draft rule does not distinguish between the baseline actual emissions of an electric utility steam generating unit (EUSGU) and an emissions unit that is not an EUSGU.
 - b. The draft State rule requires use of a 24-month period within the last five years to determine the baseline actual emissions for non-EUSGU. The Federal rule provides for use of a 24-month period within the last ten years to determine the baseline actual emissions for non-EUSGU.
 - c. The draft State rule allows use of a different time period (within last 10 years) for non-EUSGU if it is demonstrated to be more representative of baseline actual emissions.

Note that we think it is appropriate to limit use of the full 10-year look back period when you do not have adequate data for the time period you select. However, this limitation should be alleviated over time as sources begin to maintain records for longer periods to accommodate the 10-year look back opportunity.

- ii. Paragraph (a)(1) of the definition differs from 40 CFR 51.166(b)(47)(i)(a) and (ii)(a) as described below:
 - a. Under the draft State rule a source would include "authorized emissions associated with start-ups and shutdowns" from the determination of baseline actual emissions.
 - b. Under the draft State rule a source would exclude excess emissions or emissions associated with upsets or malfunctions from the determination of baseline actual emissions.
 - c. The Federal rule requires inclusion of emissions from startups, shutdowns, and malfunctions in the determination of baseline actual emissions.
- iii. The draft State rule has no provision corresponding to 40 CFR 51.166(b)(47)(ii)(c). This Federal rule provides that for a non-EUSGU, the baseline actual emissions must be adjusted downward to exclude emissions that exceed any currently applicable emissions limitation.
- iv. Paragraph (c) requires that the baseline actual emissions for a PAL be determined as described in paragraph (A) of the definition of

baseline actual emissions. In order for paragraph (c) to meet the Federal requirements, the ODEQ must address the items of concern identified above for paragraphs (A), (A)(1), and the lack of provision corresponding to 40 CFR 51.166(b)(47)(ii)(c) as described above.

- B. Definition of "baseline area." The draft State definition refers to "interstate areas" whereas the Federal rule refers to "intrastate areas."
- C. Definition of "low terrain." The draft definition defines low terrain as any area other than "high terrain." However, there is no definition of "high terrain" in OAR 252:100-8-31. Is this term defined elsewhere in the State regulations?
- D. Definition of "net emissions increase." The State's proposed definitions differs from the Federal definitions in 40 CFR 51.166(b)(3)(vii). The current approved SIP meets the requirements of §51.166(b)(3)(vii), which provides that any replacement unit that requires shakedown becomes operational no later than 180 days after initial operation. For emissions units, other than replacement units, a physical change occurs when the unit become operational and begins to emit a particular pollutant. In this action the ODEQ proposes to remove the word "replacement" This change would make the 180-day shakedown period available to all emissions units, and not limited to replacement units as provided in §51.166(b)(3)(vii). ODEQ needs to show that its proposed rule is at least as stringent as the Federal requirement.
- E. Definition of "projected actual emissions." The draft State rule differs from Federal requirement. The draft State rule omits a provision the projected actual emissions are based upon full utilization of the unit will result in a significant net emissions increase at the source.
- F. Definition of "regulated NSR pollutant." The draft State rule provides that any pollutant regulated under §112(r) of the Act is not a regulated NSR pollutant. This is not in the Federal definition.
- G. Definition of "replacement unit." The draft State definition has no provisions corresponding to 40 CFR 51.166(b)(32)(iii). The Federal rule provides that "[t]he replacement does not change the basic design parameter(s) (as discussed in paragraph (v)(2) of [§51.166]) of the process unit." Apparently ODEQ did not propose language corresponding to §51.166(b)(32)(iii) because the Federal rule refers to paragraph (v)(2) which is part of the routine maintenance repair and replacement provisions which are currently stayed. To address this concern, ODEQ may wish to

consider omitting the reference to paragraph (v)(2). Thus it could propose the following:

The replacement unit does not alter the design parameters of the process unit.

This is consistent with the corresponding provision proposed by Louisiana under its draft NSR Reform regulations.

H. The ODEQ does not propose definitions of the following terms which are in 40 CFR 51.166(b):

- ▶ building, structure, facility, or installation; §51.166(b)(6)
- ▶ federally enforceable; §51.166(b)(17)
- ▶ secondary emissions; §51.166(b)(18)
- ▶ volatile organic compounds; §51.166(b)(29)
- ▶ reviewing authority; and §51.166(b)(50)
- ▶ lowest achievable emission rate (LAER) §51.166(b)(52)

ODEQ must identify where these terms are defined in its regulations or demonstrate that its program is at least as stringent as the Federal requirements.

3. **OAC 252:100-8-35. Air quality impacts evaluation.** Paragraph (b)(2) differs from 40 CFR 51.166(l)(1). The draft State rule does not provide that when an air quality model as specified under ¶(b)(1) is inappropriate, the use of a modified or substituted model must have written approval from the EPA Administrator and that such modified or substituted model must be subject to notice and opportunity for public comment under §51.102.
4. **OAC 252:100-8-35.2. Additional impact analysis.** The draft State rule has no provisions which correspond to 40 CFR 51.166(o)(2). The Federal rule requires an analysis of the air quality impact projected for the area as the result of general commercial, residential, industrial, and other growth associated with the source or modification.
5. The State did not propose a provisions that corresponds to §51.166(r)(7). This Federal rule provides that the “owner or operator of a source shall make information required to be documented and maintained pursuant to paragraph (r)(6) of [§51.166] available for review upon request for inspection by the reviewing authority or the general public pursuant to the requirements contained in §70.4(b)(3)(viii) of this Chapter.”

6. OAC 252:100-8-40. Actuals PAL.

- A. 252:100-8-40(a). ODEQ proposes to incorporate by reference the requirements of §51.166(w), as promulgated 12/31/2002. EPA also revised §51.166(w)(1)-(2) on November 7, 2003. ODEQ should also include the 11/7/2003 revisions.
- B. 252:100-8-40(d). Terminology related to 40 CFR 51.166(w). It is not clear what this provision means. This provision cites several terms and states that their use is synonymous with the term in another section. ODEQ needs to make clear how these terms relate to PAL. For example: use of "major modification" in OAC 252:100-8-31 is different from how "modification" is used under the PAL provisions. ODEQ needs to clarify the use of this and other definitions as identified below.
 - ▶ 252:100-8-40(d)(3) "major modification." It is not clear how this term in OAC 252:100-8-31 relates to modifications at a PAL.
 - ▶ 252:100-8-40(d)(5) "pollution control project." It is not clear how this term in OAC 252:100-8-31 relates to pollution control project at a PAL. Furthermore, the court vacated the provisions for PCP.
 - ▶ 252:100-8-40(d)(6) "projected actual emissions." It is not clear how this term in OAC 252:100-8-31 relates to projected actual emissions at a PAL.

IV. Part 9. Major Sources Affecting Nonattainment Areas

1. 252:100-8-51. Definitions.

- A. Definition of "lowest achievable emissions rate." ODEQ proposes to remove this definition. ODEQ should provide clarification of its reasons for removing these definitions from 252:100-8-51. If these terms are defined elsewhere in ODEQ's program, ODEQ should specify where these terms are defined.
- B. Definition of "major modification." Paragraph (A)(i) identifies volatile organic compounds (VOC) as the only precursor to ozone. Section § 182(f)(1) of the Clean Air Act provides that plan provisions for nonattainment areas required for (VOC) "shall also apply to major sources ... of nitrogen oxides." You should revise this provision to identify both VOC and oxides of nitrogen (NO_x) as ozone precursors.
- C. Definition of "net emissions increase." The State's proposed definitions differs from the Federal definitions in 40 CFR 51.165(a)(1)(vi)(F). The current approved SIP meets the requirements of 51.165(a)(1)(vi)(F), which provides that any replacement unit that requires shutdown

becomes operational no later than 180 days after initial operation. For emissions units, other than replacement units, a physical change occurs when the unit becomes operational and begins to emit a particular pollutant. In this action the ODEQ proposes to remove the word "replacement". This change would make the 180-day shakedown period available to all emissions units, and not limited to replacement units as provided in §51.165(a)(1)(vi)(F).. ODEQ needs to show that its proposed rule is at least as stringent as the Federal requirement.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

December 2, 2005

Mr. Scott Thomas
Air Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, Oklahoma 73101-1677

Dear Mr. Thomas:

Thank you for providing us the opportunity to comment on the proposed Best Available Retrofit Technology (BART) Rule, Part 11 Visibility Protection Standards. We view this as an important step forward in the Oklahoma's Regional Haze State Implementation Plan. Enclosed are our comments.

If you have any questions or concerns, please call me at (214) 665-3102 or Joe Kordzi of my staff at (214) 665-7186.

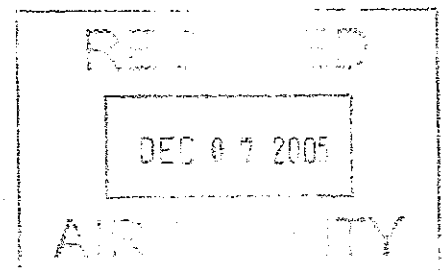
Sincerely yours,

Carrie Paige for

Thomas H. Diggs
Chief
Air Planning Section

Enclosure

cc: Ms. Joyce Sheedy (ODEQ)



U. S. Environmental Protection Agency (EPA)
Comments on the Proposed BART Rule, Part 11 Visibility Protection Standards
December 1, 2005

1. The Oklahoma Department of Environmental Quality (ODEQ) should clarify whether all 35 of the 51.301 definitions are intended to be adopted, as several definitions (i.e., fugitive emissions, potential to emit, reconstructed, stationary source, etc.) are referenced in the proposed rule, but are not defined in the rule. Also, other definitions are not referenced or listed in the rule. ODEQ should clarify if these general definitions have been adopted elsewhere and, if so, it should make reference to that cite.
2. In Section 252:100-8-70, ODEQ should clarify that "BART-eligible source" means an existing stationary source *as defined in* Section 8-71.
3. Section 252:100-8-76, states the BART requirements will be included as a permit modification in a facility's Part 70 permit. It is our understanding that ODEQ's BART Rule will be submitted to EPA for federal approval, making that rule an applicable requirement. As such, the requirements under that rule will then be folded into each source's operating permit. Please clarify that ODEQ will use its significant modification or reopen procedures per 252:100-8-7.1, et al. Also, please provide those specific references in the BART rule.
4. ODEQ should define "potential to emit" using the language from 51.301:

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.
5. ODEQ may wish to change the term "BART applicability" in Section 252:100-8-73(b), to "Whether a source is subject to BART," or similar language, in order to highlight the difference between the terms "BART eligibility" and "subject to BART" and to provide a smoother transition between the Section 252 rule and the BART guidelines.
6. Section 252:100-8-73(c)(3) provides that a source can request a waiver to a BART determination if the source demonstrates by modeling that it does not emit any air

The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly **and continuously** operated and maintained.

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

SUBCHAPTER 1
SUBCHAPTER 8

EXECUTIVE SUMMARY:

The Department is proposing amendments to Subchapter 8, Part 70 Sources. The Department proposes to revise Parts 7 and 9 of Subchapter 8 to incorporate the Environmental Protection Agency's (EPA) revisions to the new source review (NSR) permitting program under the Federal Clean Air Act. These proposed amendments contain revisions to the method of determining what should be classified as a modification subject to major NSR and includes Plantwide Applicability Limitations (PAL) Exclusions. These proposed amendments should result in fewer modifications to major NSR sources being considered major and therefore requiring a Prevention of Significant Deterioration (PSD) permit and the use of Best Available Control Technology (BACT). The proposed amendments also include other NSR revisions not previously incorporated by the Department and some changes in location of some definitions to reduce redundancy. As part of the revision the Department proposes to make the following changes to Section 8-1.1 in Part 1: 1) move 8 definitions to Subchapter 1; delete 2 definitions from Section 8-1.1 because they are the same as those in Subchapter 1; move paragraph (B) of the definition of "begin actual construction" to Section 8-2 in Part 5; move 8 definitions to 8-31 in Part 7; and move 3 definitions that were previously located in Section 8-31 to Section 8-1.1. In 8-2 of Part 5, the Department proposes to revise the definition of "insignificant activities" to reflect the changes made to Subchapter 41 and the new Subchapter 42.

In conjunction with the revision proposed to Parts 7 and 9 of Subchapter 8 regarding NSR sources, the Department is proposing amendments to Section 3 of Subchapter 1. This is being done as a general "clean up" of definitions in Parts 1, 7, and 9 of Subchapter 8 and to reduce redundancy. The definitions DEQ proposes to move from Subchapter 8 to Subchapter 1 are used in more than one Subchapter in OAC 252:100. If these definitions are not defined in Subchapter 1, they will have to be defined in each Subchapter in which they are used. The Department proposes to: (1) move 8 definitions from OAC 252:100-8-1.1 to 252:100-1-3 without substantive changes; (2) move the definition of "lowest achievable emissions rate" or "LAER" from OAC 252:100-8-51 to 252:100-8-1-3 and update it for consistency with the federal definition at 40 CFR 51.165(a)(xiii); (3) add the definition of "federally enforceable" as found at 40 CFR 51.166(b)(17); (4) add the definition of "reasonably available control technology" or "RACT" for consistency with the federal definition found at 40 CFR 52.21(b)(54); (5) replace "reviewing authority" with "Director" in the definition of "complete" for consistency; (6) modify the definition of "stack" to make clear that a pipe can be a stack, but a flare cannot; and (7) modify the definition of "stationary source" by adding "subject to OAC 252:100" to the end of the definition, for clarity.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

There are no substantive differences.

