MINUTES
AIR QUALITY COUNCIL
January 21, 2009
DEQ Multipurpose Room
707 North Robinson
Oklahoma City, Oklahoma

APPROVED AQC
April 15, 2009

Notice of Public Meeting  The Air Quality Council convened for its regular meeting at 9:00 a.m. January 21, 2009 at the 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 October 24, 2008 and amended on November 25, 2008 to change the date from the 14th to the 21st. Agendas were posted at 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. Mr. David Branecky, Chair, called the meeting to order and welcomed Mr. Pete White and Mr. Gary Collins to the Council. Ms. Bruce called roll and a quorum was confirmed.

MEMBERS PRESENT
David Branecky
Montelle Clark
Gary Collins
Jim Haught
Laura Lodes
Bob Lynch
Sharon Myers
Jerry Purkaple
Pete White

DEQ STAFF PRESENT
Eddie Terrill
Beverly Botchlet-Smith
Scott Thomas
Cheryl Bradley
Joyce Sheedy
Max Price
Rob Singletery
Nancy Marshment

DEQ STAFF PRESENT
Diana Hinson
Sarah Penn
Kendal Stegmann
Dawson Lasseter
Patrick Farris
Jay Wright
Karl Heinzig
Myrna Bruce

OTHERS PRESENT
Steve Mason, EQB
Christy Myers, Court Reporter

Transcripts and Attendance Sheet are attached as an official part of these Minutes

Approval of Minutes  Ms. Lodes made motion to approve the October 15, 2008 Minutes as presented and Ms. Myers made the second.

Election of Officers - Calendar Year 2009  Ms. Myers nominated Ms. Laura Lodes for Chair and Mr. Jerry Purkaple for Vice-Chair. Hearing no discussion, Mr. Branecky called for a second. Mr. Haught made the second.

Transcripts pages 5 - 7

Transcripts pages 7-8
OAC 252:100-9. Excess Emission Reporting Requirements [AMENDED] Mr. Robert Singletary, DEQ Environmental Attorney, advised that the Agency proposal would amend Subchapter 9 to clarify its requirements and make them more compatible with EPA guidelines. Mr. Eddie Terrill and staff fielded questions and comments from the Council. Public comments were heard from Don Shandy, Attorney; and from Alan Shar, EPA. After much discussion, Ms. Lodes called for a motion. Mr. Haught made the motion to accept this rule as modified and Mr. Branecky made the second.

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OAC 252:100-33. Control of Emission of Nitrogen Oxides [AMENDED] Ms. Cheryl Bradley advised that the proposal would define the term ‘solid fossil fuel’ to resolve issues regarding NOx emission limits for equipment that uses more than one type of fuel and equipment with technological limitations. In addition, the changes clarify what types of fuel are covered. She identified the changes that had been proposed incorporating two changes recently proposed by Council members. Following discussion, Ms. Lodes called for a motion. Mr. Purkaple moved to adopt as presented with latest changes. The second was by Dr. Lynch.

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6. Finance Committee Report – Mr. David Branecky advised that the Finance Committee had met with the accounting firm of John M. Aldrich and Associates regarding the financial audit for the Air Quality Division. He introduced representatives from the firm who fielded questions from the Council. Mr. Branecky asked for Council’s approval to move forward with the audit. Mr. Terrill assured that Council would stay updated on the progress of the audit. Transcript attached – pages 1 - 29

7. Mercury Fish Flesh Sampling Presentation - Jay Wright, DEQ Customer Services Division provided a presentation on how mercury accumulates in fish and update on DEQ’s recent sampling efforts and results.

8. Boiler and Area Source MACTs Presentation - Phillip Fielder, Engineering Manager, DEQ Air Quality Division, summarized the status of the federal MACT standards.

9. Division Director's Report - Eddie Terrill, Director, Air Quality Division had an update on ozone boundary issues; the Regional Haze SIP; and the upcoming Climate Registry national meetings. Transcript attached – pages 29 – 40

10. New Business - None

11. Adjournment – The meeting adjourned at 1:00 p.m.

Transcripts and Attendance Sheet are attached as an official part of these Minutes.
DEPARTMENT OF ENVIRONMENTAL QUALITY  
STATE OF OKLAHOMA

* * * * *
TRANSCRIPT OF PROCEEDINGS  
OF THE AIR QUALITY MANAGEMENT ADVISORY  
COUNCIL MEETING  
ITEMS NUMBER 1 THROUGH 5A  
HELD ON JANUARY 21, 2009, AT 9:00 A.M.  
IN OKLAHOMA CITY, OKLAHOMA  
* * * * *

MYERS REPORTING SERVICE  
Christy Myers, CSR  
P.O. Box 721532  
Oklahoma City, Oklahoma 73172-1532  
(405) 721-2882
MEMBERS OF THE COUNCIL

LAURA LODES, CHAIR
JERRY PURKAPLE, VICE-CHAIR
DAVID BRANECKY
JIM HAUGHT
BOB LYNCH
SHARON MYERS
PETE WHITE
MONTELL CLARK

DEQ STAFF
MYRNA BRUCE
EDDIE TERRILL
BEVERLY BOTCHELET-SMITH
CHERYL BRADLEY
JOYCE SHEEDY
MAX PRICE
NANCY MARSHMENT
DIANA HINSON
SARAH PENN
DAWSON LASSETER
KENDAL STEGMANN
MEETING

MR. BRANECKY: Good morning everyone. Let's go ahead and get started. Before we do that I'd like to remind everyone, if you have a cell phone, to turn it off or mute it. So with that Myrna, would you call roll.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Here.

MS. BRUCE: Pete White.

MR. WHITE: Present.

MS. BRUCE: Gary Collins.

MR. COLLINS: Here.

MS. BRUCE: Sharon Myers.

MS. MYERS: Here.

MS. BRUCE: David Branecky.

MR. BRANECKY: Here.

MS. BRUCE: Jerry Purkaple.

MR. PURKAPLE: Here.

MS. BRUCE: Montelle Clark.

MR. CLARK: Here.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Here.

MS. BRUCE: Laura Lodes.
MS. LODES: Here.

MS. BRUCE: We have a quorum.

MR. BRANECKY: Okay. Thank you, Myrna. Before we get started I would like to -- we do have a new Council Member, first time here, Pete White. I'd like to welcome Pete. He is an Oklahoma City Councilman in Ward 4. He's had experience in some wastewater utilities, trust, and various -- has been a Councilman for several years. So we'd just like to welcome you. And Pete, if you'd like to say anything, go right ahead.

MR. WHITE: I think I'll wait until I learn a little more about what we're doing before I start making comments. I appreciate that and I'm glad to be here. Honored to be here. Thanks.

MR. BRANECKY: All right, thank you. Gary, is this your first time too?

MR. COLLINS: Yes, it is.

MR. BRANECKY: Okay. Well I'm sorry. I apologize for that. Gary Collins with Terra Nitrogen --

MR. COLLINS: Yes.
MR. BRANECKY: -- is also the first time here as a Councilman. And I don't have anything to say about you. I didn't -- nobody put anything in front of me. Go ahead and tell us something about yourself.

MR. COLLINS: That's okay. I'm going to just listen.

MR. BRANECKY: Okay. Well, welcome Gary and Pete. All right. Well, with that we'll look at the Minutes from the last time. Do we have any discussion on the Minutes?

MR. PURKAPLE: There is a correction that needs to be made at the top -- on the top left. It says to be approved by Air Quality Council, at least the copy that I've got, said January 14th. That needs to be today.

MR. BRANECKY: Where's that at?

MR. PURKAPLE: Top left.

MS. LODES: Right here.

(Comments)

MR. BRANECKY: Okay. Any other discussion about the Minutes? If not, I'll
entertain a motion.

MS. LODES: I move to accept the Minutes with the comment -- correction suggested by Jerry.

MS. MYERS: Second it.

MR. BRANECKY: Did you get that, Myrna?

MS. BRUCE: Uh-huh.

MR. BRANECKY: Sharon seconded it. All right. Myrna, call the roll please.

MS. BRUCE: Please remember to push the blue button on your microphones before you talk. Thank you.

Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Pete White.

MR. WHITE: I think since I wasn't here, I'll abstain.

MS. BRUCE: Gary Collins.

MR. COLLINS: Abstain.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.
MS. BRUCE: Jerry Purkaple.
MR. PURKAPLE: Yes.
MS. BRUCE: Montelle Clark.
MR. CLARK: Abstain.
MS. BRUCE: Bob Lynch.
DR. LYNCH: Yes.
MS. BRUCE: Laura Lodes.
MS. LODES: Yes.
MS. BRUCE: Motion passed.
MR. BRANECKY: Thank you, Myrna.

The next item on the Agenda is Election of Officers for 2009. I've served. I've done my time. It's time for me to move on so, I will entertain any motions besides nominating me.

MS. MYERS: I make a motion that we nominate Laura for Chair and Jerry Purkaple as Vice-Chair.

MR. BRANECKY: Okay. Any discussion from the Council on that? If not, I'll entertain a second to that.

MR. HAUGHT: I'll second that.
MR. BRANECKY: So we have a nomination and a second. Myrna.

MS. BRUCE: Jim Haught.
MR. HAUGHT: Yes.

MS. BRUCE: Pete White.

MR. WHITE: Yes.

MS. BRUCE: Gary Collins.

MR. COLLINS: Yes.

MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Jerry Purkaple.

MR. PURKAPLE: I guess it's yes.

MS. BRUCE: Montelle Clark.

MR. CLARK: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: Yes.

MS. BRUCE: Thank you. Motion did pass.

MS. LODES: Beverly.

MS. BOTCHLET-SMITH: Just waiting on you to turn it over to me, Laura.

MS. LODES: Beverly, yes.

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 hearings.

The hearings will be convened by the Air Quality Council in compliance with the Oklahoma Administrative Procedures Act and Title 40 of the Code of Federal Regulations Part 51, as well as the authority of Title 27A of the Oklahoma Statutes, Section 2-2-201, and Sections 2-5-101 through 2-5-118.

Notice of the January 21, 2009 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 the meeting was filed with the Secretary of State on October 24, 2008 and amended on November 25, 2008. The Agenda was duly posted 24 hours prior to the meeting here at this facility at the DEQ.
If you wish to make a statement, it is very important that you complete one of these forms that are found at the registration table. And you will be called on at the appropriate time. Comments will be limited to ten minutes.

Audience members please come to the podium to make your statement and please state your name prior to speaking.

At this time, we will proceed with what's marked as Agenda Item Number 5A. This is OAC 252:100-9, Excess Emission Reporting Requirements.

Mr. Robert Singletary, Environmental Attorney, will be giving the staff presentation.

MR. SINGLETARY: Madam Chair, Members of the Council, ladies and gentlemen, thank you for the opportunity to present the Agency's proposed amendments to the Excess Emissions Reporting Requirement that are set forth in Subchapter 9.

The Agency is proposing to amend the current version of Subchapter 9 in order to clarify some of its requirements,
and also to make the requirements more consistent with EPA guidelines. In doing so, the proposed amendments establish Affirmative Defenses that may relieve industry of monetary penalties that are associated with excess emissions during periods of startup, shutdown, or malfunction. In addition, the proposed amendments also provide exceptions to the immediate notice provisions or immediate notice requirements in certain situations involving low quantity excess emissions that are not likely to pose a significant threat. In addition, the monetary penalties may also be avoided in situations where the excess emissions are the result of startup and shutdown activities.

As most of you probably recall, the history of the proposed rules development is rather lengthy. I'll try and briefly outline that history for you today.

The proposed -- the process has included multiple opportunities for the public and for the Council to comment and participate in the development of the
proposed rule. In fact, if you include today's Council meeting, there have been seven public meetings and six external workgroup meetings for the purpose -- or that included discussions about the proposed rule and that's just during the last 21 months.

The Council's actual involvement in this rulemaking process began back at the April 2007 Council meeting, at which time DEQ staff members solicited public comments on the proposed rulemaking.

In addition, at the October 2007 Council meeting, DEQ staff again solicited public comments on Subchapter 9, and also at that Council meeting, the subchapter 9 workgroup was establish in order to assist the Agency in considering a wide range of issues and concerns associated with the development of a new Subchapter 9 rule.

The workgroup, of course, is comprised of various DEQ Air Quality Council Members. Two Council members are actually on the workgroup. We actually have external members representing various
interested parties, but we also have members of DEQ staff, Air Quality staff and legal staff members.

On November 26, 2007 the Agency held an open public meeting specifically for the purpose of discussing Subchapter 9 and to provide additional opportunity for informal comment and discussion.

On January 9, 2008 the workgroup had its initial meeting. And at the January 17, 2008 Council meeting, DEQ staff presented various amendments to Subchapter 9. The Council decided at that time to table the proposal until the July 2008 Council meeting in order to allow the workgroup and the DEQ staff members to further develop the rule.