ENVIRONMENTAL BENEFIT STATEMENT:

Not required because these rules are not more stringent than corresponding federal rules.

SUMMARY OF COMMENTS AND RESPONSES:

Attached.

REGULAR MEETING/ HEARING AGENDA
AIR QUALITY ADVISORY COUNCIL
April 19, 2006, 9:00 a.m.
OSU- Tulsa Campus, 700 N. Greenwood, Tulsa, OK

Please turn off your cell phones.

1. Call to Order – Sharon Myers, Chair
2. Roll Call – Myrna Bruce
3. Approval of Minutes – January 18, 2006 Regular Meeting
4. Public Rulemaking Hearings
 - A. OAC 252:100-5. Registration, Emission Inventory and Annual Operation Fees [AMENDED]

The Department proposes to amend Subchapter 5 by clarifying the requirement to provide a written explanation when yearly emission changes are in excess of 30 percent.

1. Presentation – Morris Moffett
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

B. OAC 252:100-8. Permits for Part 70 Sources, Part 11 [NEW]

The Department proposes a new Part 11 which incorporates the federal Best Available Retrofit Technology (BART) requirements into Subchapter 8. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

1. Presentation – Matt Paque
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption and emergency adoption

- C. OAC 252:100-5. Registration, Emission Inventory and Annual Operation Fees [AMENDED]
 - OAC 252:100-7. Permits for Minor Facilities [AMENDED]
 - OAC 252:100-9. Excess Emission Reporting Requirements [AMENDED]
 - OAC 252:100-23. Control of Emissions From Cotton Gins [AMENDED]
 - Appendix P. Regulated Air Pollutants [NEW]

The Department proposes to add a new definition for “regulated air pollutant” to Subchapters 5, 7 and 9. A new Appendix P, Regulated Air Pollutants, is being added to Chapter 100 as part of these amendments. The terms “Actual emissions,” “Allowable emissions” and “Regulated pollutant (for fee calculation)” are being amended in OAC 252:100-5-1.1. In addition, Section 5-1.1 is being amended by the addition of a new definition for “Gross particulate matter” (GPM) which replaces the term “TSP” in the section. The term “GPM” also replaces the term “TSP” in OAC 252:100-23-2. The term “Actual emissions” is also being amended in OAC 252:100-7-1.1.

1. Presentation – Max Price
2. Questions and discussion by Council/Public
3. Possible action by Council

**D. OAC 252:100-17. Incinerators
100-17-61. [AMENDED]**

The Department proposes to amend Section 61 of Subchapter 17 to update the incorporations by reference for commercial and industrial solid waste incineration (CISWI) units.

1. Presentation – Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council
4. Roll call vote for permanent adoption

**E. OAC 252:100-17. Incinerators
Part 11. Other Solid Waste Incineration Units [NEW]**

The Department proposes to add a new Part 11, Other Solid Waste Incinerators (OSWI), to establish state emission standards and other enforceable requirements for existing OSWI.

1. Presentation – Heather Bragg
2. Questions and discussion by Council/Public
3. Possible action by Council

**F. OAC 252:100-44. Control of Mercury Emissions From Coal Fired Electric Steam
Generating Units [NEW]**

The Department is proposing three possible options for a new Subchapter 44, Control of Mercury Emissions from Coal Fired Electric Steam Generating Units:

Option 1: Incorporation by reference of the federal Clean Air Mercury Rule (CAMR) issued in May 2005.

Option 2: Adoption of the model rule issued in November 2005 by the State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials (STAPPA/ALAPCO).

Option 3: A rewrite of the federal CAMR by the Department with state-developed timelines and requirements.

1. Presentation – Morris Moffett
2. Questions and discussion by Council/Public
3. Possible action by Council

**G. Appendix H. De Minimis Facilities
Appendix I. Insignificant Activities (Registration) List
Appendix J. Trivial Activities (De Minimis) List**

The Department proposes to reformat and update the information in all three lists in Appendices H, I and J. Appendices may not be amended, so staff requests that the Council revoke the outdated Appendices and approve the new lists proposed today.

1. Presentation – Joyce Sheedy
2. Questions and discussion by Council/Public
3. Possible action by Council

5. Division Director's Report – Eddie Terrill

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 proposed for 9 a.m., Wednesday, July 19, 2006, in Oklahoma City.

Lunch Break, if necessary.

Should you have a disability and need an accommodation, please notify the DEQ Air Quality Division three days in advance at 405-702-4212. Hearing impaired persons may call the text telephone (TDD) Relay Number at 1-800-722-0353 for TDD machine use only.

April 3, 2006

MEMORANDUM

TO: Members of the Air Quality Advisory Council

FROM: Eddie Terrill, Director ⁶¹
Air Quality Division

SUBJECT: New Part 11 of OAC 252:100-8

Enclosed are copies of the proposed amendment to OAC 252:100-8 adding new Part 11 (Visibility Protection Standards), the rule impact statement for the proposed amendment, a summary of comments and staff responses, and a list of the BART-eligible sources in the state.

The Department is proposing to amend Subchapter 8, Permits for Part 70 Sources, by the addition of a new Part 11, which incorporates the federal Best Available Retrofit Technology (BART) requirements into Chapter 100. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

States are required to implement the Federal BART requirements as a part of a Regional Haze SIP no later than December 2007. Stationary sources that were not in operation prior to August 7, 1962, and were in existence on August 7, 1977, that have the potential to emit 250 tons per year or more of any air pollutant, are BART-eligible sources if they belong to one of the 26 categories listed in the definition of "existing stationary facility" contained in proposed OAC 252:100-8-71. BART-eligible sources that cause visibility impairment in any Class I Area are subject to BART and must establish emissions limitations by the application of BART. Any owner or operator of a BART-eligible source who wishes to obtain an exemption or a waiver from BART must submit an application for an exemption or a waiver to the Director by December 1, 2006. The owner or operator of any BART-eligible source that has not applied for an exemption or a waiver shall submit a BART determination to the Director by March 30, 2007. BART must be installed and operated at the sources subject to BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.

This amendment was recommended to the Environmental Quality Board by the Air Quality Advisory Council on January 18, 2006. However, errors subsequently discovered in the proposed amendment necessitated its return by the Board to the Council for correction.

Notice of the proposed rule changes was published in the Oklahoma Register on March 15, 2006, and comments were requested from members of the public.

At the April 19, 2006, Air Quality Advisory Council meeting, staff will ask the Council to recommend these changes to the Environmental Quality Board for adoption as a permanent and emergency rule. Because of the EPA's December 2007 Regional Haze SIP deadline, and the Department's expected BART permitting turn-around time, it is important that the council recommend this proposal for passage at the April 19, 2006, meeting.

Enclosures: Proposed OAC 252:100-8, new Part 11
Rule Impact Statement
Summary of comments and responses
BART-eligible sources list

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

INTENDED RULEMAKING ACTION:

Notice of proposed EMERGENCY and PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 8. Permits for Part 70 Sources
- Part 11. Visibility Protection Standards [NEW]
- 252:100-8-70. [NEW]
- 252:100-8-71. [NEW]
- 252:100-8-72. [NEW]
- 252:100-8-73. [NEW]
- 252:100-8-74. [NEW]
- 252:100-8-75. [NEW]
- 252:100-8-76. [NEW]
- 252:100-8-77. [NEW]

ACCEPTED

FEB 24 2006

For Publication In
THE OKLAHOMA REGISTER
Docket No. 06-204

SUMMARY:

The Department is proposing a new Part 11 which incorporates the federal Best Available Retrofit Technology (BART) requirements into Chapter 100. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).

AUTHORITY:

Environmental Quality Board powers and duties, 27A O.S., §§ 2-2-101, 2-2-201; and Oklahoma Clean Air Act, §§ 2-5-101 et seq.

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on April 19, 2006. For comments received at least 5 business days prior to the Council meeting, staff will post written responses on the Department's web page at least 1 day prior to the Council meeting and provide hard copy written responses to these comments to the Council and the public at that Council meeting. Oral comments may be made at the April 19, 2006 hearing and at the appropriate Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, April 19, 2006, at the Tulsa Campus of Oklahoma State University, 700 N. Greenwood, North Hall 150, Tulsa.

Before the Environmental Quality Board on June 20, 2006, at Redbud Hall, SWOSU Conference Center, 1121 N. 7th, Weatherford, OK.

DEQ proposes to submit Subchapter 8 to the EPA for inclusion in the Oklahoma SIP. This hearing shall also serve as the public hearing to receive comments on the proposed revisions to the SIP under the requirements of 40 Code of Federal Regulations (CFR) § 51.102 of the EPA regulations concerning the SIPs and 27A O.S. § 2-5-107(6)(c).

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, record keeping, 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:

The proposed rules are available for review 30 days prior to the

hearing at the Air Quality Division of the Department and on the Department's website (www.deq.state.ok.us), Air Quality Division, Council Meetings, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Joyce Sheedy (e-mail: joyce.sheedy@deq.state.ok.us), Department of Environmental Quality, Air Quality Division, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, FAX (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4100.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

PART 11. VISIBILITY PROTECTION STANDARDS

252:100-8-70. Applicability

This Part applies to any BART-eligible source (existing stationary facility as defined in OAC 252:100-8-71) which may reasonably be anticipated to cause or contribute to visibility impairment at any mandatory Class I Federal area.

252:100-8-71. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise. All terms used in this Part that are not defined in this Subsection shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, 252:100-8-31, or in the Oklahoma Clean Air Act.

"BART-eligible source" means an existing stationary facility as defined in this Section.

"Best Available Retrofit Technology" or "BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by a BART-eligible source. The emission limitation must be established on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

"Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

$$\text{Deciview haze index} = 10 \ln_e (b_{\text{ext}}/10 \text{ Mm}^{-1}).$$

Where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

"Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 TPY or more of any air pollutant. In

determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

- (A) Fossil-fuel fired steam electric plants of more than 250 million Btu/hr input,
- (B) Coal cleaning plants (thermal dryers),
- (C) Kraft pulp mills,
- (D) Portland cement plants,
- (E) Primary zinc smelters,
- (F) Iron and steel mill plants,
- (G) Primary aluminum ore reduction plants,
- (H) Primary copper smelters,
- (I) Municipal incinerators capable of charging more than 250 tons of refuse per day,
- (J) Hydrofluoric, sulfuric, and nitric acid plants,
- (K) Petroleum refineries,
- (L) Lime plants,
- (M) Phosphate rock processing plants,
- (N) Coke oven batteries,
- (O) Sulfur recovery plants,
- (P) Carbon black plants (furnace process),
- (Q) Primary lead smelters,
- (R) Fuel conversion plants,
- (S) Sintering plants,
- (T) Secondary metal production facilities,
- (U) Chemical process plants,
- (V) Fossil-fuel boilers of more than 250 million Btu per hour heat input,
- (W) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,
- (X) Taconite ore processing facilities,
- (Y) Glass fiber processing plants, and
- (Z) Charcoal production facilities

"In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by the Department and EPA and either has:

- (A) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or
- (B) entered into binding agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator to undertake a program of construction of the facility to be completed in a reasonable time.

"In operation" means engaged in activity related to the primary design function of the source.

"Integral vista" means a view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.

"Mandatory Class I Federal area" means any area identified in 40 CFR part 81, subpart D.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Reasonably attributable" means attributable by visual observation or any other technique the Department deems appropriate.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a BART-eligible source but do not come from the BART-eligible source. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the BART-eligible source.

"Visibility in any mandatory Class I Federal area" includes any integral vista associated with that area.

252:100-8-72. Incorporation by reference.

Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule, of 40 CFR 51 is hereby incorporated by reference as it exists July 6, 2005.

252:100-8-73. BART applicability

(a) Each BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area is subject to BART. This shall be determined using the criteria in Section III of Appendix Y of 40 CFR 51 in effect on July 6, 2005. Thresholds for visibility impairment are set forth in OAC 252:100-8-73(a)(1) and (2).

(1) A single source that is responsible for an impact of 1.0 deciview or more is considered to cause visibility impairment.

(2) A source that causes an impact greater than 0.5 deciviews contributes to visibility impairment.

(b) Air pollutants emitted by sources in Oklahoma which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area are NO_x, SO₂, PM-10, and PM-2.5.

(c) The owner or operator of a BART-eligible source may request and obtain a waiver from the Department that a BART determination is not required:

(1) for SO₂ or for NO_x if the BART-eligible source has the potential to emit less than 40 TPY of such pollutant(s),

(2) for PM-10 if the BART-eligible source ~~emits~~ has the potential to emit less than 15 TPY of such pollutant, or

(3) if the owner or operator of the BART-eligible source demonstrates by modeling, in accordance with a protocol approved by the Director, that a source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. ~~This third option is limited to BART-eligible sources with plantwide emissions of greater than 40 TPY but less than 250 TPY of SO₂ or NO_x and/or greater than 15 TPY but less than 250 TPY of PM 10.~~

252:100-8-74. Exemption from BART requirements

(a) The owner or operator of any BART-eligible source subject to the requirements of this Part to install, operate, and maintain BART may apply to the Administrator for exemption from that requirement.

(b) Should the owner or operator of a BART-eligible source wish to apply for exemption as provided for in 40 CFR 51.303, such application must be accompanied by a written concurrence from the Director.

252:100-8-75. Visibility standards for existing stationary facilities

(a) The owner or operator of a BART-eligible source that emits any air pollutant which causes or contributes to visibility impairment in any mandatory Class I Federal area shall establish emissions limitations by the application of BART.

(1) The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reduction achievable for each BART-eligible source that is subject to BART.

(2) After the level of control that represents BART is determined, an emission limit representing this level of control must be established.

(3) BART may be established as design, equipment, work practice, or other operational standards or combination thereof, when limitations on measurement technologies make emission standards infeasible, if such application achieve equivalent results. Such standard, to the degree possible, shall set forth the emission reduction to be achieved and must provide for compliance by means which achieve equivalent results.

(b) The determination of BART shall be made pursuant to the guidelines in Appendix Y of 40 CFR 51 in effect on July 6, 2005.

(c) In order to obtain an exemption or a waiver, the owner or operator of each a BART-eligible source subject to BART pursuant to ~~OAC 252:100-8-73 shall submit the proposed BART to the Director by December 1, 2006. BART-eligible sources that have~~

~~not obtained a waiver pursuant to OAC 252:100-8-73 or an exemption pursuant to OAC 252:100-8-74 shall be deemed subject to BART on December 1, 2006.~~

(1) an application for a waiver pursuant to OAC 252:100-8-73,
or

(2) an application for an exemption pursuant to OAC 252:100-8-74.

(d) A BART-eligible source that has not applied for a waiver pursuant to OAC 252:100-8-73 or an exemption pursuant to OAC 252:100-8-74 shall submit to the Director a BART determination by March 30, 2007.

~~(d)~~ (e) The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.

~~(e)~~ (f) The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly and continuously operated and maintained.

~~(f)~~ (g) The owner or operator of any BART-eligible source that might cause or contribute to visibility impairment in any mandatory Class I Federal area must provide a BART analysis at such times, as determined by the Administrator, as new technology for control of the pollutant becomes reasonably available if:

- (1) the pollutant is emitted by that BART-eligible source;
- (2) controls representing BART for the pollutant have not previously been required under this Part; and
- (3) the visibility impairment in any mandatory Class I Federal area is reasonably attributable to the emissions of that pollutant.

252:100-8-76. Permit requirements

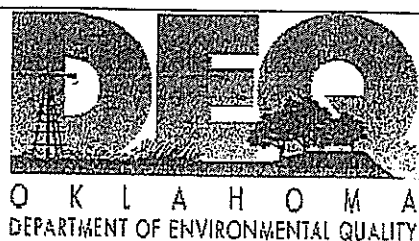
The BART requirements for any BART-eligible source that is subject to BART shall be submitted to the Director in an application for a permit modification pursuant to OAC 252:100-8-7.2 no later than ~~December 1, 2006~~ March 30, 2007.

252:100-8-77. Cap and/or trade program.

Nothing in this rule precludes the establishment of a cap and/or trade program that will achieve greater reasonable progress than would be achieved through the installation and operation of BART.

252:100-8-78. Modeling

All modeling required by this Part shall be performed in accordance with a protocol approved by the Director.



AIR QUALITY COUNCIL

Attendance Record

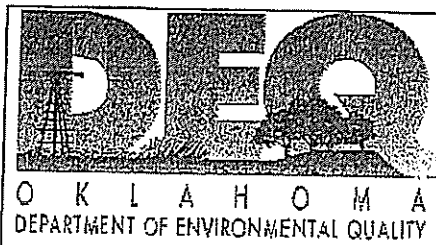
April 19, 2006

Oklahoma City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Mylina Bruce	DEQ 17170
Heather Bragg	DEQ x4176
Bud Ground	PSO
GARY MARTIN?	PONCA CITY
Mary Wofford	588-7530
Lynn Reed	588-7380
Saoi Ooi	732-1388
Jim Haught/ONEOK, Inc.	(918) 588-7640 jim.haught@oneok.com
ROD SOBER/RES CONSULTING	918 663 9850 rsober@resconsulting.com
Dustin Givens / Georgia-Pacific	918/683-7671 dustin.givens@gapinc.com
Steve Landers / Georgia-Pacific	918-683-7671 steve.landers@gapinc.com
Mark Lawson / Spirit Aerosystems	918-832-2238 Mark.Lawson@Boeing.com
BRIAN TOPPING / MAGELLAN PIPELINE	918 574-7381 BRIAN.TOPPING@magellanpipe.com
Pam Bennett / Lafarge Cement	918-388-1471 pamela.bennett@lafarge.com
Donna Jeffries DEQ	918 293 1626
GARY COLLINS / TERRA NITROGEN L.P.	918 266 5111 gcollins@terraindustries.com
DON WHITNEY TRINITY CONSULTANTS	405-228-3292
Julia Bevers OGE Energy	405-553-3439
Melody Martin OGE	405 553-3297
Thad Henry AECT	417-885-9222 thad.henry@aect.com
Andrew Horner Suroco	918 594-6284
Nancy Marshment	DEQ
SHANNON FERRELL Hall ES&H	594-0640
David Provence CP Chem	918-661-7999
Bonnie McMillen	1099-2011 x114



AIR QUALITY COUNCIL

Attendance Record

April 19, 2006

Oklahoma City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Sharon Shelby	AES Shady Point	(918) 962-6022	sharon.shelby@aes.com
Garry Keefe	Hall Estill	(918) 594-0553	gkeefe@hallestill.com
Summer Goebel	OGI	405-553-3523	goebel@ogi.com
Deanne Hughes	Cardinal Engineering	405 842 1066	dhughes@cardinaleng.com
Gerald Butcher	WFLC	405-247-4341	gbutcher@wflc.com
Terrie Blackburn	Williams	918-573-9766	terrie.blackburn@williams.com
Adrienne Jones	Cardinal Eng.	405 842 1066	aj@cardinaleng.com
Sam Miller	Tulsa Glass Plant	918 254 5263	smiller@tgp.com
Randy Beeson	Evercon Steel	918-665-7693	rbeeson@evercon.com

DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

* * * * *

TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY ADVISORY COUNCIL

ITEM NUMBER 4B SC8 Part 11 BART

HELD ON APRIL 19, 2006, AT 9:30 A. M.

IN TULSA, OKLAHOMA

* * * * *

ORIGINAL

Page 2	Page 4
<p>1</p> <p>2 MEMBERS OF THE COUNCIL</p> <p>3 SHARON MYERS - CHAIR</p> <p>4 DAVID BRANECKY - VICE-CHAIR</p> <p>5 BOB CURTIS - MEMBER</p> <p>6 BOB LYNCH - MEMBER</p> <p>7 GARY MARTIN - MEMBER</p> <p>8 JERRY PURKAPLE - MEMBER</p> <p>9 DON SMITH - MEMBER</p> <p>10 RICK TREEMAN - MEMBER</p> <p>11 LAURA WORTHEN - MEMBER</p> <p>12</p> <p>13 STAFF MEMBERS</p> <p>14</p> <p>15 MYRNA BRUCE - SECRETARY</p> <p>16 EDDIE TERRILL - DIVISION DIRECTOR</p> <p>17 DR. JOYCE SHEEDY - AQD</p> <p>18 MATT PAQUE - LEGAL</p> <p>19 BEVERLY BOTCHLET-SMITH - AQD</p> <p>20 PHILLIP FIELDER - AQD</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Specifically, the proposed OAC</p> <p>2 252:100-8-73(c)(4) read that the modeling</p> <p>3 exemption waiver was limited to sources</p> <p>4 less than 250 tons per year of NOx, SO2,</p> <p>5 and PM-10. This was not the intent of the</p> <p>6 exemption and the proposed language has</p> <p>7 been changed.</p> <p>8 Other changes from the January 18,</p> <p>9 2006 proposal are:</p> <p>10 A revision to OAC 252:100-8-73(c)(2)</p> <p>11 to indicate that the waiver for PM-10 is</p> <p>12 also based on a facility's potential to</p> <p>13 emit; also the Department recommends</p> <p>14 changing the dates for which sources shall</p> <p>15 be required to submit proposed BART or</p> <p>16 exemptions from BART.</p> <p>17 Notice of the proposed rule changes</p> <p>18 was published in the Oklahoma Register on</p> <p>19 March 15, 2006, and comments were requested</p> <p>20 from members of the public.</p> <p>21 In addition to the comments provided</p> <p>22 for you today, the Department has received</p> <p>23 comments from Rob Kaufman of Georgia</p> <p>24 Pacific, and EPA Region 6.</p> <p>25 Staff recommends that the Council</p>
Page 3	Page 5
<p>1</p> <p>2 PROCEEDINGS</p> <p>3 MS. BOTCHLET-SMITH: Okay. The</p> <p>4 next Item on the Agenda is OAC 252:100-8,</p> <p>5 Permits for Part 70 Sources, Part 11.</p> <p>6 Mr. Matt Paque will give the Staff</p> <p>7 presentation.</p> <p>8 MR. PAQUE: Madam Chair, Members</p> <p>9 of the Council, ladies and gentlemen. My</p> <p>10 name is Matt Paque, I'm an attorney for the</p> <p>11 Department and the Air Quality Division.</p> <p>12 For this Item of the Agenda I'll discuss</p> <p>13 the Department's proposed revision to OAC</p> <p>14 Title 252 Chapter 100 Subchapter 8, Part</p> <p>15 11.</p> <p>16 The Council first approved this</p> <p>17 proposal at its last meeting on January 18,</p> <p>18 2006 and the amendment was recommended to</p> <p>19 the Environmental Quality Board. However,</p> <p>20 between that time, errors were found in the</p> <p>21 proposed amendment that necessitated its</p> <p>22 return by the Board to the Council for</p> <p>23 correction.</p> <p>24 The rule as proposed today corrects</p> <p>25 the identified problems.</p>	<p>1 recommend these changes to the</p> <p>2 Environmental Quality Board for adoption</p> <p>3 both as a permanent rule and emergency rule</p> <p>4 so that the rule can become effective this</p> <p>5 calendar year.</p> <p>6 MS. BOTCHLET-SMITH: Do we have</p> <p>7 any questions from the Council?</p> <p>8 MR. PURKAPLE: I noticed that the</p> <p>9 Environmental Quality Board, they canceled</p> <p>10 their June meeting, correct?</p> <p>11 Will that effect this process?</p> <p>12 MR. PAQUE: Well, that's one of</p> <p>13 the reasons why we're asking you all to</p> <p>14 approve it by emergency so then when they</p> <p>15 meet in August we can take it before the</p> <p>16 Board at their August Meeting. It will go</p> <p>17 into effect then, 45 days after that time.</p> <p>18 It is also why we changed the due dates</p> <p>19 back from December 1st to March 31st of</p> <p>20 next year to allow a little bit more time.</p> <p>21 MR. PURKAPLE: I have a question.</p> <p>22 In 100-8-73(a)(1), refers to a single</p> <p>23 source and (a)(2), first with a source.</p> <p>24 Are those supposed to be the same?</p> <p>25 MR. PAQUE: Let me grab my notes</p>