In the meantime, the workgroup met on January 31, February 22, May 30, and July 11 of 2008, in order to work on the rule.

Out of those workgroup meetings, a revised version of Subchapter 9 was developed and presented at the July 2008 Council meeting. However, there were
several issues that still needed to be finalized and addressed. So the Council agreed to continue to table the proposal until the October 2008 Council meeting. At the October 2008 Council meeting staff presented a revised version of the rule. However, there were significant comments received just prior to and during the Council meeting. As a result, the Council decided to provide additional time for those comments to be addressed. As a result, the proposal was carried to this Council meeting.

On November 3, 2008 the workgroup met to resolve those outstanding issues, primarily concerning the clarification of the immediate notice requirements that are as set forth in the rule. At that time the workgroup indicated there were some minor modifications and supported the revised version. And that revised version is what was published for public comment and what was provided to the Council in their Council packets today.

In addition to the comments
concerning the clarity of the immediate
notice provisions and the prior version,
commenters at the last Council meeting also
urged the Agency to consider an affirmative
defense for maintenance activities. Staff
considered the request, consulted with EPA,
and was told by EPA that an affirmative
defense for maintenance activities was
directly against their agency's policy and
that any SIP containing such a defense
could not and would not be approved.

Examples of SIPs containing those
types of affirmative defenses for
maintenance activities that have not been
approved by EPA, are the SIPs submitted by
Texas and Alaska. Alaska's was submitted
-- I believe that was sometime in 2007. As
a result of EPA's comments, staff decided
not to include an affirmative defense for
maintenance activities in the proposed
rule.

On a related issue there was one
comment received since the last Council
meeting. It was, in essence, a request
that the proposed rule include a statement
that maintenance activities that resulted
in under four tons per years of a criteria
pollutant or 1.5 tons per year of a HAP
only be require to have a minor permit
modification.

The Agency again, did not include
that type of statement in the proposed rule
for two reasons.

One is that the statement really is
a permitting determination and would more
properly belong in one of our permitting
subchapters as opposed to the excess
emissions subchapter. But more
significantly the proposed language would
result in a state rule that potentially
weakened the federal requirement.

For example, four tons per years of
a criteria pollutant seems like an
insignificant amount; however, those four
tons may actually cause a facility that
already has permitted emissions already
near federal thresholds to actually exceed
those thresholds. Once that threshold is
exceeded, the additional federal permitting
requirements would be triggered, and a
blanket provision requiring those emissions to be treated as minor modifications, again, would effectively weaken a federal requirement and would not be approved by EPA. That was another justification that EPA cited for its non-approval of the Alaska SIP in 2007, as well.

Since the last Council meeting, several additional comments have been received and written responses to those comments have been provided, with the exception of several verbal comments that were received last Friday. Those verbal comments were followed up with written comments that we received yesterday. Those comments actually request four changes be made to the rule that was currently before the Council.

We've indicated those changes and some other changes in a document entitled "Proposed Changes to the Text Distributed Previously", which should be before each you. And as you can see in that document the Agency has agreed to four of the -- or three of the four requested changes.
Specifically, OAC 252:100-9-7(b)(9), the word "required" was changed to "requested."

MS. LODES: Rob.

MR. SINGLETARY: Do we have those?

MS. LODES: No.

MR. BRANECKY: No. We do not have those.

MS. MYERS: No. I do not have a copy.

MS. LODES: Sorry, we just have the copy that was distributed yesterday -- David and I have a copy that came from yesterday's --

MR. SINGLETARY: Should be highlighted at the top in yellow and it will say "Proposed Changes to the Text Distributed Previously".

MS. LODES: No. This is --

MR. BRANECKY: Okay. Get some more copies made.

(Comments)

MR. SINGLETARY: It's probably going to be a lot easier to follow along if you have that to look at.
MS. LODES: Right. If you will wait just a minute on us to get a copy of those.

MR. BRANECKY: Take a break.

MR. LODES: We'll take a break while staff is making copies.

(Break)

MS. LODES: Shall we get started back up now. Were extra copies provided to all of the audience?

MR. BRANECKY: They had some on the table.

MR. SINGLETARY: They had them initially. There was just a mis-communication and you guys didn't get them. Everybody else in the room had them but you.

MS. LODES: Okay. As long as everybody else has them.

MR. SINGLETARY: Again I apologize for that.

As I was saying there were four requested changes in these -- the comments that were just received. They were just received on Friday and then followed up in
written form yesterday. But the Agency has decided -- has excepted three of the proposed changes. And those are indicated or reflected in that document.

The first one is specifically located at OAC 252:100-9-7(d)(9). The word "required" was changed to "requested".

The second change is in OAC 252:100-9-8(b)(9). The entire provision at that location is replaced with the exact language that is in the corresponding provision of the existing rule at OAC 252:100-9-3.3(a)(3). That's where that provision comes from. And it reads:

"To the maximum extent practicable, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions; provided, however, that the provision shall not be construed to automatically require the shutdown of process equipment to minimize emissions."

Similarly, in OAC 252:100-9-8(c)(8), the entire provision is replaced with the
exact language from the corresponding provision in the existing rule, which is located at OAC 252:100-9-3.3(b)(4) which reads:

"The facility was operated in a manner consistent with good practice for minimizing emissions; provided, however, that this provision shall not be construed to require the use or installation of additional or redundant pollution control equipment not otherwise required and that this provision shall not be construed to automatically require the shutdown of process equipment to minimize emissions."

The last change that was requested in the comments was the complete elimination of the provision located at OAC 252:100-9-8(d)(2), and also the amendment of Subsection (d)(5) to eliminate the last portion of the provision which consists of the phrase "or any other federally enforceable performance standard or emission limit."

In regard to Section (d)(2), the commenter explained that the provision
would prevent facilities that decided to permit startup/shutdown activities from being eligible for an affirmative defense. It is staff's position that, first of all, we can't support such a significant change to the proposed version without adequate time to properly consider the proposal, and the same goes for the provision in Subsection (d)(5).

Staff's initial concerns though with this proposal is that a facility being able to chose to permit startup/shutdown activities, thereby avoiding excess reporting requirements and also enjoying the protection from PSD enforcement, also being allowed to take advantage of the affirmative defense provisions that are in the proposed rule. In addition, staff has serious concerns with how compliance with the NAAQS and PSD requirements will be demonstrated if the limits in Subsection (d)(2) are eliminated. The concern there is that without those limits in place and sharing compliance with those limits, that the only
other way to determine compliance with the
NAAQS or PSD requirements would actually be
through modeling after excess emissions.
And I don't think that's something anybody
wants required.
As a result, the Agency did not
include these changes in the proposed
version of the rule.
There was one last minor change
agreed to by the Agency, and that's located
at OAC 252:100-9-7(a)(2) which was amended
to clarify the intent of the provision.
It's just that simple clarification.
Again, all the proposed changes that
I've talked about are in that document
that's entitled, "Proposed Changes to Text
Distributed Previously", and now they have
been made available to the Council as well
as the public.
Just to briefly sum up, during the
last 21 months there has been a significant
amount of participation in the development
of the proposed rule, and this lengthy and
collaborative process has resulted in a
rule that we feel has taken into account a
wide-array of somewhat competing interests.

And has balanced those interests in a proposed rule that enables the Agency to continue first and foremost to protect public health and the environment, but at the same time also to relieve some of the regulatory burden on industry.

For example, by reducing immediate notice reporting requirements; by providing additional time in which to submit written reports for excess emissions; there's also the potential avoidance of duplicative reporting requirements; and then also there's the potential avoidance of monetary penalties associated with excess emissions resulting from startup/shutdown or malfunction activities.

In addition, the proposed rule also allows the Agency to satisfy the requirements of the EPA, which of course, ultimately also had to approve of this rule.

Staff believes that the proposed rule is currently ready for final adoption
and, therefore, respectfully requests that the Council vote to send the proposed rule to the Environmental Quality Board with a recommendation that it be adopted as a permanent rule. Thank you.

MS. BOTCHLET-SMITH: At this time the staff will take questions and comments from the Council.

MS. LODES: Rob, I have a question. At the beginning you said that you couldn't do a blanket; that this would all be Tier I for modifications to the permits. Correct? If we're going to modify a permit to add startup, shutdown or maintenance emissions --

MR. SINGLETARY: I'm guessing -- I'd actually probably defer that question to our permitting guys. But if it's -- my understanding there may be -- there are many situations where it would be a minor modification. I mean it just depends on the situation. Is that correct, Dawson? I mean if they're not near that threshold, and a few additional tons per year might not trigger an additional threshold
requiring a major modification.

MS. LODES: Well, then at the end when you were talking about the affirmative defense, you said by opting to include it, they're afforded PSD protection. But could it be that that addition of startup and shutdown and maintenance emissions might trigger PSD review?

MR. SINGLETARY: Yeah. That was the point of the examples, that it could trigger -- in certain situations if a facility was already on a threshold, or close to a threshold, that maintenance activities could be enough to trigger that, and that's the reason we couldn't agree on a blanket exemption or a blanket definition or statement that it was a minor modification.

MS. LODES: Okay. So by taking away the affirmative defense -- or if you permit them, you're not allowed to do the affirmative defense. That really doesn't keep you out of any kind of PSD permitting review, because you may have had to go through that to begin with.
MR. SINGLETARY: I see what you're saying. If there is an excess emission in addition to what was permitted then you --

MS. LODES: Right. Correct.

MR. SINGLETARY: Yes, there would still be the potential of, but there wouldn't be the potential of, if you didn't have that excess emission permitted -- part of that excess emission -- well, part of the startup/shutdown emissions permitted.

The parts that are permitted you are protected from PSD review, because that would be considered in the permitting process. However, if you exceeded those limits, I guess there is still the potential that you could exceed a PSD threshold.

MS. LODES: Have you all also developed a time line? The rule here doesn't have a time line for when permit applications must be submitted for this. I know different dates, deadlines, and such have been talked about.

MR. SINGLETARY: Yes, I believe
that the --

MR. TERRILL: Are you talking about for permitting of the maintenance?

MS. LODES: For permitting startup/shutdown maintenance emissions.

MR. TERRILL: Yes. If the Council chooses to pass this rule today, what we're proposing -- it wouldn't go into effect until July of 2009. So we're proposing six months additional time from that, which would basically be the end of the year to get your application in. And once your application is in, if it takes us six months to a year, you're protected at that point. All we want is the paperwork in to get started or if you have a problem and can't get it in at that time, email us, send us a letter saying we need some additional time explaining that and we'll work with you on that too. Because we understand this somewhat of a burden for you, all as well as for us, to get this done. So we want to make sure that there is adequate time allowed for us and for you all.
MS. LODES: I think the time line might need to be a little bit longer, because I know -- I can think of three companies alone that between the three would have over 500 facilities with permits that would need to be modified.

MR. TERRILL: Well, I'd prefer that you leave a target at the end of the year, but if you have extenuating circumstances we'll work with you on an individual basis to extend that. Again, we have to get to them as well. So it's not in our benefit to be flooded with these so we can't get to them. But if we don't have some target that's reasonable, we'll be doing this two years from now. But I think we need to at least have the process started so you're at least thinking about it, even if all we get say in November is "we're not there yet, can we have another whatever, six months", that's fine. You're considering it, you're getting it, you're working with us to get it done.

But I'd rather have a target in there that's, you know, somewhat reasonable
so that we don't get a year and a half down
the road and then not be anywhere even
thinking about it yet.

So that's the purpose for the year.

MR. HAUGHT: How would that be
part of the rule or would that -- how would
that be documented?

MR. TERRILL: It's on the record.

That's part of our commitment. And I think
we felt like it would be very difficult to
put that --

MR. SINGLETARY: I think even if
we did put it in a rule, I think that would
be a temporary blanket exemption that EPA
could come back and disapprove the
provisions because you would be allowing
basically -- in the rule you would be
codifying an exemption to permitting
maintenance activities for a certain amount
of time.

MR. TERRILL: And we'll use our
discretion. Which I think that's -- we
think this rule given the amount of work
that's gone into it and the feedback we've
gotten from EPA, could very well be a model
rule for the country. And given that, we feel like we'll use our discretion to take the time we need and use our resources to what we think is the best purpose. And if it takes two years to get this done, then it will take two years to get it done and we'll work with folks to do it. If we can get it done in a year, well that would be great. But we'll use our discretion and our commitment to the Council to work through that and make sure we get it done in a timely manner but one that doesn't waste resources, both ours and yours.

MR. PURKAPLE: Eddie, question. The direction that the DEQ is wanting to move in terms of permitting is for facilities to permit startup and shutdown emissions. Because clearly the option that a facility would have, they still would make use of affirmative defense, is not to permit those.