<p style="text-align: right;">Page 6</p> <p>1 here. I think we could rectify that 2 language with a source. I think it s 3 supposed to be -- it should be the same. 4 We could do single source or a source. 5 MR. PURKAPLE: The second 6 question. In 100-8-75(c)(1) and (2) where 7 it talks about the Application for a Waiver 8 and Exemption, date-wise it needs to go in 9 by, what is it, December 1st? And I guess 10 with the timing, suppose a source makes the 11 Application but it s denied and the denial 12 is opposed to March 30, 2007. It seems 13 like that puts the source in an odd 14 position relative to the rule because it 15 seems to me March 30, 2007 (inaudible) 16 determination or Application in their hand. 17 MR. PAQUE: You re saying that if 18 they turn in an Application for Exemption 19 or Waiver, the Department or EPA disagrees 20 -- 21 (Talking over each other). 22 MR. PAQUE: We had talked about 23 that and I thought we were confident that 24 we had an answer before March 30th. 25 MS. BOTCHELT-SMITH: Phillip,</p>	<p style="text-align: right;">Page 8</p> <p>1 on EPA to give an answer -- to give some 2 sort of a permit and exemption. It would 3 work similar if somebody had their Title V 4 now that the EPA (inaudible due to noise). 5 MR. TERRILL: But there s not an 6 enforcement mechanism in any of this 7 though. Really. I mean that s kind of 8 what s interesting about this is they are a 9 lot of deadlines in there but there s 10 nothing that indicates what s going to 11 happen if you miss them. And so my 12 position is we re going to do the best we 13 can with what we got and hope we get the 14 time frames, and if we don t, we ll do the 15 best we can with what we got. 16 MR. PURKAPLE: I guess my final 17 question is, is the model protocol all 18 worked out? The bugs are fixed and it s -- 19 MR. FIELDER: Yeah, I think the 20 model -- the modeling protocols are done. 21 MR. PURKAPLE: Thank you. 22 MR. BRANECKY: Matt, you said 23 there were comments from Georgia Pacific? 24 MR. PAQUE: Yeah. 25 MR. BRANECKY: I haven t -- I</p>
<p style="text-align: right;">Page 7</p> <p>1 could you step down to the podium to answer 2 that? 3 MR. FIELDER: Phillip Fielder 4 with the Permit Section. It s our 5 anticipation that we ll start actually 6 reviewing some of this stuff prior to that 7 deadline date and that we will try to move 8 forward as quickly as possible with the 9 understanding that could be an issue. And 10 so we re hoping to get any determinations 11 done in advance of that deadline so that 12 someone could start working on (inaudible) 13 determination, if there is a problem. 14 MR. PURKAPLE: I don t think my 15 concern is as much with the DEQ as it would 16 be if you chose a route to the EPA. 17 MR. FIELDER: That s kind of out 18 of our hands. We re not quite sure about 19 that. We re not expecting very many waiver 20 procedures or proposals but that s a cause 21 of concern, agreed. 22 MR. PURKAPLE: So what position 23 would a source be in, then, having missed 24 the March 30, 2007 deadline? 25 MR. PAQUE: I think we re waiting</p>	<p style="text-align: right;">Page 9</p> <p>1 don t see those in my packet. 2 Did I miss it? Where is it? 3 MS. WORTHEN: In the separate 4 stuff they gave us. 5 MR. PAQUE: It was provided 6 today. 7 MR. BRANECKY: Oh, okay. 8 MS. WORTHEN: In the packets 9 provided today. 10 (Multiple inaudible conversations) 11 MR. PAQUE: It s in the summary 12 documents. 13 MR. BRANECKY: Thank you. 14 MS. BOTCHLET-SMITH: Are there 15 any other questions from the Council? I 16 didn t have any indication that anyone from 17 the public was wanting to speak but if so, 18 signify me now and I ll call upon you. I 19 don t see anyone from the public wishing to 20 question this or to comment at this time, 21 Sharon. So, if we re through with the 22 Council. 23 MS. MYERS: Matt, what is the 24 Staff s recommendation? 25 MS. BOTCHLET-SMITH: Matt, did</p>

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<p>1 you give a recommendation on this rule?</p> <p>2 MR. PAQUE: Yes. We recommend</p> <p>3 that it be approved as both a permanent and</p> <p>4 an emergency rule.</p> <p>5 MS. MYERS: Okay. We need a</p> <p>6 Motion from the Council, please.</p> <p>7 MR. TERRILL: Matt, they need to</p> <p>8 do that separately, don t they?</p> <p>9 MR. PAQUE: Yes.</p> <p>10 MR. TERRILL: They need to make a</p> <p>11 --</p> <p>12 MR. PAQUE: Both as a</p> <p>13 recommendation to the Board as a permanent</p> <p>14 rule and then a second recommendation to</p> <p>15 the Board as an emergency rule. And we</p> <p>16 hope that we won t be bringing it back</p> <p>17 anymore.</p> <p>18 MR. BRANECKY: I move that we</p> <p>19 pass this rule as a permanent rule and send</p> <p>20 it to the Board for approval.</p> <p>21 MS. MYERS: We have a Motion --</p> <p>22 MS. WORTHEN: Second.</p> <p>23 MS. MYERS: We have a Motion and</p> <p>24 a second. Myrna, would you call the roll,</p> <p>25 please.</p>	<p>1 as suggested by Mr. Purkapple in 100-8-</p> <p>2 73(a)(1) that we strike that word single</p> <p>3 out of that sentence.</p> <p>4 MS. WORTHEN: Second.</p> <p>5 MS. MYERS: Okay. We now have a</p> <p>6 Motion and a second to send this as a</p> <p>7 permanent rule to the Board with one change</p> <p>8 in the wording. Now can we call roll?</p> <p>9 MS. BRUCE: Gary Martin.</p> <p>10 MR. MARTIN: Yes.</p> <p>11 MS. BRUCE: Jerry Purkapple.</p> <p>12 MR. PURKAPLE: Yes.</p> <p>13 MS. BRUCE: Laura Worthen.</p> <p>14 MS. WORTHEN: Yes.</p> <p>15 MS. BRUCE: David Branecky.</p> <p>16 MR. BRANECKY: Yes.</p> <p>17 MS. BRUCE: Bob Lynch.</p> <p>18 DR. LYNCH: Yes.</p> <p>19 MS. BRUCE: Bob Curtis.</p> <p>20 MR. CURTIS: Yes.</p> <p>21 MS. BRUCE: Rick Treeman.</p> <p>22 MR. TREEMAN: Yes.</p> <p>23 MS. BRUCE: Sharon Myers.</p> <p>24 MS. MYERS: Yes.</p> <p>25 MS. BRUCE: Motion passed.</p>
Page 11	Page 13
<p>1 MS. BRUCE: Should we do this</p> <p>2 separately?</p> <p>3 MS. MYERS: Two separate Motions.</p> <p>4 MS. BRUCE: Okay. To send --</p> <p>5 MS. MYERS: The rule is</p> <p>6 permanent.</p> <p>7 MS. BRUCE: -- to the Board as a</p> <p>8 permanent rule.</p> <p>9 MS. MYERS: Permanent rule, yes.</p> <p>10 MR. PAQUE: Did you want to make</p> <p>11 that one change that Jerry had?</p> <p>12 MR. PURKAPLE: For clarification</p> <p>13 on 100-8-73(a)(1), (a)(2)?</p> <p>14 MS. MYERS: Okay. Robert s Rule</p> <p>15 of Order. We have a Motion and a second.</p> <p>16 Do we need to amend the Motion?</p> <p>17 MS. BOTCHLET-SMITH: He can amend</p> <p>18 his Motion.</p> <p>19 MR. BRANECKY: What was that</p> <p>20 again?</p> <p>21 MR. PURKAPLE: 100-8-73(a)(1) and</p> <p>22 (a)(2), single source, a source.</p> <p>23 MR. BRANECKY: Okay. I ll amend</p> <p>24 my Motion that we send this rule as a</p> <p>25 permanent rule to the Board with a change</p>	<p>1 MS. MYERS: And now we need a</p> <p>2 Motion to send this as an emergency rule so</p> <p>3 that it will go into effect before the next</p> <p>4 Board Meeting.</p> <p>5 MR. TERRILL: After the Board</p> <p>6 Meeting.</p> <p>7 MS. MYERS: After the Board</p> <p>8 Meeting. Yes.</p> <p>9 MR. TERRILL: 45 days after.</p> <p>10 MS. MYERS: 45 days after the</p> <p>11 Board Meeting.</p> <p>12 MR. CURTIS: So moved. With the</p> <p>13 changes.</p> <p>14 MS. MYERS: We have a Motion. Do</p> <p>15 we have a second?</p> <p>16 MR. PURKAPLE: Second.</p> <p>17 MS. MYERS: We have a Motion and</p> <p>18 a second to pass this as an emergency rule</p> <p>19 with the specified change in it.</p> <p>20 Myrna, could you please call the</p> <p>21 roll.</p> <p>22 MS. BRUCE: Gary Martin.</p> <p>23 MR. MARTIN: Yes.</p> <p>24 MS. BRUCE: Jerry Purkapple.</p> <p>25 MR. PURKAPLE: Yes.</p>

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1 MS. BRUCE: Laura Worthen.
2 MS. WORTHEN: Yes.
3 MS. BRUCE: David Branecky.
4 MR. BRANECKY: Yes.
5 MS. BRUCE: Bob Lynch.
6 DR. LYNCH: Yes.
7 MS. BRUCE: Bob Curtis.
8 MR. CURTIS: Yes.
9 MS. BRUCE: Rick Treeman.
10 MR. TREEMAN: Yes.
11 MS. BRUCE: Sharon Myers.
12 MS. MYERS: Yes.
13 MS. BRUCE: Motion passed.
14 (End of Proceedings)
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<p>-1-</p> <p>1 [5] 5:22 6:6 11:13,21 12:2</p> <p>100 [1] 3:14</p> <p>100-8 [1] 12:1</p> <p>100-8-73 [3] 5:22 11:13 11:21</p> <p>100-8-75 [1] 6:6</p> <p>11 [2] 3:5,15</p> <p>15 [1] 4:19</p> <p>18 [2] 3:17 4:8</p> <p>19 [1] 1:13</p> <p>1st [2] 5:19 6:9</p>	<p>agreed [1] 7:21</p> <p>Air [2] 1:11 3:11</p> <p>allow [1] 5:20</p> <p>amend [3] 11:16,17,23</p> <p>amendment [2] 3:18,21</p> <p>answer [3] 6:24 7:1 8:1</p> <p>anticipation [1] 7:5</p> <p>Application [4] 6:7,11 6:16,18</p> <p>approval [1] 10:20</p> <p>approve [1] 5:14</p> <p>approved [2] 3:16 10:3</p> <p>APRIL [1] 1:13</p> <p>AQD [3] 2:17,19,20</p> <p>attorney [1] 3:10</p> <p>August [2] 5:15,16</p>	<p>comments [4] 4:19,21 4:23 8:23</p> <p>concern [2] 7:15,21</p> <p>confident [1] 6:23</p> <p>conversations [1] 9:10</p> <p>correct [1] 5:10</p> <p>correction [1] 3:23</p> <p>corrects [1] 3:24</p> <p>Council [10] 1:11 2:2 3:9 3:16,22 4:25 5:7 9:15,22 10:6</p> <p>Curtis [6] 2:5 12:19,20 13:12 14:7,8</p>	<p>6:18 8:2</p> <p>exemptions [1] 4:16</p> <p>expecting [1] 7:19</p> <p>-F-</p> <p>facility [1] 4:12</p> <p>Fielder [5] 2:20 7:3,3,17 8:19</p> <p>final [1] 8:16</p> <p>first [2] 3:16 5:23</p> <p>fixed [1] 8:18</p> <p>forward [1] 7:8</p> <p>found [1] 3:20</p> <p>frames [1] 8:14</p>	<p>Laura [3] 2:11 12:13 14:1</p> <p>LEGAL [1] 2:18</p> <p>less [1] 4:4</p> <p>limited [1] 4:3</p> <p>II [5] 3:12 7:5 8:14 9:18 11:23</p> <p>Lynch [5] 2:6 12:17,18 14:5,6</p>
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MINUTES
AIR QUALITY COUNCIL
April 19, 2006
OSU-Tulsa Campus, 700 N. Greenwood
Tulsa, Oklahoma

AQC Approved
July 19, 2006

Notice of Public Meeting The Air Quality Council convened for its regular meeting at 9:00 a.m. April 19, 2006 in Room 150 at OSU-Tulsa Campus, 700 N. Greenwood, Tulsa, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on December 5, 2005. Agendas were posted on the entrance doors of the meeting facility and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting.

Ms. Beverly Botchlet-Smith convened the hearings by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51, and Title 27A, Oklahoma Statutes, Sections 2-5-201 and 2-5-101 - 2-5-118. Ms. Smith entered the Agenda and the Oklahoma Register Notice into the record and announced that forms were available at the sign-in table for anyone wishing to comment on any of the rules. Ms. Sharon Myers, Chair, called the meeting to order. Ms. Bruce called roll and a quorum was confirmed.

MEMBERS PRESENT

Sharon Myers
David Branecky
Bob Curtis
Bob Lynch
Gary Martin
Jerry Purkayle
Rick Treeman
Laura Worthen

MEMBERS ABSENT

Don Smith

OTHERS PRESENT

Christy Myers, Court Reporter

DEQ STAFF PRESENT

Eddie Tenill
Beverly Botchlet-Smith
Scott Thomas
Joyce Sheedy
Max Price
Heather Bragg
Morris Moffett
Kendal Stegmann
Matt Paque

DEQ STAFF PRESENT

Rhonda Jeffries
Dawson Lasseter
Philip Fielder
Nancy Marshment
Myrna Bruce

Transcripts and Attendance Sheet are attached as an official part of these Minutes

Approval of Minutes Ms. Myers called for approval of the January 18, 2006 Minutes. Hearing no discussion, she called for a motion to approve the Minutes as presented. Mr. Treeman made the motion with Mr. Curtis making the second. Roll call as follows with motion passing.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkayle	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Abstain
David Branecky	Yes	Sharon Myers	Yes

OAC 252:100-5 Registration, Emission Inventory and Annual Operation Fees [AMENDED] Mr. Morris Moffett advised that the amendment to OAC 252:100-5-2.1(b)(3) concerns the content of the Emission Inventory and will clarify the requirement

to provide a written explanation when yearly emission changes are in excess of 30 percent. Comments were received from the Council then from OG&E Energy Corp. and Trinity Consultants. The motion made by Mr. Treeman was to return the proposal to staff for new language which would include a 30-day extension. Mr. Curtis made the second.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkale	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Yes
David Branecky	Yes	Sharon Myers	Yes

OAC 252:100-8 Permits for Part 70 Sources, Part 11 [NEW] Mr. Matt Paque advised that a new Part 11 would incorporate the federal Best Available Retrofit Technology (BART) requirements which are part of the Regional Haze SIP. Mr. Paque pointed out changes that had been made to the rule after Council's approval at its January 18, 2006 meeting. Staff's recommendation was to forward this rulemaking to the Environmental Quality Board for permanent adoption. He added that the recommendation also would be for emergency approval due to the timing and the fact that the Board will not be meeting in June. Mr. Paque entered into the record comments received after preparation of the Agenda Packet, from George Pacific and EPA. Following questions by the Council, Mr. Paque pointed out that there would need for motions and votes for both permanent and for emergency adoption. Mr. Branecky made motion for permanent adoption with the second by Ms. Worthen. Following discussion, Ms. Myers called to amend the motion to add Mr. Purkale's concern for clarification in 252-100-8-73-(a)(1) and (a)(2). Mr. Branecky amended his motion and Ms. Worthen made that second with roll call for the amended motion for permanent adoption.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkale	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Yes
David Branecky	Yes	Sharon Myers	Yes

Ms. Myers called for a motion for approval to forward to the Board for emergency adoption. Mr. Curtis made the motion and Mr. Purkale made the second.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkale	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Yes
David Branecky	Yes	Sharon Myers	Yes

OAC 252:100-5 Registration, Emission Inventory and Annual Operation Fees [AMENDED]

OAC 252:100-7 Permits for Minor Facilities [AMENDED]

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

OAC 252:100-23 Control of Emissions From Cotton Gins [AMENDED]

Appendix P Regulated Air Pollutants [NEW]

Mr. Max Price identified several changes for Subchapters 5, 7, 9, 23, and Appendix P which would make the rules more user-friendly. Proposed amendments would add a new definition for the term "Regulated Air Pollutants"; amend the terms "Actual emissions"; "Allowable emissions" and "Regulated pollutant (for fee calculation)"; add a new

definition for "Gross particulate matter" (GPM) which replaces the term "TSP". Mr. Price related that staff would like to continue the proposal to Council's next meeting to allow time for further public comment. Mr. Treeman made the motion to continue and Mr. Curtis made the second.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkale	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Yes
David Branecky	Yes	Sharon Myers	Yes

OAC 252:100-17-61 Incinerators [AMENDED] Dr. Joyce Sheedy advised that proposal would amend Section 61 to update the incorporation by reference for commercial and industrial solid waste incineration (CISWI) units. She explained the extensive changes that EPA had made to the language in the definition and that the final revision was published in the Federal Register. Dr. Sheedy conveyed that notice of the proposed changes was published in the Oklahoma Register and that no comments had been received. Staff's recommendation was to forward to the Environmental Quality Board for permanent adoption. Following discussion, Mr. Branecky made motion to forward this incorporation by reference to the Board. Mr. Purkale made the second.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkale	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Yes
David Branecky	Yes	Sharon Myers	Yes

OAC 252:100-17 Incinerators Part 11 Other Solid Waste Incineration Units [NEW] Ms. Heather Bragg stated that the proposal allows for a new Part 11 for Other Solid Waste Incineration Units (OSWI) to establish state emission standards and other enforceable requirements for existing OSWI. She added that it is necessary to promulgate new rules to establish an enforcement mechanism required by the State 11(d) Plan. Ms. Myers pointed out that staff's recommendation was to continue and called for a motion. Mr. Curtis made motion to continue and Mr. Treeman made the second.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkale	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Yes
David Branecky	Yes	Sharon Myers	Yes

OAC 252:100-44 Control of Mercury Emissions From Coal Fired Electric Steam Generating Units [NEW] Mr. Morris Moffett related the need for a new subchapter due to EPA's issuance of the Clean Air Mercury Rule to permanently cap and reduce mercury emissions from coal-fired power plants. He described three proposal options for discussion adding that the Department recommends that the rulemaking be continued to allow for more public comment.

Option 1: Incorporation by reference of the federal Clean Air Mercury Rule (CAMR) issued in May 2005.

Option 2: Adoption of the model rule issued in November 2005 by the State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials (STAPPA/ALAPCO).

Option 3: A rewrite of the federal CAMR by the Department with state-developed timelines and requirements.

Along with Council's questions and comments, public comments were received from Ms. Julia Bevers on behalf of the electric utility group that will be affected by this rule and from Mr. Howard Ground, Public Service Company of Oklahoma. Ms. Myers called for motion to continue to Council's next meeting. Mr. Purkaple made the motion and Mr. Curtis made the second.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Yes
David Branecky	Yes	Sharon Myers	Yes

Appendix H. De Minimis Facilities

Appendix I. Insignificant Activities (Registration) List

Appendix J. Trivial Activities (De Minimis) List

Dr. Joyce Sheedy advised that the proposal would reformat each Appendix to make it easier to use and update activities currently in all three lists. She explained that it had been anticipated that when these Appendices were first compiled and made part of Chapter 100 they would be revisited and appropriate changes would be proposed based on the Staff's experience in using the lists and on more accurate emission factors and data if available. Dr. Sheedy mentioned that Appendices cannot be amended; therefore upon approval of the new lists, Staff will also request that the outdated Appendices be revoked. Oral comments were heard from ONEOK and AES Shady Point; and Dr. Sheedy pointed out that written comments had been received from EPA and OIPA. After staff fielded questions, Ms. Myers called for a motion to continue the hearing to Council's July meeting. Ms. Worthen made the motion and Mr. Curtis made the second.

Gary Martin	Yes	Bob Lynch	Yes
Jerry Purkaple	Yes	Bob Curtis	Yes
Laura Worthen	Yes	Rick Treeman	Yes
David Branecky	Yes	Sharon Myers	Yes

Division Director's Report Mr. Eddie Terrill discussed planned topics for the June 22 EFO meeting and invited input for topics from interested parties. He talked about the ozone season stating that the kickoff would be in Tulsa in mid-May. He also mentioned that staff is looking into a Smoke Management Plan.

New Business None.

Adjournment Ms. Myers adjourned the meeting at 11:10 a.m.

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

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES

EXECUTIVE SUMMARY:

The Department is proposing to add new Part 11, Visibility Protection Standards, to Subchapter 8. This new Part incorporates the Federal Best Available Retrofit Technology (BART) requirements into Chapter 100. States are required to implement the Federal BART requirements as part of a Regional Haze Implementation Plan no later than December 2007. Stationary sources that were not in operation prior to August 7, 1962, and were in existence on August 7, 1977, that have the potential to emit 250 tpy or more of any air pollutant, are BART-eligible sources if they belong to one of the 26 categories listed in the definition of "existing stationary facility" contained in proposed OAC 252:100-8-71. BART-eligible sources that cause visibility impairment in any Class I Area are subject to BART and must establish emissions limitations by the application of BART. Owners or operators of BART-eligible sources who wish to obtain an exemption or a waiver from BART must submit an application for an exemption or a waiver to the Director by December 1, 2006. The owner or operator of any BART-eligible source that has not applied for an exemption or a waiver for that source shall submit a BART determination to the Director by March 30, 2007. BART must be installed and operated at the sources subject to BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.

DIFFERENCES FROM ANALOGOUS FEDERAL RULES:

There are no substantive differences.

ENVIRONMENTAL BENEFIT STATEMENT:

Not required because these rules are not more stringent than corresponding federal rules.

SUMMARY OF COMMENTS AND RESPONSES:

Attached.

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL
[OAR Docket #07-821]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 8. Permits for Part 70 Sources

Part 11. Visibility Protection Standards [NEW]

252:100-8-70 [NEW]

252:100-8-71 [NEW]

252:100-8-72 [NEW]

252:100-8-73 [NEW]

252:100-8-74 [NEW]

252:100-8-75 [NEW]

252:100-8-76 [NEW]

252:100-8-77 [NEW]

252:100-8-78 [NEW]

AUTHORITY:

Environmental Quality Board; 27A O.S., §§ 2-2-101, 2-2-201 and 2-5-101, *et seq.*

DATES:

Comment period:

September 15, 2005 through October 19, 2005

December 15, 2005 through January 18, 2006

February 24, 2006

March 15, 2006 through April 19, 2006

August 22, 2006

Public hearing:

October 19, 2005

January 18, 2006

February 24, 2006

April 19, 2006

August 22, 2006

Adoption:

August 22, 2006

Submitted to Governor:

August 29, 2006

Submitted to House:

August 29, 2006

Submitted to Senate:

August 29, 2006

Gubernatorial approval:

October 8, 2006

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 27, 2007

Final adoption:

March 27, 2007

Effective:

June 15, 2007

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 8. Permits for Part 70 Sources

Part 11. Visibility Protection Standards [NEW]

252:100-8-70 [NEW]

252:100-8-71 [NEW]

252:100-8-72 [NEW]

252:100-8-73 [NEW]

252:100-8-74 [NEW]

252:100-8-75 [NEW]

252:100-8-76 [NEW]

252:100-8-77 [NEW]

252:100-8-78 [NEW]

Gubernatorial approval:

October 8, 2006

Register publication:

24 Ok Reg 297

Docket number:

06-1478

INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR 51 Appendix Y

Incorporating rules:

252:100-8-72

252:100-8-73. Availability:

From the contact person

ANALYSIS:

The Department is proposing to add new Part 11, Visibility Protection Standards, to Subchapter 8. This new Part incorporates the Federal Best Available Retrofit Technology (BART) requirements into Chapter 100. States are required to implement the Federal BART requirements as part of a Regional Haze Implementation Plan no later than December 2007. Stationary sources that were not in operation prior to August 7, 1962, and were in existence on August 7, 1977, that have the potential to emit 250 tpy or more of any air pollutant, are BART-eligible sources if they belong to one of the 26 categories listed in the definition of "existing stationary facility" contained in proposed OAC 252:100-8-71. BART-eligible sources that cause visibility impairment in any Class I Area are subject to BART and must establish emissions limitations by the application of BART. Owners or operators of BART-eligible sources who wish to obtain an exemption or a waiver from BART must submit an application for an exemption or a waiver to the Director by December 1, 2006. The owner or operator of any BART-eligible source that has not applied for an exemption or a waiver for that source shall submit a BART determination to the Director by March 30, 2007. BART must be installed and operated at the sources subject to BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.

CONTACT PERSON:

Joyce D. Sheedy, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 794-6800, fax (405) 702-4101, e-mail joyce.sheedy@deq.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 15, 2007:

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES**PART 11. VISIBILITY PROTECTION STANDARDS****252:100-8-70. Applicability**

This Part applies to any BART-eligible source (existing stationary facility as defined in OAC 252:100-8-71) which may reasonably be anticipated to cause or contribute to visibility impairment at any mandatory Class I Federal area.

252:100-8-71. Definitions

The following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise. All terms used in this Part that are not defined in this Subsection shall have the meaning given to them in OAC 252:100-1-3, 252:100-8-1.1, 252:100-8-31, or in the Oklahoma Clean Air Act.

"BART-eligible source" means an existing stationary facility as defined in this Section.

"Best Available Retrofit Technology" or "BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by a BART-eligible source. The emission limitation must be established on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

"Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements): Deciview haze index = $10 \ln e (b_{ext}/10 \text{ Mm}^{-1})$; where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

"Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 TPY or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

- (A) Fossil-fuel fired steam electric plants of more than 250 million Btu/hr input,
- (B) Coal cleaning plants (thermal dryers),
- (C) Kraft pulp mills,
- (D) Portland cement plants,
- (E) Primary zinc smelters,

- (F) Iron and steel mill plants.
- (G) Primary aluminum ore reduction plants.
- (H) Primary copper smelters.
- (I) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- (J) Hydrofluoric, sulfuric, and nitric acid plants.
- (K) Petroleum refineries.
- (L) Lime plants.
- (M) Phosphate rock processing plants.
- (N) Coke oven batteries.
- (O) Sulfur recovery plants.
- (P) Carbon black plants (furnace process).
- (Q) Primary lead smelters.
- (R) Fuel conversion plants.
- (S) Sintering plants.
- (T) Secondary metal production facilities.
- (U) Chemical process plants.
- (V) Fossil-fuel boilers of more than 250 million Btu per hour heat input.
- (W) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels.
- (X) Taconite ore processing facilities.
- (Y) Glass fiber processing plants, and
- (Z) Charcoal production facilities

"In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by the Department and EPA and either has:

- (A) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or
- (B) entered into binding agreements or contractual obligations which cannot be cancelled or modified without substantial loss to the owner or operator to undertake a program of construction of the facility to be completed in a reasonable time.