MR. TERRILL: Right. Right. And we're not saying you have to do it. Obviously, this is something that EPA feels would be helpful and we want to provide
that -- we think it would be wise too, but we're not going to tell you -- you all know your facilities better than we do and if you feel like you're better off taking the affirmative defenses and going through the process that we've got here, then avail yourself of that. If you think you can get it permitted, then do that. But the fact that you get these tradeoffs of not having to do the immediate reporting and not having to do some of the other things, we feel like that you should spend time to make sure that you get this as close as you can to being right in the permit so that you don't need the affirmative defense. So that's kind of -- it's kind of a tradeoff and a balance. But that's the direction we're going.

MS. MYERS: So if a facility goes through the process and permits excess emissions for startup or malfunction and should unforeseen events happen and you go over what you estimated that you thought you might have, and you permitted that, where does that leave you for the balance?
Does that leave you without affirmative defense? Because that's the way I read this. I mean there is not a slam-dunk guarantee that with your best efforts you're going to capture every potential occurrence.

MR. SINGLETARY: I guess there are two parts to the question. You had mentioned malfunction and startup/shutdown. There would be no expectations that malfunctions could be permitted in any way, shape, or form.

MS. MYERS: Okay.

MR. SINGLETARY: So that wouldn't be --

MS. MYERS: I was thinking malfunction leading to maintenance, but okay.

MR. SINGLETARY: As far as startup and shutdown, that's our position. That's the position that we have right now that if the facility has made the choice to try and quantify these and get the protections from having it in the permit that they wouldn't also be eligible to
receive the benefit of receiving an
affirmative defense. So, yes, it would be
an excess emission that wouldn't -- that
you would not automatically, if you set
aside those elements under the affirmative
defense be entitled to relief from.

MS. MYERS: So for a facility
that might have some unforeseen event that
they tried to capture in a permit amount --

MR. SINGLETARY: If the
unforeseen event was -- if there was some
type of malfunction or something, I mean
clearly that would be still -- even if
there was a malfunction occurring during a
startup or shutdown event that would be
something that could be eligible for an
affirmative defense under the malfunction
provision.

I recognize that it may be
difficult, depending on the industry, to
actually permit certain startup/shutdown
emissions and that choice -- I mean that's
one reason you -- the choice has been
provided to -- there's no requirement to
actually get them permitted.
MS. MYERS: Right.

MR. SINGLETARY: It's actually up to the facility to examine their situation and make the choice that's right for them.

MR. HAUGHT: On the last page of the rule, 9-8(d)(5), on the part where there was a comment that you didn't accept it. We spent some time talking about (2), where we addressed them specifically in this, but you didn't about the kinds that would fit in together on the last part where there was a recommendation to strike the -- after the citations to strike the rest of that sentence. Does that exclude -- because it talks about federal enforceable emission limits, does that mean that any synthetic minor facility or any Title V facility is prohibited from the --

MR. SINGLETARY: I think that that could be interpreted that way. I think our concern with changing it is that we just -- that was actually a comment that we didn't receive until yesterday. And that wasn't one that we even received.
verbally last week. That was one that we talked about for the first time yesterday afternoon and we didn't feel like -- it seemed like a pretty significant change. And we hadn't really had an opportunity to address it or consider it the way we needed to before we felt comfortable making a recommendation to the Council that it be removed. I do understand the concern with the potential of it being interpreted that way.

MR. HAUGHT: So how do we address that? Because essentially you're going to have to take out a large portion of facilities that would otherwise --

MR. SINGLETARY: To be eligible

MR. HAUGHT: -- be eligible for it with that terminology. And I don't know what it intends to capture, if it doesn't intend to capture those individual permit limits.

MR. SINGLETARY: I think that would be something that we would probably be interested in hearing some of the other
comments in regard to that proposed change
and if we could take those in the light. I
think if we have a chance to consider it a
little more possibly even during this
hearing, I mean that may be something we
would be a little more amenable to
supporting. But at this point we haven't
really had a chance to hear all of the
different issues and opinions on it.

MR. TERRILL: Jim, we talked
about that this morning. And I think staff
-- I've got some concerns but then I'm not
as smart about the issues as the staff is.
They don't think it's that big. It's a
concern, but we think we can work through
that part probably today. What we're not
willing to give on though is the (2). We
think that's -- for us that's a
deal-breaker to lose that. But staff
believes that we can modify (5) so that
it's not as broad and still captures the
(2) of the affirmative defense loss there,
if you chose to permit the facility.
So Rob is right. We would kind of
like to hear if there are any other
thoughts about that. We wanted to hear from you all and from anybody from the public. But that's one area that we think we can fix today so that it's not as broad, but we still keep that affirmative defense exemption under (2). So as soon as the Council is interested in hearing that, we can probably talk about that if we get interest from you all and from the public to make that change.

MS. LODES: I'm interested in making that change. I would like to talk about it. What are the thoughts or concerns, Eddie, where you all might be able to work on rewording that -- tweaking it?

MR. TERRILL: Go ahead, Rob.

MR. SINGLETARY: I think that we wouldn't necessarily be opposed to striking out that portion of (d)(5) that was proposed depending on what we hear -- you know, comments from the rest of the Council and from the public.

MR. TERRILL: Again, we're looking at unintended consequences here.
And if we don't hear anything that anybody raises on this short notice, we don't see -- I'm sorry, I turned my microphone off.

Again we're looking at unintended consequences here. I mean we looked, we got it yesterday, we at first blush there was some concern from staff, but the more they looked at it, the more they thought, well, maybe this is a little bit broad and maybe we could narrow it down and not lose what we were looking for in (2). But we wanted to hear from some the Council and from the public, because if somebody raised an issue that we hadn't thought about, then obviously we would want to hold it over and give that some thought.

But if we don't hear anything, we're amenable to doing that. But we would like to hear, you know, is there something we've missed, because the whole thing in here is unintended consequences of making these changes this close to, you know, passage.

MR. HAUGHT: Do you know what the staff concerns were that weren't covered -- that weren't considered in those parts that
are listed in 60, 61 or 63?

MR. SINGLETARY: I think we're more afraid of what we haven't -- if we've missed something that it wouldn't be covered in those other provisions that we're not thinking of. And that's the unintended consequences that Eddie was talking about. That's why we were amenable to the change, but we wanted to get some more input. Because this is obviously -- the removal of that hadn't been something that we had any input on except from the person who made the comment yesterday.

MR. HAUGHT: Well, this prohibits those categories -- it just says category intended. The Agency still has discretion if something shows up later on in a federal rule you can (inaudible). It's not a -- I guess I don't see that it would tie your hands at some point if that did come up on an individual basis, that you could still decline that affirmative events request or -- that doesn't mean that -- isn't that subjective anyway on your part?

MR. TERRILL: And I think that's
probably what they thought too. I think
that's what our folks thought too. But
again we wanted to make sure that -- we
wanted to kind of hear what your thoughts
were, and we're getting that.

MR. HAUGHT: And not being a part
of the workgroups, I didn't see it until
this morning either. So I kind of had some
questions about it (inaudible) but it does
seem to be a problem if we're going to try
this and we're not sure that what we're
covering excludes all major sources and all
synthetic minor sources. Take the
affirmative defense off the table as an
option for them, and I've got a problem
with that.

MR. SINGLETARY: Sure.

MS. LODES: Maybe we should see
if we've got anymore questions from the
Council -- or should we hear from the
public, Jim, and see what comments we get
there on that issue?

MS. BOTCHLET-SMITH: Okay. At
this time we'll take comments from the
public. Don Shandy.
MR. SHANDY: Members of the Council, my name is Don Shandy, and I have been involved in the workgroup. This has been a tedious task, to say the least. It has been something that probably -- I would think that most people that have worked on this workgroup would say it's been one of the more difficult tasks in terms of rulemaking.

I'm not going to go over all of the ground that Rob has covered. But before I get there, I actually want to say thanks to Rob, because he and I have had many discussions. I think that's a safe thing to say. And we have discussed these issues that he's talked about this morning. The letter or the four issues that Rob raised were -- the comments were provided by me. And so I appreciate the DEQ resolving those first three issues.

I'm going to confine my comments primarily to the affirmative defense section. And you've covered a lot of the ground that Rob and I have had extensive discussions about in the past few days.
You know, my understanding was the basic desire for startup and shutdown emissions were to get those permitted. And I don't know which Council Member made the comment but as we continue to read through this rule for probably a hundred times, questions started to arise in my mind about Paragraph (2) of the affirmative defense section as well as Paragraph (5).

Again what the basic intent being, I think, to permit those emissions. The longer I looked at this language, the more concerned I got, because it appeared to me that the language was essentially swallowing the rule.

And what I look at when I look at this rule, I look at it not only from a administrative standpoint but from the standpoint of how would a judge look at this down the road.

And my concern, quite honestly, is not just from an administrative perspective, but also from a perspective of a potential citizen suit.

So here's the scenario that concerns
me. Someone comes in in good faith, permits the emissions, has an event or a series of events that exceeds that permit limit, then you have absolutely no affirmative defense. And I just think from an industry perspective and the people that I represent, which is a consortium of industries, the language is unacceptable. We are prepared, and I am prepared to say we agree with the rule subject to Paragraph (2) being taken out, and a portion of Paragraph (5) I think that you have in front of you, being taken out.

One of the fundamental problems that I also have with this section is that if you -- if you look at Paragraph (5) the language says "any enforceable limits". My concern is that language -- for example, if you have a judge that would look at this and they understood Title V, the first thing they would ask is -- if they understood -- if you have a Title V permit, is anything in there an enforceable limit? The answer, yes.

I think the logical legal conclusion
at that point is -- if that is the case, which I believe that it is -- that if you have a Title V permit with any limit which is enforceable, then you have no affirmative defense. And I think, you know, in the Air Quality Division's defense again, these comments came up relatively late. But I'd rather get it right and be late, than get it wrong and never comment on it. And so I think there are significant concerns, legal issues, related to this language that just simply can be resolved by taking the language out.

Another point that I think is important. When I made the comment -- I'm not asking, for example, in the rule, to do any violations to injunctive claims for injunctive relief. In Item (3), "excess emissions that cause an exceedance of the NAAQS or a PSD increment". Item (4) "failure to meet a federally promulgated emission limit including but not limited to 40 CFR 60, 61, and 63". Or Item (5), "violations of requirements that are
derived from 40 CFR Part 60, 61 and 63".

What I'm trying to address narrowly here in this affirmative defense prohibited section, is a surgical approach to it, which leaves the sacred areas which we all recognize are things such a NAAQS, PSD increment, injunctive relief.

If the state needs to go seek an injunction against the facility because they're not operating correctly and it's creating a health problem or an environmental problem, I would be the first one to stand up and say we should never, never, never do anything to prohibit the State's ability to proceed. But what I am saying is we should not adopt language in a rule that swallows the rule and defeats the fundamental intent of the rule.

So I would say today, I would recommend approving the rule subject to these changes.

I will try to answer any questions that you all might have. I don't want to go and belabor the points any further. I think Rob articulated pretty well, the
State's position. And I just wanted to make sure you all understood where we were coming from.

And I will say I'm glad I don't have your job.

MS. BOTCHLET-SMITH: Next commenter is Mr. Alan Shar from EPA.

MR. SHAR: Chairman, Members of the Council, and the public, my name is Alan Shar. I am with the Air Planning Program from EPA Region 6, Dallas, Texas. I would like to thank the members of the Excess Emission Workgroup for their dedication and hard work of many months -- nearly two years of working on this project.

Obviously, a regulated community in the state of Oklahoma now faces the excess emission subchapter that you have in front of you. One is a 1993 version that EPA has on its books, which is federally enforceable. The other one is the state enforceable rule, the 1998 or 1999 version. I think adoption of the rule that combines and takes some of that ambiguity out would
be prudent.

Some of these changes introduced are known to us; we haven't had an opportunity at EPA to review this, so it would be improper for me to endorse or reject it one way or another. Excess emissions is a controversial topic and EPA regional office not only has to coordinate (inaudible) but also (inaudible) assurance for any revisions made on the rules that are proposed today.

I would like, for the record, to introduce a ruling of the 6th Circuit Court of Appeals, dating the year 2000 in the case law of Michigan Department of Environmental Quality and Michigan Manufacturing Association versus EPA. In that case the Court sided with EPA. I would like to officially introduce this document for the record.

MS. LODES: Do we have copies of that document?

MR. SINGLETARY: We can make copies for you.

MS. LODES: Okay. Thank you.
MS. BOTCHLET-SMITH: That concludes comments from the public. If we have any other questions from the Council, we can take those at this time.

MS. LODES: Okay. I have a question on the issue with -- and my primary question is going to be centered around the last portion, where Jim was talking about the synthetic minors in Title V -- on Item (5). And here's the scenario I have because -- and Kendal may end up -- I'll throw her under the bus on this one.