"In operation" means engaged in activity related to the primary design function of the source.

"Integral vista" means a view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.

"Mandatory Class I Federal area" means any area identified in 40 CFR part 81, subpart D.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Reasonably attributable" means attributable by visual observation or any other technique the Department deems appropriate.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a BART-eligible source but do not come from the BART-eligible source. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the BART-eligible source.

"Visibility in any mandatory Class I Federal area" includes any integral vista associated with that area.

252:100-8-72. Incorporation by reference

Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule, of 40 CFR 51 is hereby incorporated by reference as it exists July 6, 2005.

252:100-8-73. BART applicability

(a) Each BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area is subject to BART. This shall be determined using the criteria in Section III of Appendix Y of 40 CFR 51 in effect on July 6, 2005. Thresholds for visibility impairment are set forth in OAC 252:100-8-73(a)(1) and (2).

(1) A source that is responsible for an impact of 1.0 deciview or more is considered to cause visibility impairment.

(2) A source that causes an impact greater than 0.5 deciviews contributes to visibility impairment.

(b) Air pollutants emitted by sources in Oklahoma which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area are NO_x, SO₂, PM-10, and PM-2.5.

(c) The owner or operator of a BART-eligible source may request and obtain a waiver from the Department that a BART determination is not required:

(1) for SO₂ or for NO_x if the BART-eligible source has the potential to emit less than 40 TPY of such pollutant(s),

(2) for PM-10 if the BART-eligible source has the potential to emit less than 15 TPY of such pollutant, or

(3) if the owner or operator of the BART-eligible source demonstrates by modeling, in accordance with a protocol approved by the Director, that a source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area.

252:100-8-74. Exemption from BART requirements

(a) The owner or operator of any BART-eligible source subject to the requirements of this Part to install, operate, and maintain BART may apply to the Administrator for exemption from that requirement.

(b) Should the owner or operator of a BART-eligible source wish to apply for exemption as provided for in 40 CFR 51.303, such application must be accompanied by a written concurrence from the Director.

252:100-8-75. Visibility standards for existing stationary facilities

(a) The owner or operator of a BART-eligible source that emits any air pollutant which causes or contributes to visibility impairment in any mandatory Class I Federal area shall establish emissions limitations by the application of BART.

(1) The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reduction achievable for each BART-eligible source that is subject to BART.

(2) After the level of control that represents BART is determined, an emission limit representing this level of control must be established.

(3) BART may be established as design, equipment, work practice, or other operational standards or combination thereof, when limitations on measurement technologies make emission standards infeasible, if such application achieves equivalent results. Such standard, to the degree possible, shall set forth the emission reduction to be achieved and must provide for compliance by means which achieve equivalent results.

(b) The determination of BART shall be made pursuant to the guidelines in Appendix Y of 40 CFR 51 in effect on July 6, 2005.

(c) The owner or operator of a BART-eligible source shall submit to the Director by December 1, 2006:

(1) an application for a waiver pursuant to OAC 252:100-8-73, or

(2) an application for an exemption pursuant to OAC 252:100-8-74.

(d) A BART-eligible source that has not applied for a waiver pursuant to OAC 252:100-8-73 or an exemption pursuant to OAC 252:100-8-74 shall submit to the Director a BART determination by March 30, 2007.

(e) The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.

(f) The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly and continuously operated and maintained.

(g) The owner or operator of any BART-eligible source that might cause or contribute to visibility impairment in any mandatory Class I Federal area must provide a BART analysis at such times, as determined by the Administrator, as new technology for control of the pollutant becomes reasonably available if:

- (1) the pollutant is emitted by that BART-eligible source;
- (2) controls representing BART for the pollutant have not previously been required under this Part; and
- (3) the visibility impairment in any mandatory Class I Federal area is reasonably attributable to the emissions of that pollutant.

252:100-8-76. Permit requirements

The BART requirements for any BART-eligible source that is subject to BART shall be submitted to the Director in an application for a permit modification pursuant to OAC 252:100-8-7.2 no later than March 30, 2007.

252:100-8-77. Cap and/or trade program

Nothing in this rule precludes the establishment of a cap and/or trade program that will achieve greater reasonable progress than would be achieved through the installation and operation of BART.

All modeling required by this Part shall be performed in accordance with a protocol approved by the Director.

[OAR Docket #07-821; filed 4-23-07]

**REGULAR MEETING AGENDA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OKLAHOMA ENVIRONMENTAL QUALITY BOARD**

A Public Meeting: 9:30 a.m., Tuesday, August 22, 2006
Kruse Auditorium
2510 Sam Noble Parkway
Ardmore, OK 73401

1. **Call to Order** – Steve Mason, Chair
2. **Roll Call** – Myrna Bruce, Secretary, Board & Councils
3. **Approval of Minutes** of the February 24, 2006 Regular Meeting
4. **Rulemaking – OAC 252:4 Rules of Practice and Procedure**
The proposed amendment reduces to three the number of meetings the Environmental Quality Board is required to hold each year. Current rules require the Board to hold quarterly meetings.
 - A. Presentation – Jimmy Givens, DEQ General Counsel
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion and action by the Board, which may include a roll call vote on permanent adoption
5. **Rulemaking – OAC 252:100 Air Pollution Control**
 - The DEQ proposes emergency as well as permanent adoption of a new Part 11 to Subchapter 8, incorporating the federal Best Available Retrofit Technology (BART) requirements. The BART requirements are part of the Regional Haze State Implementation Plan (SIP).
 - The DEQ proposes to amend Section 61 of Subchapter 17 to update the incorporation by reference of federal definitional rules relating to commercial and industrial solid waste incineration (CISWI) units.
 - A. Presentation – David Branecky, Vice-Chair, Air Quality Advisory Council
 - B. Questions and discussion by the Board
 - C. Questions, comments and discussion by the public
 - D. Discussion and action by the Board, which may include roll call votes on emergency and permanent adoption of the Subchapter 8 amendment and permanent adoption of the Subchapter 17 amendment
6. **Executive Director's Report** – Steve Thompson. The report will include the disclosure of certain employee financial interests as required by statute, a summary of key actions in the recent legislative session and implementation strategies, and a review of especially notable projects, activities and accomplishments by DEQ programs and personnel within the last year. These updates and summaries are for informational purposes and do not require action by the Board. They are presented at this point in the meeting because they may help provide context for agenda items 7 and 8.
7. **DEQ Operational Budget Request**
DEQ budget requests to the Governor through the Office of State Finance require approval of the Board. The operational budget request for State Fiscal Year 2008 (beginning July 1, 2007) must be submitted to the OSF by October 1st of this year. The law requires that all state agencies submit a 5-year budget. The request for the coming year, SFY 2008, is the most critical. It

involves funding for the addition and maintenance of laboratory equipment, the "Blue Skyways" program to reduce air pollution, and enhanced monitoring of mercury in fish.

- A. Presentation – Craig Kennamer, Deputy Executive Director
- B. Questions and discussion by the Board
- C. Questions, comments and discussion by the public
- D. Discussion and action by the Board, which may include a roll call vote on approval of the budget request

8. Annual Performance Review of Executive Director

Among the statutory duties of the Board are responsibilities to appoint and set the compensation of the Executive Director and to assist the Department in conducting periodic reviews and planning activities related to the goals, objectives, priorities, and policies of the Department. In connection with these responsibilities, the Board has determined that it should perform an annual performance review of the Executive Director.

- A. Discussion by the Board in open session
- B. Possible executive session pursuant to Title 25 Oklahoma Statutes § 307(A) (discussion of employment actions related to any individual salaried public officer or employee), if authorized by recorded majority vote of the Board members present
 - (1) Vote in open session on whether to enter executive session
 - (2) If executive session approved, designation in open session of person to keep minutes in executive session
 - (3) Discussion in executive session of Executive Director's performance and of employment actions by the Board relating to the Executive Director
- C. Further discussion by the Board in open session
- D. Possible roll call vote on specific actions or recommendations as a result of performance review

(Executive Session held in Noble Foundation Board Room)

9. Calendar Year 2007 Board meeting dates and locations:

Discussion and vote by the Board

10. New Business (any matter not known about and which could not have been reasonably foreseen prior to the time of posting of agenda)

11. Adjournment

Remaining 2006 Meeting: November 14 at OSU/Tulsa Campus, 700 North Greenwood, Tulsa, Oklahoma

Public Forum (after adjournment): The Board meets several times a year at different locations across the State to hear the views and concerns of all Oklahomans about environmental issues. This opportunity is informal, and we invite you to sign the register to speak.

Should you desire to attend but have a disability and need an accommodation, please notify the DEQ three days in advance at 405-702-7100. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

Some members of the Board, as well as senior staff members from the DEQ, will meet for dinner in Ardmore the evening of August 21. This is a social occasion. It is uncertain whether a majority of the Board will be present. No Board or DEQ business will be conducted.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

April 12, 2006

Mr. Scott Thomas
Environmental Program Manager
Air Quality Division
Oklahoma Department of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677

Dear Mr. Thomas:

Thank you for the opportunity to comment on the proposed revisions to Oklahoma's Air Pollution Control Rules, OAC 252:100, as listed below:

Subchapter 5	Registration, Emission Inventory and Annual Operating Fees
Subchapter 7	General Provisions
Subchapter 8	Permits for Major Sources
Subchapter 9	Excess Emission Reporting Requirements
Subchapter 17	Incinerators
Subchapter 23	Control of Emissions from Cotton Gins
Subchapter 44	Control of Mercury Emissions
Appendix H	De Minimis Facilities List
Appendix I	Insignificant Activities (Registration) List
Appendix J	Trivial Activities (de Minimis) List
Appendix P	Regulated Air Pollutants

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

The proposed amendment to the definition of regulated air pollutant in Subchapters 5-1.1, 7-1.1, and 9-2 reads: "**Regulated air pollutant**" means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given delegation by EPA, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit." To maintain consistency in addressing the "group of substances", please consider

rewording the paragraph, per the example suggested below. This will ensure that any currently proposed or future State or federal rulings regarding any substance or group of substances as regulated air pollutants will be included as regulated air pollutants.

Our recommended text: "**Regulated air pollutant**" means any substance or group of substances listed in Appendix P of this Chapter, or regulated as an air pollutant under any federal regulation for which the Department has been given delegation by EPA. In addition, any substance or group of substances for which an air emission limitation or equipment standard is set by an enforceable permit, or any State or federal rule pertaining to air quality."

The requirement that actual emissions varying from the allowable or from the previous year's actual by more than 30% be explained is being modified. Please justify this modification and identify where this provision is adequately covered elsewhere in the regulations.

Subchapter 7 General Provisions

The proposed amendment to the definition of actual emissions in Subchapter 7-1.1. reads: "**Actual emissions**" means the total amount of any regulated air pollutants actually emitted from a given facility during a particular calendar year, ~~determined using methods contained in OAC 252:100-5-2.1(d)~~ twelve (12) consecutive months. Please explain why the definition of "actual emissions" as contained in 40 CFR 51.166(b)(21) could not be used as an acceptable protocol to determine actual emissions for the proposed deletion of OAC 252:100-5-2.1(d).

The state has proposed changes to the definition of "Actual Emissions," and "Regulated Air Pollutant." Please clarify how the state intends to examine a source's permit exempt status on a year-to-year basis. Please clarify how ODEQ will verify a source's permit exempt status if the facility is not required to submit annual emissions information on a yearly basis. In addition, see the comment for Subchapter 5 above regarding the proposed amendment to the definition of regulated air pollutant in Subchapter 7-1.1.

Please note that EPA is providing comments on its concerns relating to Subchapter 7, Permits for Minor Facilities, Definitions, "Permit exempt facility," in a separate letter, signed by David Neleigh, Chief, Air Permits Section.

Subchapter 8 Permits for Major Sources (regarding BART Rule only)

OAC 252:100-8-78 states, "All modeling required by this Part shall be performed in accordance with a protocol approved by the Director." To avoid miscommunication on this issue, we suggest that Oklahoma ensure that any BART modeling follows EPA-approved protocol. We urge the State to submit such protocols to us for prior approval. This will help ensure that the State does not risk disapproval of its Regional Haze SIP.

In addition, although Appendix Y to 40 CFR Part 51 is properly referenced in OAC 252:100-8-72 and OAC 252:100-8-72(b), Oklahoma may wish to avail itself of other relevant guidance in the preparation of the regional haze SIPs and we offer the following as references:

- "Guidance for Tracking Progress Under the Regional Haze Rule," EPA-454/B-03-004, September 2003
- "Draft Guidance for Demonstrating Attainment of Air Quality Goals for PM_{2.5} and Regional Haze," January 2, 2001
- "Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule," EPA-454/B-03-005, September 2003.
- A memo from Lydia Wegman to the Regional Air Directors entitled, "2002 Base Year Emission Inventory SIP Planning: 8-Hour Ozone, PM_{2.5} and Regional Haze Programs," dated 11/18/2002.
- "Draft Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," 11/28/2005.
- "Visibility Monitoring Guidance," EPA-454/R-99-003, June 1999.
- "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations," EPA-454/R-05-001, August, 2005.
- "Interim Air Quality Policy on Wildland and Prescribed Fires," April 23, 1998

Subchapter 9 Excess Emission Reporting Requirements

See the comment for Subchapter 5 above regarding the proposed amendment to the definition of regulated air pollutant in Subchapter 9-2.