You have a synthetic minors site, let's say an oil and gas site, because we have several hundred or thousand of those here in the state. Individual Minors Source Permit. It has a condensate throughput limit for VOC to keep it under synthetic minor. You also have a d-hyd at the site. And typically in those individual minors source permits, if you have a d-hyd, they go ahead and put a line item permit limit for VOC and everything else on there. If you have an excess emission at that d-hyd, because it's a
synthetic minor, do you lose any
affirmative defense for that d-hyd because
you have a synthetic -- because you are a
synthetic minor because of the condensate
storage tanks?

MR. SINGLETARY: Under the
currently proposed (d)(5)?

MS. LODES: Yes.

MS. STEGMANN: I would say no.

But I think it could be construed in the
affirmative, the other way as well.

MS. LODES: Okay.

MS. STEGMANN: It's a wishy-washy
answer.

MS. LODES: Well, like Jim said,
that is my concern. There's no telling how
many synthetic minors are out there. Every
general permit in the state for an oil and
gas facility or any of the others, are all
synthetic minors, which most of those don't
have individual limits. But there's a huge
number of synthetic minors, I know, for oil
and gas facilities and other industries.
And that's really what I see they're -- the
big unintended consequence with this would
be the synthetic minors even more so, I
think, than the Title V's.

MR. TERRILL: Laura, your concern
is with the way it was proposed now, not
with the changes that Don proposed?

MS. LODES: Correct. I'm just
reading (5) and I --

MR. TERRILL: The changes that
Don proposed would fix that; right?

MS. LODES: I believe they would
fix that if you struck the "or any other
federally enforceable permit standard or
emission limit".

MR. TERRILL: And I think we're
okay with doing that. Because, again, you
know, this rule can be looked at like we
looked at the one we did in 2000. I'm sure
we haven't thought of everything. And the
offer then is the same I'm making now. If
we do have an unintended consequence, we'll
fix it.

I mean until you actually implement
this rule you really don't know what you've
missed and what you haven't. But we're not
looking to do anything other than reduce
the reporting requirements for you all and
for us and to shift this whole discussion
to more of what's important to protect the
public health, which is being more
cognizant of the startup and shutdown
emissions, or cognizant of maintenance
emissions, or cognizant of malfunction
emissions and doing what you can to reduce
those. I mean that's the whole purpose of
this.

So I think we're okay with making
that change because it's not our intent to,
you know, drag in all those thousands of
sources. And at the end of the day it's
probably not going to do much for
environmental protection anyway.

MS. LODES: Right. And that was
my example on the d-hyd, those are usually
small emissions and you're not talking
about much of anything there that wouldn't
throw you into the rest of this anyway.

MR. TERRILL: Since it looks like
we're sort of winding down here and you
guys are thinking about what you want to
do, let me just throw this out there. I've
been thinking about how to bring this full
circle. And I think that a little bit of
history might be in order here. And a
little bit of looking forward as to what
might happen over the next few months.

This whole issue relative to excess
emission came up about two, to two and a
half years ago. I'm the Co-Chair of the
Enforcement Committee for what was
STAPPA/ALAPCO and is now NACAA or the
National Association of Cleaner Air
Agencies. And that is basically the State
Air Directors. And as such, myself and my
Co-Chair, meet with the Regional Air
Managers with EPA, the ten regions and the
OECA Senior Enforcement Staff at least once
a year, but generally on a twice-a-year
basis, just to talk about national policy
and those sort of things.

And this issue came up relative to
excess emission malfunction and the issues
that Eric Shaffer raised with the
Environmental Integrity Project and the
paper that he wrote four or five years ago
that detailed this problem. And Adam
Kushner who is the Chief of the Air Enforcement, at the time indicated he was considering asking for a SIP call to force the states to look at this issue. They really didn't want to go down that route because there was a rift between the program side of EPA and the enforcement side of EPA. It was bad then, it got worse. It got worse over time, but it would have been a really nasty thing to try to do or to try to convince EPA to do at that time, and they really didn't want to do it.

So what we talked to them about was taking this issue to our membership at one of our annual meetings and turn it over to the states to determine whether or not it was appropriate for them to address this issue ahead of an EPA SIP call. So that's what we did.

And that's kind of what started our discussions 18 months ago. And we have been meaning to take a look at this rule for a long period of time, and this was kind of impetus for us to take a look at
it. Because the way our rule is right now, both the 1993 version and the changes we made in 2000 are not going to be approvable by EPA; they're just not.

And so the workgroup was formed and I think that they've done an excellent job. I think that Julia did a good job of herding the cats along and trying to get, you know, things moving. And I think that Laura, and Sharon, and Don, and all the other folks that worked on this -- and especially our staff, that I'm most proud of -- did a good job of putting together a rule that took into the consideration that you all had about the burden that this reporting had on you. But still balanced the need for making sure that it doesn't lose what we intend for it do, which is to get you to focus on the things that matter relative to startup/shutdown/malfunction and try to reduce those emissions. But we feel really strongly about this too -- this affirmative defense being prohibited in the event you permit them.

I don't doubt that what Don says is
probably -- is a possibility. But anything we do is a possibility to get sued on. If you look around, EPA gets sued every day on issues. And at some point you've got to make a decision that, you know, we think this is the right way to go and we'll take our chances with it. And our staff is willing to do that. What we're not willing to do is give up (2) without giving it further consideration.

We believe that the rule is a model rule for EPA. We think that this is something that they will push nationwide if we pass this. And I'm really proud of the work that they've done on it. But we're willing to not pass that today and go back and take another look, in trying to fix it.

But here's a risk you're going to take with doing that. As you know yesterday, there was pretty much a SEE change in the way things are going to be done federally in this country. If you look at the appointments at EPA, you've got a fairly aggressive group of leaders at
EPA. In our role as a Committee Chair, we had discussions with Obama's transition team, with EPA, and what they're looking for. And one of the things that was top of their list was fixing this rift between the programs and the enforcement; so that they're all on the same page on these issues and moving forward and trying to write rules that are enforceable and not fight among themselves at cross purposes. And that's going to happen. That's going to be one of the first things that the EPA's new Administrator is going to do, is say we can no longer have this fight. So I think you're going to see a lot more cooperation between enforcement and compliance and the program side. And I don't know who the head of OECA is going to be. But I know two of the three candidates that I think have a likely possibility to get this position, feel like the excess emission malfunction is something that has to be addressed. And Adam Kushner, who originally brought this issue to our attention, is now
the head of all civil enforcement. And he still thinks it's a major issue.

So I'm willing to continue with the rule we've got and sit back and see what EPA does with this, because I think it's going to be one of the first things they address and we'll let them work through the thorny things.

But I think one of the things you risk losing is the things that we think are good. And we will fight for these if we get the opportunity. But I can tell you that the notion of reportable quantity is not one that's favorable among a lot of the top EPA folks. I think it makes a lot of sense because it drops out things that don't matter. But that's going to be something that's going to be a tough sale. So you do run some risk either way you go with this rule. You run some risk if we leave it in; you run some risk if we wait. But it's up to the Council. It's a tough decision to make, but I think you need to weigh all of this as we move forward.

But we just can't really support
removal of (2) without going back and
taking a look at it and we would ask that
you -- if that's something that you want us
to do, that you remand that back to us to
take another look. And we may or may not
bring it back in March. It kind of depends
on what we -- because I don't think --
we'll try to look for a fix for this that
gets us what we need, and maybe gets Don's
folks what they need. But if we can't come
up with a fix for it, we're not willing to
budge on that. And then you'll have to
make a decision as to whether or not you
want to pass it or not.

MR. BRANECKY: I don't
necessarily disagree, Eddie, that EPA may
make this a top priority, but for EPA to
move between now and April is probably
pretty quick for EPA to do anything at all.
So I don't have any problem delaying it
until April. But if we do delay it until
April, and we pass it in April, it won't go
to the Board until their July meeting. And
so the rule, unless we pass it as an
emergency rule, will not become effective
until June of 2010.

MR. TERRILL: That's correct.

And I don't know that -- well that's assuming the Board meets in July. Because they've had a history over the last couple of years of not meeting until late summer or early fall and not doing the July -- it just kind of depends on what they've got going on. But even at that, won't the Legislature be out of session? And it still won't make any difference. If we don't, we'll miss the cycle anyway.

MS. LODES: Well, Eddie, I'd like to -- I know we've got the EPA document now. I'd like to suggest at least a ten minute break so that we can review this EPA document because I would like to read that.

MR. SINGLETARY: Madam Chair, may I quickly respond to some of the public comments that were made before we --

MS. LODES: That would be great.

MR. SINGLETARY: I think what I'm hearing from our staff is that, you know,
we do recognize that concern with the (d)(5) provision. And that removing that may be appropriate. However, in regard to (d)(2), as Mr. Terrill was saying, we do have serious concerns still with that. Two of the comments made by Don Shandy tend to support the elimination of that concerning the SIP and sue concern, and that there be no damage to the NAAQS or any of the other essential requirements. It's our position -- first of all in regard to NAAQS and PSD increments that, you know, without those limits that are set in (d)(2) it really becomes meaningless. Because like I said, without requiring some kind of modeling after every excess emission we won't be able to know whether or not a NAAQS or a PSD increment is in danger or has exceeded in those limits and to help us to ensure that doesn't happen.

But also in regard to the SIP and sue provision, I don't know that I necessarily completely agree with that concern. If you look down at the very last sentence of the proposed rule, it indicates
that this section shall not be construed as limiting EPA or citizens authority under the act.

I interpret that to mean that this affirmative defense section, regardless of what the DEQ says, if we say it is an affirmative defense or not, they still may be -- and the facility may still be subject to citizens' suits, based on just the -- if an excess emission occurs and this is something that we've already been told directly by EPA, this is verbatim out of their policy and it has to be in there otherwise they will not approve it. I just wanted to make those comments. Thank you.

MS. LODES: Thank you, Rob. Do we have any other comments from the Council?

MR. PURKAPLE: Yeah. The thing that I wanted to say is that, number one, I appreciate all the work that the DEQ has placed on this and the workgroup as well. I'm kind of torn between the fact that they've put in so much effort to move it forward, but yet at the same time, with the
desire for this to be a model rule, I can't believe that these same questions wouldn't eventually come up again down the road. And it seems prudent to consider the comments that have been made, although admittedly late. I know last time in looking at the minutes, it was a common agreement amongst everybody that we're awfully close. I mean that this has got to be -- that this is almost it. And yet, not to minimize the fact that this issue has come up again. It seems to me that it would just be prudent to give staff additional time to consider that Number (5) or whichever one -- MS. LODES: It's (2).

MR. PURKAPLE: -- whichever one we were talking about here, and see what see what the ultimate decision is on that. MR. TERRILL: We're certainly willing to do that, but I would be less than candid with you all if I didn't tell you that the chances of us being able to find a solution that's going to satisfy our
concerns, EPA's concerns, and Don's
concerns are remote, at best.

And again, the feedback I'm getting
-- the feedback we've gotten from the OECA
folks that have looked at this is that they
like -- of course, they're going to like
the rule. It's just something that has not
been done anywhere in the country. It's a
unique way of looking at things, especially
with the reportable quantity. I don't
think you're going to get them to give on
this (2); and I don't think that we're
going to give on it. And so really what
it's going to come down to is the Council
is going to have to decide, whenever, do
you want to pass it with it or without it.
And to be honest with you, I've got to tell
you that I'll go to the Board and ask for
it to be sent back if it's not in there.

MS. LODES: Well, Eddie --
MR. TERRILL: I feel that
strongly about it.

MS. LODES: -- before we vote one
way or the other, I really would like to
see the EPA document --
MR. TERRILL: Right.

MS. LODES: -- and give us at least 15 minutes to read the document. So why don't we pass those out and take a 15 minute break. How does that sound?

(Comments)

MS. LODES: I want to say a 15 minute break, because I want to read the EPA document before I make a decision one way or the other.

MR. CLARK: Madame Chair.

MS. LODES: Yes.

MR. CLARK: I'm afraid this will feel a little bit like backtracking, but I have some, sort of broader, more general questions that might be beneficial to those of us who came on the Council after this whole rulemaking began and also beneficial to the members of the public who don't have the technical literacy to follow much of this discussion. Would you prefer that I ask those questions now, or would you prefer that I wait until after the break?

They're not as specific in detail as the issues that you guys are discussing.
It's more intended to get a better sense of the scale of excess emissions in Oklahoma.

MS. LODES: Why don't you go ahead and ask those now and that way we can make sure that if there's anything else that needs to be mulled over, they can in the break.

MR. CLARK: Okay. Thank you. I appreciate it. And I suppose that Robert can answer these questions.

Can you tell me how many excess emissions events we had in Oklahoma in the most recent year for which you have a count?

MS. STEGMANN: My name is Kendal Stegmann. I'm the Compliance and Enforcement Manager for Air Quality and I got -- he gave me your questions earlier and I got some rough numbers. From calendar year 2008 we had roughly 2,800 excess emission events reported to us.

MR. BRANECKY: Can you define an event?

MS. STEGMANN: Well, how is it
defined in our --

MR. TERRILL: While she's doing that let me make a comment here, because these numbers are a little bit misleading. One of the things we really wanted to look at in making this change to the rule, was focusing on what really matters relative to these events. And the way our rule is structured now, there's not any leeway relative to -- or much leeway as to what you have to report. And it's more of a reporting and doing the jumping through the hoops, and all that stuff that -- that's got its place, don't get me wrong. I think making reports and notifying us when these things happen are important. But without the reportable quantity portion, which we think is really important to folks that may not know what's important at the fence line, and what's important for us to be looking at, you really lose sight of it in these numbers, because a lot of this would drop out because they don't rise to the level of being a public health significance.
And so 2,800 sounds like a lot and it is a lot, but I can say with pretty much certainty that 99 percent of those did nothing relative to protecting the public health that satisfied our rule.

MS. STEGMANN: Right. And we're talking about maybe missing opacity standard six minute average maybe by, you know, 20 percent -- maybe 21 percent, or 22 percent. You have to report that. It may be a pounds per hour. Whatever their -- if they have an exceedance of an applicable standard. It may be a pounds per hour. It may be a .1 or a .2 over their pounds per hour, you know. It could be small amounts; it could be larger amounts.

So the numbers don't give an accurate reflection of actually what is being emitted. And I don't have the numbers right now on the actual emissions. So that would take a little more time.

MR. CLARK: Then could you define it by what percentage of those events led to an enforcement action or fines?

MS. STEGMANN: I can -- for
fiscal year 2008 we had roughly about 50 enforcement actions dealing with excess emissions. Several of those are dealing with reporting requirements, dealing with immediate notice or not submitting a 10 day report or a DOC.

MR. TERRILL: Again focusing our resources on things that really don't meet -- that don't matter to the environment. We want to avoid that. It didn't do anything for us. It didn't do anything for the facility. It didn't do anything for the environment. We want to avoid that. We want to shift this, like I said, to the things that matter. So we probably wouldn't have that many --

MS. STEGMANN: Right. And those numbers are even low. Because I think when we started this workgroup I -- we really wanted to move away from the details of reporting requirements and actually focus on the excess emission event; and focus our enforcement on the excess emission instead of the actual reporting requirement.

So we have been using a lot of
enforcement discretion, if they were a day late on their immediate notice and it's qualified for an excess emission under our rule, it was startup/shutdown or malfunction, we would probably still give them credit for that.

MS. LODES: And Montelle, I noticed you used the term DOC a minute ago. That's "Demonstration of Cause". I didn't know if you were familiar with that since you're not doing as many of these. And that is a form that the facility will fill out and Kendal can explain.

MS. STEGMANN: We haven't been as strict as -- if it was actually a true startup/shutdown, or a malfunction we haven't been as strict in the reporting requirements. That may change, I don't know.

MR. CLARK: I'm just concerned with violation of reporting requirements and I like the fact that these rules apparently reduce the reporting requirements or make it less onerous on industry. I'm more just concerned with the
size of these events and if it's as you
say, just a minor --

MS. STEGMANN: Right.

MR. CLARK: -- event that has
very little impact on the environment and
public health, then that's not as much of a
concern. But if, you know, and it has been
alleged in other states by the
Environmental Integrity Project, if any
event led to emissions that exceeded the
actual amount that was allowed under a
permit, then that's obviously something
that's much different.

MS. STEGMANN: And we do take
that into account and we do -- when get all
of these reports for
startup/shutdown/malfunction we verify
every single one that they actually qualify
for a malfunction, or a startup/shutdown
and if they do not we will take enforcement
action.

MS. LODES: Now, Montelle, one
thing to understand here in this proposed
rule -- and I know you haven't had to deal
with this much. But even if you're a tenth
of a pound over that pound per hour permit
limit under this excess emissions rule, you
still have to report it.

MR. CLARK: Right.

MS. LODES: The only change is
you may not have to do an immediate notice
if you are within 10 percent of your permit
limit. You have to do the 30 day notice.

MR. CLARK: Right.

MS. LODES: So nobody gets a free
pass on reporting their excess emissions to
the Agency on anything here.

MR. CLARK: Right. Yeah. I
understand that. I think that's a good
modification in the rule.

MS. LODES: Okay.

MR. COLLINS: Montelle, can I
interject one question that I have? Does
the state definition -- current definition
of an excess emission, does it include
emissions that might exceed a reportable
quantity threshold but not be subject to
any federal or state limits? Does your
data include that?
MS. STEGMANN: But if you report an excess emissions --

MR. COLLINS: Let's say you make a report of a reportable quantity that's covered say under CERCLA --

MS. STEGMANN: Under CERCLA?

MR. COLLINS: -- HEPA.

MS. STEGMANN: No. We don't. We should not have -- unless you submit it, an actual excess emission to us, it won't be included in our numbers.

MR. COLLINS: Okay.

MR. CLARK: Are our excess emissions included in DEQ's annual inventory?

MS. STEGMANN: Yes. They are -- and when they get their -- submit their ED -- in their emissions inventory there is a section to include your excess emissions.

MR. CLARK: Is there -- it's not really a question, but is there a mechanism for accounting for excess emissions almost like an offset in the permit itself, assuming those excess emissions are not in the permit? Do you understand what I'm
asking? In other words, if it's known that
a particular industry or company is going
to be having a frequent number of excess
emissions, and I believe it was in October
it was mentioned that some have them
virtually daily.

MS. STEGMANN: Uh-huh.

MR. COLLINS: Is there a
mechanism for accounting for that or
offsetting in their permit emissions?

MS. STEGMANN: I don't think so.

But are you talking about their excess
emissions taking away from the -- taking up
some of their permitted emissions? Is that
what you're talking about?

MR. CLARK: Yes. In permitting
and modeling, et cetera. I'm trying to get
a sense of -- of whether the excess
emissions are sort of separately -- is
there an offset, I guess would be the best
way -- best term that I could use. I don't
know if -- if we're just talking about one
or two percent that's not very much, but if
those excess emissions amount to a
considerable number, then it seems like we
would want to have some adjustments in the permit to account for that.

MS. STEGMANN: Right. And I think that's one of the benefits of being able to permit your excess emissions -- do your startup/shutdown right now. Because right now there haven't been really quantified up front. So I think it's hard to make that offset when they haven't made those calculations yet. Usually they don't make those calculations until the actual actual excess emissions happens.

MR. TERRILL: Yeah, that was the allegations that were made in the Environmental Integrity Projects Report where there were a number of sources, not in Oklahoma because they didn't look in Oklahoma, that they alleged had unpermitted emissions, off the books emissions, if you would, that greatly exceeded their permitted limits. And they were protected by the way the rules were written. That's the reason they're going to -- I don't know whether it was that bad or not. I suspect like with everything else there were a few
that were. But I suspect that was
overstated somewhat. Some of the groups
tend to do that. But they're trying to
make a point, which is a good point, that
this needs to be addressed.

MS. STEGMANN: Yeah. I will say
in enforcement, if we see a large amount of
excess emissions it will be seen as a
pattern or, you know, poor maintenance or
poor operations. We can view it that way
and we will take enforcement and we have
done that in the past.

MR. TERRILL: And I just really
don't believe that we've got the issues
that were illustrated in that report and
we've got a pretty good handle on what our
facilities are doing, we think. We hope we
do. And we just don't see the same type of
concerns that have been raised. But again,
if -- they may -- this is going to be an
issue that they are going to take up, one
way or another in the next year to 18
months, however long it takes them to look
at it.

MS. LODES: Well, as you say, I
mean, I want to keep to the rule at hand,
here as it's written, so we've got --
because some of those are -- yeah, and they
are permitting issues and they are
understandable questions.

MR. CLARK: Yeah. That's all I
had. I appreciate it. Thank you

MS. LODES: Okay. Then why don't
we take that 15 minute break now, for real,
at 10:35 since we started to break a second
ago and then we'll be back in 15 minutes.

(Break)

MS. LODES: I'd like to get
restarted.

MS. BOTCHLET-SMITH: We've heard
all the comments from the public and I
think we're back to if there's any further
questions or discussion from the Council.

MS. LODES: Beverly, I think upon
review, we're really down to one point.

And I know all of us would really like to
pass this rule today. So what I would like
is to invite Don Shandy back up here to
make -- to try and clarify (2) and his
concerns on item -- on (d)(2) and have Rob
discuss it so we can maybe get this passed.

MR. SHANDY: Thank you, Laura. I feel like Rob and I are dueling banjos. I will tell you that somebody back there made -- I had more than one person say this just a wonderful marketing opportunity for lawyers. I think Rob or I, either one, would like just as soon put this to bed.

And I don't know if Laura -- the specific questions that you would have at this point would be what? Sharon?

MS. MYERS: If Provision Number 2 is removed, you still have the very last sentence that states "this section should not be construed as limiting EPA or citizens authority". There still is -- there's still a provision in there that allows for suit. But this Number 2 Provision as it's written right now takes away all of our affirmative defense.

MR. SHANDY: Well, I think that's essentially right. And I think Rob may have misunderstood the point that I was trying to make. You're not going to get
rid of the citizens suit provision. I mean
you can always be sued under that
provision, whatever applicable provision;
Federal, State, or whatever that might
exist out there. What I'm suggesting is,
it's the defense side of it that I'm
concerned about. And if you leave
Paragraph 2 in, my concern, is that in the
event you get sued out there somewhere, at
a minimum it takes an argument away at the
courthouse. And my concern is that a
particular facility may have a very
legitimate argument why they exceeded the
permit limit. And that's really my
concern.
I mean I understand Eddie's
comments. I don't minimize his concerns at
all. And you know, I find this somewhat
ironic we're down to one issue. I mean
we're -- we -- think about this, we agree
on 99.9 percent of everything else. We're
down to one issue, and so I think that
that's the concern that I have. You're not
going to take away the ability of someone
to file suit if they think that's
warranted.

MS. MYERS: But it also does not take away the ability of the Agency to enforce if that's taken out.

MR. SHANDY: No. I wouldn't think so because if you -- the way I would look at this is if -- let's say you have a permit and someone exceeds that limit. Well, then I presume you would go report your excess emission under the startup/shutdown provision. You would have an affirmative defense, but I -- you know, I don't see that even remotely being an absolute bar to any kind of enforcement action the state would take at all.

I think -- you know, I'm not saying it may not be a little more difficult, to be quite honest, on the state, but I don't think it takes that ability away.

And again, my concern is not so much from, you know, Eddie's perspective and the state's perspective, it's really more what could happen in the courthouse. And I know people are saying, well, you know, you can "what if" this thing into oblivion but some
of those "what ifs" I've had to defend and
I know how difficult that can be and I just
think that, you know, you shouldn't have
both hands tied behind your back if you
find yourself or if a client finds themself
in that situation.

MR. COLLINS: Don, if Chapter 2
is not removed, what would your advice be
to your clients as far as startup/shutdown;
what's that going to do to your folks you
represent? Would your advice be to not
permit those startup/shutdowns?

MR. SHANDY: I think at an
absolute minimum, Gary, you would -- my
advice to a client would be you're going to
have very serious reservations before you
go permit these emissions. And let's face
it some people are -- you know, it's going
to have to be a case-by-case analysis.
There are going to be some facilities, it's
an easy decision to go get a permit.
Because perhaps they are able to quantify
those emissions. They don't go up and down
in terms of their startups and shutdowns
very often and so it's easier for them to
quantify. So the risk to them would be less.

On the other hand, there are people I work with that that's not the case. And in that situation I don't know that I would advise them to do that. And you know, of course, the retort to that perhaps would be well, that's their decision on how they do it. But the concern I've got is -- what I was hoping to come out of the rule with was that we really would have this blanket encouragement under the rule to get people to go get a permit. Because in all honesty, I think that's the better way to address it. Because I think what it does when people are encouraged to get their facilities permitted they tend to watch things a little bit closer. That's my 24 years of experience of, you know, being involved in this area.

So I think again that kind of motivation should be provided, not taken away. But again, I can see both sides of the argument. I just, you know -- we're just going to have to agree to disagree.
with the State on this rule. Any other
questions?

MS. LODES: Rob.

MR. SINGLETARY: I think I would
respond by first saying as Don said, I mean
you're still going to be subject to the
citizens suit provision. I mean we can't
get around that. So if there's an excess
emission and there's some other things that
have to happen before a citizen can take
suit. But there's still going to be that
availability there.

I guess I would just reiterate that
the first concern we had was that, you
know, your PTE's already going to be
considered if you get these emissions
permitted. And you're going to get
protection from that and with your PSD
enforcement, you're not going to have to do
any excess emission reporting as long as
you stay within those limits. And with
that PTE already considered -- PTE already
considered it wouldn't be, in our opinion,
appropriate to go ahead and allow you to
also -- if you exceed that to also get the
opportunity to, you know, take advantage of
the affirmative defenses.