Subchapter 17 Incinerators

We support the proposed rule and have no adverse comments.

Subchapter 23 Control of Emissions from Cotton Gins

The proposed revisions to OAC 252:100-23-2 seek to delete the definition of Total Suspended Particulates (TSP) from the "High efficiency cyclone" efficiency standard, and replace it with Gross Particulate Matter (GPM), which itself would be newly defined in OAC 252:100-5-1.1. The current definition of TSP, which resides in OAC 252:100-1-3, states: "Total Suspended Particulates" or "TSP" means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50. This method captures particulate matter up to 45 microns in size. The proposed revisions; "Gross Particulate Matter or GPM means particulate matter with a nominal aerodynamic diameter greater than 10 micrometers." This definition of GPM in the performance standard/definition of "High efficiency cyclone" in the Cotton Gin Rule would potentially exclude particles in the size range of 0 to 10 microns. We view this as a potential relaxation of a SIP approved control measure and question whether this proposed modification is in compliance with Section 110(l) of the Clean Air Act (CAA), which states:

"Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act."

We are authorized under the CAA to approve relaxations of SIP requirements as long as the relaxations do not interfere with timely attainment or subsequent maintenance of the NAAQS or any other CAA requirement. The submittal must therefore demonstrate that the proposed SIP revisions do not interfere with the attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), Rate of Progress, Reasonable Further Progress (RFP), violate the Prevention of Significant Deterioration increments, or any other applicable requirements under the CAA, or in any way adversely affect the existing air quality in Oklahoma. This demonstration must show that any relaxation of the existing SIP requirements will not result in interference with the requirements of the CAA. As with past proposed revisions, the State must provide an opportunity for notice and public comment. If needed, we can provide past Federal Register Actions and a copy of EPA's latest draft guidance, dated June 6, 2005, "Demonstrating Noninterference Under Section 110(l) of the CAA When Revising a State Implementation Plan."

As stated in the guidance, with respect to attainment, maintenance and RFP, EPA interprets section 110(l) such that areas generally have two options available to demonstrate noninterference for the affected pollutant(s): substitution of one measure by another with equivalent or greater emissions reductions/air quality benefit; an air quality analysis showing that removing the measure will not interfere with other applicable requirements (i.e., without a substitute measure). Please consider whether the State can successfully make this kind of a demonstration before GPM is substituted for TSP, in the Cotton Gin Rule.

Subchapter 44

Control of Mercury Emissions

The Air Permits Section will provide comments in a separate communication.

Appendix H

De Minimis Facilities List

The introductory paragraph to Appendix H states that the de minimis activities list is to be used in conjunction with Subchapter 7 for minor facilities. Approval of Appendix H is dependant on EPA approval to Subchapter 7 Minor Facilities to which a source could still not emit air emissions at or above any revised minor NSR threshold. Please note that EPA is providing comments relating to Subchapter 7, Permits for Minor Facilities, Definitions, "Permit exempt facility," in a separate letter, signed by David Neleigh, Chief, Air Permits Section.

Please note that the enumerated activities in Appendix H must not have a potential to emit equal to or above the SIP-approved 5 tpy threshold. Any enumerated "de minimis" activity must be below the requirement to obtain a minor NSR permit.

Please show that the activities identified as "de minimis" are appropriately defined as de minimis. Please provide the technical basis and documentation to justify the list of de minimis activities. Please clarify the rule does not interfere with other federal programs or permitting requirements, etc. Approval of Appendix H is dependant on the State's demonstration under Section 110(l) of the CAA.

Appendix I Insignificant Activities (Registration) List

The first paragraph of the proposed amendment to **APPENDIX I. INSIGNIFICANT ACTIVITIES REGISTRATION LIST**, should include the following sentence: "In addition, any activity must insure that it does not exceed any standard or limitation contained in 252:100-41, 252:100-42, "Maximum acceptable ambient concentration" or "MAAC" contained in Appendix O of this Chapter for TAC, or any hazardous air pollutant de minimis rate established pursuant to section 112(g) of the Clean Air Act." This will further insure that those activities described on the list comply with any State or federal standards or limitations.

The rule at 40 CFR 70.5(c) requires EPA approval of the State's insignificant activities and emission levels. In EPA's initial action giving interim approval to the Oklahoma operating permits program, one of the conditions given to obtain full approval required revision of the insignificant activities provisions to reflect an insignificant emissions level of one pound per hour of operation, based on potential to emit, or some other level as the State may demonstrate is insignificant with respect to applicable requirements (61 FR 4223). In response, the State promulgated a revised insignificant activities definition in OAC 252:100-8-3(c). The revision defined insignificant activities as those on a list approved by the Administrator and contained in Appendix I of Subchapter 8, or whose actual calendar year emissions do not exceed certain limits. The definition also excluded any activity to which a Federal or State applicable requirement applies. In its action giving final full approval of the Oklahoma operating permits program, EPA found that the emission levels in the revised definition are consistent with the levels in other approved State operating permit programs, however, EPA specifically stated that it was not approving the list of insignificant activities contained in Appendix I. Thus, it appears that under the Oklahoma title V program currently approved by EPA, insignificant activities are limited to the emission levels in OAC 252:100-8-2 and do not include the activities listed in the current version of Appendix I. If EPA is to comment or act on the proposed revisions to Appendix I, our comment and action should include all provisions of Appendix I, and not just proposed revisions.

Appendix J Trivial Activities (de Minimis) List

The first paragraph of the proposed amendment to **APPENDIX J. TRIVIAL ACTIVITIES (DE MINIMIS) LIST**, should include the following sentence: "In addition, any activity must insure that it does not exceed any standard or limitation contained in 252:100-41, 252:100-42, "Maximum acceptable ambient concentration" or "MAAC" contained in Appendix O of this Chapter for TAC, or any hazardous air pollutant de minimis rate established pursuant to section 112(g) of the Clean Air Act." This will further insure that those activities described on the list comply with any State or federal standards or limitations.

The State may act consistent with EPA guidance addressing activities that EPA considers "trivial" in the sense that they never implicate applicable requirements and exempt such activities from permit applications without the need for prior EPA approval. This list in Appendix J

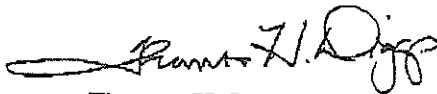
should conform to EPA guidance on "trivial" activities. (See White Paper for Streamlined Development of Part 70 Permit Applications, July 10, 1995).

Appendix P Regulated Air Pollutants

See discussion of definition of "regulated air pollutants" above.

We appreciate the opportunity to review and comment on the proposed rules prior to the public hearing on April 19, 2006. We have incorporated comments provided by the Air Permitting Section and Office of Regional Council. If you have questions regarding any of these comments, please feel free to contact me or Carrie Paige at (214) 665-6521.

Sincerely yours,



Thomas H. Diggs
Chief
Air Planning Section



David Nealeigh
Chief
Air Permits Section

cc: Heather Bragg, ODEQ
Morris Moffitt, ODEQ
Matt Paque, ODEQ
Max Price, ODEQ
Joyce Sheedy, ODEQ

252:100-8-32.2 Exclusion from increment consumption.

The last three words at the end of the sentence in 252:100-8-32.2(1) should be deleted because they are redundant:

The following cases are excluded from increment consumption.

- (1) *Concentrations from an increase in emissions from any stationary source converting from the use of petroleum products, natural gas, or both by reason of any order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act shall be excluded.*

Part 11

252:100-8-71 Definitions.

... "Secondary emissions"

The last sentence of the definition of "Secondary emissions" should be made consistent with the definition provided in OAC 252:100-1-3:

252:100-8-71 ... "Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the BART-eligible source.

252:100-1-3 ... "Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel."

252:100-8-75(a).

There appears to be a typographical error. There are two subparagraphs identified as number (3); both seem to reflect the same requirements and one of them should be deleted.

252:100-8-75(d).

The proposed language states that BART installation and operation must occur "no later than five years after the Department has approved the proposed BART". It is unclear how the date of "five years after the Department has approved..." will be determined. It is our understanding that a source will first submit a proposed BART to the Director by December 1, 2006 [252:100-8-75(c)] following which the Director will submit the SIP to EPA for their approval. There appears to be at least four options that could determine the date BART is approved by the Department:

- 1) the date the source submits a proposed BART to the Director;
- 2) the date the SIP is submitted to the EPA;

Joyce Sheedy, ODEQ
OGE Energy Corp Comments on Proposed Rules OAC 252:100-8
December 15, 2005


- 3) the date the EPA approves the SIP; or,
- 4) some other date that has not been defined.

The date BART installation and operation must occur should be clarified in the rule and be consistent with Federal requirements that allow five years after EPA approves the SIP before installation and operation are required [40 CFR 51 Appendix Y Section V.].

...(d) The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after the ~~Department~~ has approved the proposed BART EPA approval date of the proposed SIP.

OGE Energy Corp appreciates this opportunity to comment on the proposed rule. If you have any questions you may contact me at 553-3439 or by email at beversjo@oge.com.

Sincerely,



Julia Bevers, CIH
Sr. Regulatory Environmental Analyst

From: Worthen, Laura [mailto:Laura.Worthen@benham.com]
Sent: Monday, February 13, 2006 5:36 PM
To: Terrill, Eddie
Subject: BART Rules

Eddie,

I have been reviewing the BART rules we passed at the January meeting and I am concerned there is a mistake in them. The way the proposed OAC 252:100-8-73(c)(4) reads the modeling exemption waiver is limited to sources less than 250 T/yr of NOx, SO2 and PM10. This doesn't make sense since sources that emit less than 250 T/yr are not considered BART eligible and the modeling waiver option under the federal rules is intended for sources that emit greater than 250 T/yr of each.

Can you provide clarification if I'm wrong. Kim Wahnee from my office spoke with Phillip Fielder today and he is also puzzled by the wording.

Laura Worthen, P.E.
Air Quality Group Manager
The BENHAM Companies, LLC
Infrastructure and Environment
3700 West Robinson, Suite 200
Norman, OK 73072
Phone: (405) 701-3195
Cell: (405) 919-4129
Fax: (405) 364-1708
Laura.Worthen@Benham.com

**SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO SUBCHAPTER 8, PART 11 VISIBILITY
PROTECTION STANDARDS (BART)**

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

Written Comments

EPA Region 6 - Letter dated December 2, 2005, signed by Carrie Page for Thomas H. Diggs, was received by FAX on December 5, 2005, from Joe Kordzi

1. **COMMENT:** The ODEQ should clarify whether all 35 of the 51.301 definitions are intended to be adopted, as several definitions (i.e., fugitive emissions, potential to emit, reconstructed, stationary source, etc) are referenced in the proposed rule, but are not defined in the rule. Also, other definitions are not referenced or listed in the rule. ODEQ should clarify if these general definitions have been adopted elsewhere and, if so, it should make reference to this cite.

RESPONSE: The terms that are used in Part 11 are defined either in OAC 252:100-8-71, 252:100-1-3, or 252:100-8-31. The terms "adverse impact on visibility", "Federal Land Manager", "major stationary source", "major modification", "natural conditions" and "visibility impairment" are not used in Part 11. They are, however used in Part 7 and are defined in OAC 252:100-8-31. "Agency", "building, structure, or facility", "federally enforceable", "fugitive emissions", "potential to emit", and "stationary source", are defined in 252:100-1-3. "Federal Class I area", "fixed capital cost" "geographic enhancement for the purpose of §51.308", "implementation plan", "Indian tribe or tribe", "installation", "least impaired days", "most impaired days", "reconstruction", "regional haze", "significant impairment" are not used in Part 11 and are, therefore, not defined.

2. **COMMENT:** In Section 252:100-8-70, ODEQ should clarify that "BART-eligible source" means an existing stationary source as defined in Section 8-71.

RESPONSE: This change has been made, except the term is "existing stationary facility".

3. **COMMENT:** Section 252:100-8-76, states the BART requirements will be included in a permit modification in a facility's Part 70 permit. It is our understanding that ODEQ's BART Rule will be submitted to EPA for federal approval, making that rule an applicable requirement. As such, the requirements under the rule will then be folded into each source's operating permit. Please clarify that ODEQ will use its significant modification or reopen procedures per 252:100-8-7.1, *et al.* Also, please provide more specific references in the BART rule.

RESPONSE: Language has been added to clarify this.

4. **COMMENT:** ODEQ should define "potential to emit" using the language from 51.301: "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

RESPONSE: This definition is very similar to the definition of "potential to emit" located in 252:100-1-3. However, the definition in 40 CFR 51.301 requires that any limitations be federally enforceable and the definition in 252:100-1-3 does not. In light of this difference, "potential to emit" as defined in 40 CFR 51.301 has been added to 252:100-8-71.