But again, like I said in my initial
presentation, more significantly is the
concern that these limits are how we
demonstrate compliance with the NAAQS and
with the PSD increments. And without them
in there -- we have that provision in there
but there is no real way for us to
determine whether or not an excess emission
is going to be in compliance with those
unless we did modeling after each excess
emission.

MS. LODES: Well, with that said,
if Don is going to recommend clients not
permit their emissions, you really want
them in this -- you really want them in
there for that demonstration. So is it not
in our interest to get -- to do whatever we
can to encourage people to permit that.

MR. SINGLETARY: I think we do
want to encourage those emissions to be
permitted but I don't think we want it to
the extent that we're going to jeopardize
being able to demonstrate compliance with
the NAAQS and the PSD increments.

MS. MYERS: Is that not covered in Item Number 5?

MS. LODES: And (3). Which (3) says excess emissions that cause --

MS. MYERS: I mean you've already got it in other places, Rob. Why do you have to have Number 2 in there?

MR. SINGLETARY: Well, I think we're -- it would definitely be covered under (5), if (5) wasn't amended as proposed.

MS. MYERS: And what about (3)?

MR. SINGLETARY: But (3), I think we're missing in those two provisions as modified, we would be missing the permit limits. I mean if there is a specific limit that's required in the NESHAPs or NSPS standards, then, yes, it would be covered. But other permit limits wouldn't be covered.

MS. MYERS: Well, that's (inaudible) to permitting to make sure that they've got all the rules covered. Which -- I mean we do that, when we come in for
permits. We go through --

MR. SINGLETARY: Sure.

MS. MYERS: -- and determine

applicability for the different rules to

that particular permit and how it needs to

be worded. I'm just -- I'm having

difficulty seeing why we really need that

in there.

MR. SINGLETARY: I think what I'm

saying is that permit limits that weren't

specifically the result -- or specific

limits that were already considered in Part

60, 61, and 63, those would not be covered

if we took Number (d)(2) out or Section

(d)(2) out.

MS. MYERS: What?

MR. SINGLETARY: Because then

we're just talking about the specific

provisions in the CFR's that are going to

be covered. Not the specific permit in

this which we're also concerned about.

MR. TERRILL: You know, we're

getting into a dialogue here that raises

the exact concern that I've got about

taking this out without referring it back.
If the Council really believes that we need to look at this, then send it back to us. Because I cannot in good conscience take this to the Board without us having time to look at it. And if you take it out then we're going to have to ask the Board to send it back. I mean I'm just being honest with you about it. I think you all have seen what's going -- the downside of having it in there. We don't know what the downside of taking it out is. I think that there's been plenty of bites at this apple. I think that you can make your decision to permit this or not permit it. That's your call.

Nobody's -- and we've satisfied 99.9 percent. We've given a lot in this. We've relieved the burden a lot. And there's some things though that you've just got to say we respectfully disagree. And that's where we are with this.

And, of course, the Council can do - is going to do what they think is best for the public and we're going to -- we'll abide by it, but I would be less than
honest with you if I didn't say I would go
to the Board and ask them to send it back
if you take it out, without us having the
opportunity to look at it.

MS. LODGES: Would you have that
opportunity within now and whenever -- when
does the Board meet?

MR. TERRILL: I don't know if we
will or not to be honest with you. I don't
know if I can -- it's in February. But
we've got to send it to them pretty quickly
and whether or not can get it to our
satisfaction or not I just -- I'll just be
honest with you, I just don't see us being
able to agree to take this out. I just
don't see where we are. We've given so
much in so many other areas, that I just
have a hard time believing we're going to
be able to figure out a way to make this
work as it's written. Now are we sure
we've got a way to make it work by wording
it differently, maybe we can. I don't
know. But just to remove it, that's going
to -- that's a deal breaker for us. I'm
just being totally honest with you about
Mr. Haught: Eddie, what would this take -- at some point later on, what would it take to revisit this, to open this subchapter again and address that in the future?

Mr. Terrill: How long do we have to leave it closed if -- assuming it passes this time, when is the earliest we could reopen it? Is it a year from now?

Ms. Bradley: Actually after codification which would be July 1st.

Mr. Terrill: Okay.

Ms. Bradley: Once these changes become effective and permanent then --

Mr. Terrill: So at that point we can open it back up?

Ms. Bradley: Uh-huh.

Mr. Terrill: Yeah. And that's always been our position anyway on this.

I'm really surprised that we're eight years or nine years after we've made these changes that we would reopen this again anyway. I thought we were -- two or three years people were tired of the paperwork.
trail but it just never happened. So realistically we can open it up in six months, I guess, if we needed to.

MR. HAUGHT: Yeah. The whole rule has been on this to-do-list for a while.

MR. TERRILL: And again we're not looking to have unintended consequences either. If it turns out -- and Lord knows there's plenty of folks that are vocal on the side representing industry here, that we'll be -- they'll let us know if there's a problem with it. And that's your job to work with us to fix it. Because we don't want to create unintended consequences for industry but on the other hand we don't want to create unintended consequences for us in our responsibility to protect public health.

MR. BRANECKY: I think the only consequence is if you leave it in you're probably not going to have very many people applying for permits.

MR. TERRILL: That may be and it may be that we need to --
MR. BRANECKY: Is that what you want?

MR. TERRILL: Well, no. But, at least the opportunity is there and it will -- and we'll take a look at it too, to see if there is a way that we can fix it so it gets at what we want. And I don't know there may not be. I -- when we were talking about it yesterday we couldn't see a way to fix this problem. But having said that, you know, we're not the only ones out there. There's plenty of other states that will be taking a look at this. And if we can come back and figure out a way to encourage folks that might be reticent then we'll do that too.

But at the end of the day we don't have to have them permitted. I think the main thing is the focus -- the refocus on what's important, the moving away from the reportable quantity thing is as big a deal to us as it is to you all, believe it or not. Because it relieves our burden on doing things that don't make any difference. So we like that part of it.
But we just don't feel like we can give on this today without taking another look at it. But then again, we believe the rule given the changes that we've agreed to today is a good one to take and let's try it out for six months or a year, two years and see how it works.

MS. STEGMANN: I do have one comment just on the compliance side with Number 2. By permitting those excess emissions you're quantifying those startup/shutdowns in your permit. And in the permitting process I think you're able to ensure that those excess emissions are not in compliance with the NAAQS or PSD increment.

And if we take (2) away, that insurance is gone. You're still going to have the ability to have a cushion on top of those allowed excess emissions, if you will.

So our concern is you're having your cake and eating it too. You're quantifying your excess emissions and then without (2) you still have the ability to emit more
excess emissions without enforcement, if you will.

MS. LODES: Well really, all (2) does is give you an affirmative defense. And it's still at the Agency's discretion to whether or not they're going to allow that affirmative defense.

MS. STEGMANN: Right. But if it qualifies -- if (2) is taken out and you go over your permitted excess emissions and it still is a startup/shutdown, or startup/shutdown, that takes away our ability to issue a penalty.

MS. LODES: Right.

MS. STEGMANN: I know in some cases --

MS. LODES: I guess my question is if -- all this is, is taking away the affirmative -- I mean it allows them to apply for an affirmative defense for it.

MS. STEGMANN: Right.

MS. LODES: But how does that --

just them applying for an affirmative defense, how does that take away your ability to enforce on it?
MS. STEGMANN: Well, I mean we still have the injunctive relief on it. We can make them fix the problem. However, a lot of the times we need a penalty to back that up.

MS. LODES: But -- I guess --

MR. TERRILL: Well, the whole purpose is deterrent so it doesn't happen again. And if you had your bite at the apple and you still have this problem, then we should have the ability to have the deterrent effect. Having said that, we also have the enforcement discretion to take into account these unforeseen things that you just truly couldn't account for. And we always do that. I know there are some --

MS. STEGMANN: Those unforeseen things are mainly malfunctions. They're not startup/shutdown. And if it's the startup/shutdown, unforeseen, it could be construed as part of a malfunction event. And by taking (2) out you have your permit excess emission and you're allowed to emit, basically, more emissions on top of that.
MS. LODES: Well, no. But it--

I don't see it as being allowed to, it just
gives you the option to apply for an
affirmative defense on it. But it doesn't
mean -- do you all have to accept the
affirmative defense when somebody applies?

MS. STEGMANN: If you meet the
definitions for --

MR. SINGLETARY: If you satisfy
the elements in the proposed rule.

MR. TERRILL: And I've been doing
this too long to know that if we didn't,
Steve would be over in front of folks
wanting to know why you're not doing it.
Why you're picking on this company? Why
you're not following your own rules. So I
know how this game is played, too. So
that's the reason that -- again I'll come
back to where I was, if the Council wants
us to consider this then please send it
back to us and we'll look at it. But if
you pass this, there are too many things
here that we haven't considered, that I
just cannot support this at the Board. I
just can't.

MS. LODES: Any other questions from the Council?

MS. MYERS: I guess one of the things that I keep looking at on this Item Number 2 -- back in some of the older rules we had technological limitations that are fact. There are technological limitations. You can't always predict what you're going to have during a given time. And then there are so many variables that it's difficult to try to put your arms around everything. I don't know. I think that for some of the industries that do truly have some technological limitations, it becomes a problem. And again I guess we have the choice of not trying to permit those.

MR. SINGLETARY: Yeah. I think that's the reason the choice is provided in there because it's recognized that sometimes you can completely quantify these emissions, and sometimes it's a little bit more difficult. And that's why there's a choice.
MR. TERRILL: And if we can figure out a way to tweak this so that we retain what we think is important, but still allow folks to come in, we'll do that at a later date. And I'll make that commitment. Because I agree, we do want to get these permitted. And this is going to be a barrier to some industries that may not want to risk it. But we'll continue to look at that. I'm not saying we'll figure out how to do it. But it's not in our best interest not to look at it.

MS. LODES: Any other comments or questions from the Council? A motion?

MR. HAUGHT: I'll make a motion that we accept this rule as modified in the handout entitled "Proposed Changes to the Text Distributed Previously" this section, with the additional modification to strike in Section 252:100-9-8(d)(5) after the reference of Part 63, "the comma, or any other federally enforceable performance standard or emission limit".

MR. BRANECKY: I'll second that.

MS. LODES: Myrna, will you call
the roll.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Pete White.

MR. WHITE: Abstained.

MS. BRUCE: Gary Collins.

MR. COLLINS: Abstained.

MS. BRUCE: Sharon Myers.

MS. MYERS: No.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Jerry Purkaple.

MR. PURKAPLE: Yes.

MS. BRUCE: Montelle Clark.

MR. CLARK: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: No.

MS. BRUCE: Motion passed.

(Items 1-5A Concluded)
CERTIFICATE

STATE OF OKLAHOMA )
COUNTY OF OKLAHOMA ) ss:

I, CHRISTY A. MYERS, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the above meeting is the truth, the whole truth, and nothing but the truth; that the foregoing meeting was taken down in shorthand by me and thereafter transcribed under my direction; that said meeting was taken on the 21st day of January, 2009, at Oklahoma City, Oklahoma; and that I am neither attorney for, nor relative of any of said parties, nor otherwise interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this, the 30th day of January, 2009.

CHRISTY A. MYERS, C.S.R.
Certificate No. 00310
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY MANAGEMENT ADVISORY COUNCIL MEETING
ITEM NUMBER 5B
HELD ON JANUARY 21, 2009, AT 9:00 A.M.
IN OKLAHOMA CITY, OKLAHOMA

* * * * *

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JIM HAUGHT
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MONTELLE CLARK

DEQ STAFF
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BEVERLY BOTCHELET-SMITH
CHERYL BRADLEY
JOYCE SHEEDY
MAX PRICE
NANCY MARSHMENT
DIANA HINSON
SARAH PENN
DAWSON LASSETER
KENDAL STEGMANN
MEETING

MS. BOTCHELET-SMITH: The next item on the Agenda is Item Number 5B. That's OAC 252:100-33, Control of Emissions of Nitrogen Oxides, and Ms. Cheryl Bradley will give the staff presentation.

MS. BRADLEY: Madam Chair, Members of the Council, ladies and gentlemen, we are proposing to amend Subchapter 33 to define the term "solid fossil fuel", to resolve issues regarding NOx emission limits for equipment with technological limitations, and to add a formula for determining NOx emission limits for fuel-burning equipment utilizing more than one type of fuel. We are also proposing some non-substantive changes for consistency with the other rules in Chapter 100 and we propose to correct some grammatical errors as well.

These changes were first presented to the Council at the meeting held on January 17, 2008. That hearing was continued until July 16, 2008. Because
there were still outstanding issues, the
July hearing was continued until October of
2008, at which time it was determined that
the hearing would be continued to today.

After careful evaluation of the
technical issues and comments received, the
Department has made one major change in its
original proposal.

The Department has decided not to
include an exemption for all direct fired
fuel-burning equipment from the standards
contained in Subchapter 33. This is a
significant change. The specific changes
that were included in the version of the
rule in your packet:

The proposed revision to OAC
252:100-33-1.1 adds the definition for
solid fossil fuel.

The proposed revision to OAC
252:100-33-1.2(a)(2) clarifies that the
rule applies to solid fossil fuel, gas
fuel, and liquid fuel, or a combination
thereof.

The proposed revision to OAC
252:100-33-1.2(b) adds the requirement that
NOx emissions from the fuel-burning equipment in question, shall not cause or contribute to an exceedance of any NAAQS or PSD increment. This was added at the request of EPA.

The proposed revision renumbers what was OAC 252:100-33-2 to 252:100-33-2(a) and adds a new paragraph (4) which provides a formula for setting NOx emission for equipment that burns a combination of fuel types.

The proposed revision to OAC 252:100-33-2 also adds a new Subsection (b) which sets requirements for fuel-burning equipment that because of technological limitations cannot meet the standards in Subsection (a) during startup and/or shutdown. Other changes of a non-substantive nature are also proposed.

Notice of the proposed rule changes were published in the Oklahoma Register on December 15, 2008 and comments were requested.

As a result of comments received from the Mr. Branecky and Ms.
Lodes, during a meeting yesterday, staff has recommended two additional minor changes for clarity.

You will find in your folder a version of the rule, with yellow highlighting at the top, that says "Proposed Changes in Text".

One. We are proposing to change the term "gas fuel" to "gaseous fuel". The phrase "gas fuel" should be changed in Section 33-1.2(a)(2) and that same term appears again on Page 2 in 33-2(a)(4).

The one additional change was for clarification of wording on the last sentence in the last paragraph on Page 2. We are proposing that the wording of that sentence would now be "Approval of technological limitations by the Director in an Air Quality Division permit does not mean automatic approval by EPA."

As these additional changes were for clarity only and non-substantive, staff will request that the Council consider recommending the proposed rule with the three additional changes to the
Environmental Quality Board for adoption as a permanent rule.

MS. BOTCHLET-SMITH: Do we have any questions from the Council for Ms. Bradley?

MS. MYERS: Cheryl, where is direct fired process defined?

MS. BRADLEY: I'll defer that question to Joyce.

MS. BOTCHLET-SMITH: Joyce, could you please come to the microphone so we can hear you when you comment.

DR. SHEEDY: Direct fired process, I'm not sure that we have got it defined now for this subchapter. That's one of the changes that we want to add to Chapter 1, I believe. I need to call on Max Price, who might or might not be here.

(Inaudible conversations)

MR. PRICE: If I remember correctly --

MS. MYERS: Step up to the microphone, please.

MR. PRICE: I'm not really prepared for this but I do believe that
we're looking at moving the term "direct fired" into Subchapter 1 so that it will be used as an adjective to explain all of these.

DR. SHEEDY: Is it defined in (inaudible)?

MR. PRICE: We have -- direct fired is already in -- what subchapter is that -- Particulate Rule under -- I take -- and it's already defined there as a direct fired, like a kiln would be direct fired. In-direct fired is like boilers. So we have the term already defined in Chapter 100 Rules. But we're going to gather all of these -- all these definitions into one.

MS. LODES: Max. Max. You say it in the -- which Subchapter?

MR. PRICE: It would be 19, I think.

MS. LODES: Okay.

MR. PURKAPLE: That directly fires, is in Subchapter 19.

MR. PRICE: Yes, sir.

MS. LODES: Okay.
MR. PRICE: In the definition --

direct fired, here we go. Directly fired,
in this case means that the hot gases
produced by the flame or heat source --
indirectly fired, okay -- do not come in
direct contact with the material met.

Directly fired means just the opposite. It
means that the hot gases produced by the
flame or heat source come into direct
contact with the material being processed
or heated.

So I think the plans are, the next
go around on the definition (inaudible)
because these definitions are used in 33 as
well as 19, we're going to move a somewhat
modified definition into one that will
apply to both.

MR. COLLINS: I've got a
question, Joyce, that maybe you can answer.
The -- and this may have been asked and
answered in previous changes to this rule.

But what would constitute an increase or as
the definition states "resulting in
increased emissions of nitrogen oxides"
that would subject a unit that wasn't
previously included? Something that was
built after that date?

DR. SHEEDY: Okay. Something
that was built after the date -- oh, sorry.

MR. COLLINS: Any increase.

DR. SHEEDY: Okay. The question
was what would be --

MR. COLLINS: Would you like for
me to state it again?

DR. SHEEDY: Yes, sir, I would.

MR. COLLINS: All right. What
would the definition of "resulting in
increased emissions", what is the
definition of that as it relates to a unit
that was previously not covered by this
rule that would be because of, say, a
change to that unit?

DR. SHEEDY: A modification.

MR. BRANECKY: Is there a certain
increase you have to have before you become
subject to it, I think is what you're
trying to say?

MR. COLLINS: Yes.

MR. BRANECKY: Or is it just a
hundredth of a pound, or does it have to be
ten pounds, or a ton, or what?

DR. SHEEDY: Well, it would have
to be greater than fifty million BTU.

MR. BRANECKY: But is there --
what increase in the emissions has to --

DR. SHEEDY: Any.

MR. BRANECKY: -- occur? Any
increase?

DR. SHEEDY: Any increase.

MR. BRANECKY: No matter how
small, any increase?

DR. SHEEDY: Yes. Yeah. Because
we haven't put any kind of a trigger on
that.

MS. BRADLEY: That was
information provided by Dawson Lasseter.

MR. BRANECKY: Okay.

MR. COLLINS: Thank you.

MS. BOTCHLET-SMITH: Any further
questions from the Council? We've not
received any notice to comment from the
public on this rule. So if -- Montelle,
did you have a question?

MR. HAUGHT: Beverly, I just one
second. I just -- real quick if I can, for
consistency change the term "the
applicability from gas to gaseous
(inaudible) fuel. And then we still use
gas fired fuel-burning equipment. So is
that consistent? I'm assuming that the
reason for the change to gaseous fuel have
you got -- to address fuels other than what
you typically call natural gas, so does
that need to be for consistency change
those other terms?

MS. BRADLEY: We had a discussion
yesterday, and the term "gas fired" is an
entrenched term and we felt there was not a
need to differentiate that term. However,
"fuel gas" was a term that's very similar
to "gas fuel" and it had a completely
different meaning.

DR. SHEEDY: We don't think we
need to change "gas fired" to "gaseous
fired". I believe that --

MR. HAUGHT: So "gas fired" is
going to apply to any of those fuel types
then? Gaseous or gas fired?

DR. SHEEDY: "Gaseous fuel" would
be, yeah, gas fired.
MS. BOTCHLET-SMITH: Montelle.

MR. CLARK: Cheryl, just a question again on the history here. Can you tell me a little bit about the exception for glass melting furnaces and why that exception is in there?

MS. BRADLEY: The glass melting furnaces were unable, due to their process, and the NOx emissions created by that process to meet the standard. As an alternative they went through a thorough review of process to determine what Best Achievable Control Technology would be. And we hold them to that control technology. Actually the best achievable or Best Available Control Technology is also the Lowest Achievable Emission Rate, LAER.

We went through a SIP revision process and provided technological demonstration to EPA to justify this deviation. And it's -- they are unable to meet the limits. And originally this rule only applied to indirect fired fuel-burning equipment. And there was a change made
more than a decade ago to expand the scope of the rule to include all fuel-burning equipment, bringing in direct fired.

We did not become aware of the problem for the direct fired units -- the glass melting furnaces until after that date.

And the bottom line is they underwent a very stringent review and they are held to a standard the Agency has determined is appropriate for that type source.

MR. CLARK: Okay.

MR. TERRILL: This is another example of an unintended consequence that we went back and fixed. The facilities were as clean as they could possibly be, clean as any in the country. And it allowed that facility to be built where otherwise it wouldn't. And that was never the purpose of the rule. The rule changes didn't account for that and nobody showed up representing the industry, saying this is going to affect us. And then when we had a new source come in it came to our
attention and it never was -- the Council
originally never intended to say we don't
want them built. They just didn't realize
by making that change it pulled them in.
So the facility that got this
exemption has got one of the cleanest
facilities in the country. So it was a
good result all the way around.

MR. CLARK: Thank you.

MS. BOTCHELET-SMITH: Any other
questions? I believe you're ready for a
motion.

MS. LODES: Can I have a motion?

MR. PURKAPLE: I move we adopt
with the latest changes we have here.

MS. LODES: Do I have a second?

DR. LYNCH: Second.

MS. LODES: Myrna, call the roll, please.

MS. BRUCE: Jim Haught.

MR. HAUGHT: Yes.

MS. BRUCE: Pete White.

MR. WHITE: Abstain.

MS. BRUCE: Gary Collins.

MR. COLLINS: Yes.
MS. BRUCE: Sharon Myers.

MS. MYERS: Yes.

MS. BRUCE: David Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Jerry Purkaple.

MR. PURKAPLE: Yes.

MS. BRUCE: Montelle Clark.

MR. CLARK: Yes.

MS. BRUCE: Bob Lynch.

DR. LYNCH: Yes.

MS. BRUCE: Laura Lodes.

MS. LODES: Yes.

MS. BRUCE: Motion passed.

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

(Item 5B Concluded)
CERTIFICATE

STATE OF OKLAHOMA ) ) ss:
COUNTY OF OKLAHOMA )

I, CHRISTY A. MYERS, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the above meeting is the truth, the whole truth, and nothing but the truth; that the foregoing meeting was taken down in shorthand by me and thereafter transcribed under my direction; that said meeting was taken on the 21st day of January, 2009, at Oklahoma City, Oklahoma; and that I am neither attorney for, nor relative of any of said parties, nor otherwise interested in said action.

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CHRISTY A. MYERS, C.S.R.
Certificate No. 00310
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF OKLAHOMA

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TRANSCRIPT OF PROCEEDINGS
OF THE AIR QUALITY COUNCIL MEETING
DIRECTOR'S REPORT
HELD ON JANUARY 21, 2009, AT 9:30 A.M.
IN OKLAHOMA CITY, OKLAHOMA

* * * * *

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Cheryl Bradley
Joyce Sheedy
Max Price
Nancy Marshment
Diana Hinson
Sarah Penn
Dawson Lasseter
Kendal Stegmann

MEETING
MR. BRANECKY: As you all recall -- and Pete, I'm getting a copy made for you since you haven't seen a copy of this memo or the letter.

In December, Eddie sent out a scanned copy of a letter from the accounting firm of John M. Aldrich and Associates along with a memo. We met with the representative, and they are here today to answer any questions about their proposal for doing an audit of the Air Quality Division.

One thing I think I need to make clear, this is not process audit. They're not doing an audit to see the needs of the Division but it's a financial audit. And what we're asking today is for Council's approval to move ahead with this financial audit. So you all remember the memo and the letter.

Jim, is there anything else we need to add to that?

MR. HAUGHT: I thought what we were proposing at this point was for the firm to investigate the process. What are they doing, how are they accounting, how is time being billed right now, not how the money is being spent. So I looked at this as the first step. We want a financial audit as to the needs and the dollars. But I think this was the preliminary to -- that we would need to get there. So this isn't the (inaudible) audit from what I understand. At least that's my understanding.

MR. TERRILL: My recollection is the same as Jim's. So if that's wrong --

MR. BRANECKY: No.

MR. TERRILL: -- we probably need to get that clarified, too. This is just kind of a first step.

MR. BRANECKY: Right. And I guess what I'm saying, this is not a -- like a TVA -- TBA study they did in the '90s --

MR. HAUGHT: Yes.

MR. BRANECKY: -- Air Quality needs this many people to do this work and this -- Title V constitutes this much --
MR. HAUGHT: It's not that we may not want to get there --

MR. BRANECKY: Yeah, we may want to get there eventually, but this is the first step towards that.

MR. HAUGHT: Yes.

MR. CLARK: Are we going to be voting on this?

MS. LODES: No.

MR. TERRILL: I don't think we need to vote. I just think if there's a problem that you all see or comments you want to make that this is not the direction that you initially want us to go, then we would kind of like to hear that. Otherwise we're going to give the accounting firm authority to move forward. But we just kind of want to make sure that we're on the right track. And we're comfortable -- the Agency is comfortable that we are.

MR. BRANECKY: I think Jim and I are comfortable with -- after we met with them that this is the first step that we need to take.

MR. CLARK: Okay. Actually, I do have a couple of questions then. And again, for the benefit of those of us that haven't been on the Council since -- before this started, I guess. I'm not sure, it started a year and a half ago.

Can you give me a little background on what led to this? Was there a problem detected or something presented that indicated there was a discrepancy?