5. **COMMENT:** ODEQ may wish to change the term "BART applicability" in Section 252:100-8-73(b), to "Whether a source is subject to BART", or similar language, in order to highlight the difference between the term "BART eligibility" and "subject to BART" and to provide a smoother transition between the Section 252 rule and the BART guidelines.

RESPONSE: This change has been made.

6. **COMMENT:** Section 252:100-8-73(c)(3) provides that a source can request a waiver to a BART determination if the source demonstrates by modeling that it does not emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I area. ODEQ should clarify this exemption, as discussed on page 39117 of the 7/6/05 rule, is limited to sources at levels between de minimis and 250 tons. In addition, ODEQ may wish to clarify the term "BART demonstration." The following language is suggested:

(c) The owner or operator of a BART-eligible source may request and obtain a waiver from the Department that a BART determination under Section III of Appendix Y of 40 CFR 51 is not required:

- (1) for SO₂ or for NO_x if the BART-eligible source has the potential to emit less than 40 TPY of such pollutant(s),
- (2) for PM-10 if the BART-eligible source emits less than 15 TPY of such pollutant, or
- (3) if the owner or operator of the BART-eligible source that emits less than 250 tons of a visibility-impairing air pollutant, demonstrates by modeling, in accordance with a protocol approved by the Director, that a source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class 1 Federal area.

ODEQ may wish to separate out Section 252:100-8-73(c) into new Section 252:100-8-74 entitled "De Minimis BART Exemption" (and renumber successive paragraphs), in order to emphasize the de minimize aspect of the exemption. In addition, ODEQ is encouraged to submit the modeling protocol contemplated above to EPA Region 6 for concurrence, prior to

submission of the regional haze SIP.

RESPONSE: OAC 252:100-8-73(c)(3) has been revised to limit the modeling option to BART-eligible sources with plant-wide emissions of SO₂, NO_x, and PM-10 between the "de minimis levels" and 250 TPY.

7. **COMMENT:** "Administrator," which appears in 252:100-8-74(a), should be defined using the definition in 40 CFR 51.100(b):

"Administrator" means the Administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

RESPONSE: This term is defined in OAC 252:100-1-3.

8. **COMMENT:** ODEQ may wish to define the term "subject to BART" as a "BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area." That term can then be substituted for the language in Section 252:100-8-73(a), and woven into Section 252:100-8-74, 252:100-8-75(f), and the first part of 252:100-8-75(a).

RESPONSE: Staff has decided not to add a definition of "subject to BART" to the proposed rule.

9. **COMMENT:** As discussed on page 39172 of the 7/6/05 rule, it is important that sources employ techniques that ensure compliance on a continuous basis. Therefore the following clarification to 252:100-8-75(e) is suggested:

The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly and continuously operated and maintained.

RESPONSE: OAC 252:100-8-75(e) has been modified as suggested.

OG&E Energy Corp - letter received via e-mail received on December 15, 2005, dated December 15, 2005, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst (these comments were based on the September 15, 2005, revision of the proposed rule, rather than the December 15, 2005 revision)

10. **COMMENT:** The last sentence in the definition of "secondary emissions" in 252:100-8-71 should be made consistent with the definition provided in OAC 252:100-1-3.

RESPONSE: The definition of "secondary emissions" in 252:100-8-71 is specific to Part 11 and has requirements identical to that in the definition of "secondary emissions" in 40 CFR 51.301. DEQ has decided not to move the definition of "secondary emissions" from 252:100-8-1.1 to 252:100-1-3 at this time or to make any substantive change to this definition.

11. **COMMENT:** There appears to be a typographical error in 252:100-8-75(a). There are two

paragraphs identified as number (3). As both seem to reflect the same requirements, one of them should be deleted.

RESPONSE: This error has been corrected in the December 15, 2005 revision of Part 11.

12. **COMMENT:** It is unclear how the date that BART must be installed and operated will be determined. 252:100-8-75(d) requires this no later than five years after the Department has approved the proposed BART. It is our understanding that a source will first submit a proposed BART to the Director by December 1, 2006, following which the Director will submit the SIP to EPA for their approval. There appear to be at least four options that could determine the date BART is approved by the Department: 1) the date the source submits a proposed BART to the Director, 2) the date the SIP is submitted to EPA; 3) the date EPA approves the SIP, or 4) some other date that has not been defined. The date BART installation and operation must occur should be clarified in the rule and be consistent with Federal requirements that allow five years after EPA approves the SIP before installation and operation are required (40 CFR 51 Appendix Y Section V). We propose that 252:100-8-75(d) be revised to read "The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after the EPA approval date of the proposed SIP."

RESPONSE: OAC 252:100-8-75(d) requires that BART be installed and operated no later than 5 years after the Department approves it and 252:100-8-76 requires that sources subject to BART shall submit BART requirements to the Director pursuant to 252:100-8-7.2 no later than December 1, 2006. This means that the BART shall be installed and operated no later than 5 years after the Department approves the modification to the Part 70 permit that incorporates BART into that permit. The Department is considering rewording OAC 252:100-8-75(d) to make clear that the BART will be approved by the Department when it is incorporated into the Part 70 permit for the source.

OG&E Energy Corp - letter dated January 4, 2006, from Julia Bevers, CIH, Sr. Regulatory Environmental Analyst

13. **COMMENT:** The applicability statement in 252:100-8-70 states that Part 11 applies to any BART-eligible source which may be anticipated to cause or contribute to any visibility impairment at any mandatory Class I Federal area. The words "any visibility impairment" are also used in 252:100-8-73 and 252:100-8-75. Does this really mean "any visibility impairment" no matter how small an impact, or is there some level of significance that applies?

RESPONSE: Sections 252:100-8-70, 73, and 75 have revised to include a threshold value for visibility impairment.

14. **COMMENT:** In 252:100-8-71, the definition of "Best Available Retrofit Technology" uses the words "each pollutant" the definition of "existing stationary facility" uses the words "any air pollutant". Since Part 11 applies to visibility protection it would be more accurate to state "each (or any) visibility impairing pollutant" in both instances.

RESPONSE: The federal rule in 40 CFR 51.301 uses the words "each pollutant" in the definition of "Best Available Retrofit Technology" and the words "any air pollutant" in the definition of "existing stationary facility". Since the Federal definitions do not narrow the universe of pollutants to SO₂, NO_x, PM-10, PM-2.5, VOC, and ammonia, neither do the definitions proposed in the DEQ rule. However, DEQ proposes to revise 252:100-8-73(b) to limit the pollutants considered for BART to NO_x, SO₂, PM-10, and PM-2.5.

15. **COMMENT:** In an effort to provide clarity we suggest in 252:100-8-72 that the title of Appendix Y also be included so that the section reads: "Appendix Y, Guidelines for BART Determination Under the Regional Haze Rule..."

RESPONSE: Staff agrees and proposed this change.

16. **COMMENT:** Subsections (a) and (b) of 252:100-8-73 appear to be contradictory. Subsection (a) states that each BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to any visibility impairment in any Class I Federal area is subject to BART while subparagraph (b) states that whether a source is subject to BART shall be determined using criteria in Section III of Appendix Y of 40 CFR 51 in effect on July 6, 2006. Paragraph (a) should be deleted.

RESPONSE: Paragraphs (a) and (b) have been revised and the contradiction no longer exists.

Oral Comments Made At The Council Meeting

17. **COMMENT:** Bud Ground, PSO. The Department has no plans at this time to develop a trading program. Are you waiting on CENRAP to develop something or for private industry to develop a trading program, or are you just not planning on ever trying to implement a trading program? Would you be opposed to the BART-eligible sources getting together to discuss trading?

RESPONSE: The Department has no plans to develop a trading program, but is not opposed to the stakeholders developing such a program. We will be happy to discuss any cap and trade program that such a group develops.

COMMENTS RECEIVED PRIOR TO THE APRIL 19, 2006, AIR QUALITY ADVISORY COUNCIL MEETING

BENHAM Companies, LLC – E-mail dated February 13, 2006 from Laura Worthen, P.E., Air Quality Group Manager

18. **COMMENT:** OAC 252:100-8-73(c)(4) reads that the modeling exemption waiver is limited to sources less than 250 TPY of NO_x, SO₂ and PM-10. This doesn't make sense, since sources that emit less than 250 TPY are not considered BART eligible and the modeling waiver option under the federal rule is intended for sources that emit greater than 250 TPY of

an air pollutant.

RESPONSE: This language was added to OAC 252:100-8-73(c)(4) based on an EPA comment. It appeared to make sense when it was added, but the unexpected consequence of this modification prompted staff take another look at paragraph (4). Staff had no intention of excluding any source with emissions of 250 TPY or more of any one pollutant from using modeling to demonstrate that the source does not emit any air pollutant which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area and had not interpreted the added language to mean this. Contact with EPA indicated that although this language is in the preamble, it shouldn't be. The last sentence in OAC 252:100-8-73(c)(4) containing the language in question has been deleted.

OG&E Energy Corp – Telephone call on March 20, 2006, from David Branecky, Manager, Air Quality

19. **COMMENT:** OAC 252:100-8-73(c)(1) allows the owner or operator of a BART-eligible source to request and obtain a waiver from the requirement for a BART determination for SO₂ or NO_x if the potential to emit these pollutants is less than 40 TPY of each pollutant. OAC 252:100-8-73(c)(2) allows an owner or operator to request and obtain a waiver from BART determination for PM-10 if PM-10 emissions are less than 15 tons per each. Why is the waiver from SO₂ and NO_x based on potential to emit and the waiver from PM-10 is based on actual emissions?

RESPONSE: A search of the preamble published in the Federal Register on July 6, 2005, indicates that a waiver from the requirement for a BART determination for PM-10 emissions should also be based on potential to emit. The preamble states that "We believe States may, if they choose, exclude from the BART determination process potential emissions from a source of less than forty tons per year of SO₂ or NO_x, or 15 tons per year for PM-10." Staff proposes to revise OAC 252:100-8-73(c)(2) to indicate that the waiver for PM-10 is also potential to emit.

Georgia Pacific – Telephone call on April 5, 2006, from Rob Kaufman

20. **COMMENT:** What is the basis for 252:100-8-75 (g)? Since a BART determination is a one-time evaluation, what is the basis for future BART evaluation requirements?

RESPONSE: This is a general plan requirement under the federal regional haze rule at 40 CFR 51.302. State plans must allow for a BART analysis, at such times as determined by the Administrator, when the conditions of 40 CFR 51.302 (c) (V) exist.

EPA Region 6 – Letter dated April 12, 2006, received by FAX on April 14, 2006, signed by Thomas H. Diggs, Chief, Air Planning Section and David Neleigh, Chief, Air Permits Section.

21. **COMMENT:** OAC 252:100-8-78 states that all modeling required by Part 11 shall be performed in accordance with a protocol approved by the Director. To avoid miscommunication on this issue, we suggest that Oklahoma ensure that any BART modeling

follows EPA-approved protocol. We urge the State to submit such protocols to us for prior approval. This will help ensure that the State does not risk disapproval of its Regional Haze SIP.

RESPONSE: We will work with EPA to insure that any BART modeling relied upon in the SIP follows EPA guidance. Since 40 CFR 51, Subpart P – Protection of Visibility does not require States to officially submit modeling protocols to EPA and obtain approval prior to any BART modeling, we do not believe Part 11 of Subchapter 8 needs to be changed to include this requirement.

22. **COMMENT:** Although Appendix Y to 40 CFR Part 51 is properly referenced in OAC 252:100-8-72 and 252:00-8-72(b), Oklahoma may wish to avail itself of other relevant guidance in the preparation of the regional haze SIPs, including the following:
- "Guidance for Tracking Progress Under the Regional Haze Rule," EPA-454/B-03-004, September 2003
 - "Draft Guidance for Demonstrating Attainment of Air Quality Goals for PM_{2.5} and Regional Haze," January 2, 2001
 - "Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule," EPA-454/B-03-005, September 2003.
 - A memo from Lydia Wegman to the Regional Air Directors entitled, "2002 Base Year Emission Inventory SIP Planning: 8-Hour Ozone, PM_{2.5} and Regional Haze Programs," dated 11/18/2002.
 - "Draft Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program," 11/28/2005.
 - "Visibility Monitoring Guidance," EPA-454/R-99-003, June 1999.
 - "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations," EPA-454/R-05-001, August, 2005.
 - "Interim Air Quality Policy on Wildland and Prescribed Fires," April 23, 1998

RESPONSE: Although OAC 252:100-8-72 incorporates Appendix Y, Guidelines for BART Determination Under the Regional Haze Rule, of 40 CFR 51 as it existed on July 6, 2006, and 252:100-8-73(a) references Section III of Appendix Y of 40 CFR 51 in effect on July 6, 2005, neither Section 8-72 or subsection 8-73(a) precludes the use of documents such as those listed in Comment #22. DEQ has worked closely with CENRAP in developing protocol and is aware of EPA's requirements.