MR. TERRILL: Let me -- the way this started was -- I don't remember the exact Council meeting, but last year or towards the end of the year before last, we realized that we were going to have a shortfall in our program. The money we would need to run our program. And a lot of it was passed along costs that we didn't get, relative to benefits and things like that, that we have to account for. And the only way that we really had to recoup that was to increase our Title V fees and our minor source fees. We already get a pretty good -- not a lot but we do get some general appropriations money and we just didn't have enough of that to cover these costs. And so we made the
case to the Council to have what was an unprecedented increase in the Title V fees -- the fees that our regulated industry pay for both major and minor sources. And, in fact, the increase that we asked for was the greatest that has ever been asked for and it was probably more than we've ever gotten since the inception of the program, if you total it all together.

So it was a big commitment of additional resources from -- in regulated industry to us. And as particular of that, the notion came up -- we've always had this discussion about Title V, non-Title V; are the minor sources paying for the major sources work? Are the major sources paying for the minor sources work? And that never has really been resolved and it kind of went back and forth. And so one of the things that Steve Thompson, my boss, and the Executive Director of the Agency said that we would do to try to make sure that the concerns that were raised from the regulated industry about the fees that they were paying was we would do an audit.

Which we've never been opposed to doing an audit, it was just a matter of having the money to do it. But Steve had enough money available that we could -- that wasn't allocated for other purposes, that he felt like that it was important enough for us to address this. And I think that it's important enough for the regulated industry that we do this for them to make sure that they're comfortable that their fees are being -- that they're appropriate and they're being spent in the right manner.

So that's how it started. It was a concession, if you will, but one that we've never been opposed to. We just never had the resources to do it. And Steve had that, and was willing to do that, as a trade off for getting the fees that we need to move forward. So it's something that's kind of been out there. We don't think there's going to be a problem, but just have a third party take a look and say, yeah, you're right; or if we need to make some adjustments, we'll do that too.

MR. CLARK: Air Quality Division, I assume, does their own internal audits and evaluations of division of income, et cetera; correct?
MR. TERRILL: We have a time and effort program that we use that we're constantly emphasizing to our staff the importance of making sure that it's accurate. In fact, we just got through doing another look at that to make sure that the categories that we've got are reflective of the work our folks are doing and that they understand that that's important that they, as closely as they can, allocate their time between major and minor sources and other types of programs and the way that they're funded and what they're actually doing. And then that goes through an audit internal with our finance folks.

And I'm just about to step out of what I know about it because Beverly does most of this. But the short answer to your question is, yeah, we do keep track of that but it's an internal track and it's not -- other than the fact that we're financially audited by the Office of State Finances periodically, I don't know that they're going to take a look at the -- well, they don't take a look at the detail and the issues that are going to be looked at in this audit. But we do do an -- we do audit -- we are audited by the Office of State Finance.

Patrick Farris is back there with accounting. He probably has a better answer than I do. Patrick, would you -- they can probably hear you better. This is not on the record but --

MR. FARRIS: Thank you. I'm Patrick Farris, and I'm comptroller for Agency. And I first want to -- do the Members of the Council have a copy of the November 17th letter from the accounting firm, in reference to David Dyke. David is sick today and I'm stepping in, in his place. I want everyone to be clear that -- if you're not a CPA, you're probably not familiar with the term.

This is an agreed upon procedure and not really -- it technically would be called an audit. It's an agreed upon procedure for the items that are listed in Number 2 here on -- in the letter to David. There's two gentlemen here from the accounting firm that prepared this letter that -- Jim, would you or Kelly like to -- I'll let them comment.
But I want -- I just wanted you to understand this is not what you would call a financial audit, it's an agreed upon procedure, is the term a CPA would use.

??: I am Jim ??, I'm the managing partner of John Aldrich and Associates. We were first approached as we are the auditors for the Drinking Water Capitalization Project Fund that the Agency has and that has had a single auditor requirement for many years. And so therefore, we were approached about this project and the ultimate end of this is likely to be an audit. But it was expressed in the process of, let's see where we are before we go and do an audit and get, you know, that opinion or, you know, the books don't balance or something like that. Let's see where we are on this.

And so what the discussion led to was this letter and essentially it's kind of three pieces.

It is determine the standard of what we need to follow. Similar to what you were talking about for two hours here. Set the standard. Determine what that is. And we're kind of not sure if there is a standard here, but determine if that's the case.

And then secondly, determine what we're doing. Determining, you know, how we allocate costs, how we divide them between certain parts of the Agency and others, how we share common costs. And then determine whether there is appropriate documentation to support that in the way of time records, in the way of invoices, cancelled checks. Those kinds of things. And then determine what the reporting of that is and how that's done. Determining if that's fair.

And in the end, determine what the gap is, the standard versus the practice. And see what recommendations need to be made to determine how do we get to the standard.

It's as simple as that. It's really a -- it's a three step deal. So that's what you're seeing there in one, two, and three.
The six steps under Number 2 give you -- give you kind of the meat of the subject of what do we look at in that process.

MR. TERRILL: I think that's what Jim was referring to in the first step. This is the first step, with others to follow as we get them to get you where you want to go.

MR. HAUGHT: Yeah. And I think some of the discussion was along the lines of potentially, we know what the management of the Agency -- what their expectations are and what they -- the guidance that they are putting out to the supervisors as far as the individual people coding their time. They're not sure if that's how people are really coding their time or is that really being passed down and is that what's happening in practice.

So before you look at those dollars and say, okay, yeah, they coded this much time to Title V and that's what it takes, you've got to make sure that that's properly being coded; that that process is happening right at that level. And so this increase was requested that -- I think there is no doubt that some increase was needed. Was that the correct increase? The Council went along with that increase that was requested contingent upon this look to see if that was the right number.

So it's kind of an after the fact look at the trust (inaudible) that was put in. And so there just wasn't enough documentation up front provided to where the Council was totally comfortable. And so this look at how that's being coded, how those resources are being allocated, and is that the right amount, was how they got comfortable enough to pass that to meet the immediate need, to me.

MR. CLARK: Procedure sounds very reasonable to me, especially if this leads to -- does lead to an audit. I'm guessing -- I don't have any idea, but I'm guess the cost on this will be considerable. I don't know if we have a range for what we're talking about here but given that we're in a budget constrained environment, from
what I hear from our Governor, that every division in the state will end up taking reductions on their budget.

In the absence of some evidence that there's a problem in the way DEQ has been handing this, I'm concerned about the expenditure for an audit when there are so many other pressing needs in the Department.

MR. TERRILL: I'll address that. This money is one time money that Steve -- it's penalty money, is what it is, and so we don't ever use penalty money to makeup short falls or for budgetary purposes. If we got into that, that's a slippery slope that we don't want to go down. It's fine if you don't abuse it, but there's a fine line there. So Steve has never, to my knowledge, used that money for anything other than other purposes; cleanups or one time things that the Agency needs. And we've talked about this -- Steve and I have talked about this on a number of occasions and we've known that there's a need to do this for a long time. And it's not something that he lightly said, oh, well, just go ahead and do it, just to get the money.

We think it's appropriate to take a look at this. It would be helpful to us to make sure that the way we're tracking this is the right way to do it and it meets what we believe should be the standard. And this is also a national issue. We're not the only state and local that's faced with a budget problem, and we're also not the only state and local whose industry has said, gee, we're paying our fair share, it's about time the EPA came up with their fair share or the taxpayers came up with their fair share when this is a -- you've got mobile sources that is a huge particular of our issue here and how do you account for that. So we really need this too. And it's not -- I don't think it will be wasted money.

And I understand your concern and if it was coming out of budgets that we had for people to actually get work done, then I would say we might want to rethink that, but it's not. Steve's already got the money allocated to do it. And if it turns out that once we get this preliminary work done, if the overall thing is too costly, then we'll figure out a phased approach to get it done.
But I'm committed and I really think this is a good step for us to do. I understand your concerns but I don't think in this instance that what we're -- this money would be allocated for our budget anyway. And so this gets us where we need to get long term. It gives some comfort to the regulated sources, that yeah, they do know what they're doing when they have their folks code their time and it's not a 100 percent, but it's accurate enough we can get a gauge of what their needs are.

So I would just urge that -- I think it's important enough to us for a transparency for those that are paying the bill, that they have that opportunity. Because if it wasn't coming out of their pockets then it wouldn't really be any of their business, but it is and it is their business. So that's the way I feel about it.

MR. PURKAPLE: Eddie, do you have a feeling for the timing on this and what we think the cost might be? What is the time to get this piece of it done, roughly?

MR. ALDRICH: You know, it is a busy time of year, but I do believe we can work with our schedule and get this done as soon as you all need it.

MR. BRANECKY: We meet next in April. Would that be --
MR. ALDRICH: Between now and April --
MR. BRANECKY: -- could we expect something back in April?
MR. ALDRICH: It's a busy time.
MR. BRANECKY: Yeah, I'm just asking.
MR. ALDRICH: But, you know, it's good to know that now. And as far as -- and we can work with you all on schedule as to what it needs to be. One thing about it, it is agreed upon procedures, there'll be time on site, most of the time we'll be on site. There won't be a lot of time having to be spent writing disclosures and reports and stuff like that. So you don't have as much of that as you would have in an audit and in dealing with all of those issues. It will be focusing mainly on the cost issues and those kinds of things.
In that regard, I've estimated $20,000.00 to do this, you know, in just adding up hours and looking at, you know, various scenarios that may happen in the process. So that's what I ball-parked it at, you know, and we could enter into that kind of an agreement or we could enter into a range, you know, if you so believe that that would be more appropriate.

MR. HAUGHT: I just wanted to note that the next meeting is on April 15th.

(Comment)

MS. LODES: That was actually going to be my comment. Since the next meeting is on April 15th, do we need it by April or would we -- would the July meeting work a little bit better in awareness of what you have going on between now and April 15th.

MR. ALDRICH: Well, July is always better, but if you needed it April 15th we can.

MR. TERRILL: Let's do this, if they can get it done, then we'll get to you in April, if not we'll keep the Finance Committee and then through the Finance Committee, the rest of you updated on what's going on. Our concern is that -- I don't have a problem letting you all know what's going on. I just want to make sure we don't get into a problem of quorum and that sort of thing. I don't think we would but we're not -- this is not a rule. But if you'd just leave that up to us, as far as working with the Finance Committee to either get it to you in April or June and then we'll -- from that point we'll figure out where we go from there, what the next steps are and then I think we'll have a better idea of the overall costs. But this is well within the first step for us. This not a big issue.

MS. LODES: I know this isn't something we vote on per se, but what do you need from us to get this to move forward?
MR. TERRILL: If I don't hear somebody saying don't do it, and actually I would prefer that if you've got a real concern I'd rather work that out privately. We really need to do this. And I want to do it. And so I -- if some of you have individual concerns, if you'd work through me, we'll get that addressed because we want everybody to get what they want out of this. And we want to get what we need out of it too. So all I need is just a general consensus of let's move forward. And then we'll have something in April at the earliest, it may be June, to see where we are and we'll move forward from there.

I'd like to get this whole thing wrapped up this year, this fiscal year, the whole nine yards.

MS. LODES: Eddie, I think -- is there any other comments or issues from the Council?

DR. LYNCH: Yeah, I do have one. I just want to make that it's clear that in this bid that was made, that we're going to increase fees that at some point would be -- because this is going to come up again, perhaps, some point you're going to come and say we need to increase the fees again, that we have a clear understanding -- I guess we're not going to get it at this point -- as to what the needs are to be able to do the work that's required. I think what my understanding is of what we're going to get from this is are we accounting things correctly? The bigger question is do we have all we need to run this program as it is now, and any other requests for new programs (inaudible). That's the big question.

MR. TERRILL: First step. Yeah.

DR. LYNCH: I think we have a commitment from Steve that that question would be answered to the needs of the Council and then the general regulated community so they can see that you have enough or don't have enough to do what is required for you to do.
MR. TERRILL: I'm going to have to push back a little bit on that because it depends on -- I think we may be talking about the same thing but we may not be. To do a true needs analysis that was done by the TBNA study, we're probably talking a million bucks to do that. But having said that, this is not an issue that is unique to Oklahoma. This is a nationwide crisis issue, relative to how you fund the air programs moving forward.

We're participating with our regional groups in SARA to give EPA data relative to what constitutes a small, medium sized, and large program, you know, what you need to run those types of programs to give them that data. We're working through our national organizations to provide EPA with financial data as to what folks are spending their money on, what are we doing now and how are we spending our money, what are we looking at in the future and how we spend our money. What I'm hoping is, this national issue with the new EPA, they're going to have to come to grips with how they move Air Quality forward in the new era.

And so we spend a lot of time doing a lot of things that don't amount to a lot. And those resources could be spent in other places. And EPA, I think, understands that they have got to come to grips with that because the financial crisis that we're experiencing across the country has kind of crystallized that.

And there's not going to be any new money out there for a while. And so we've got to figure out how to be smart about it. What are the needs; what are the programs we need to do to protect public health. So we will try to get you what you need. I understand what you're saying but I don't know if we'll get all the way there, but at least we'll have the financial particular of it done to say that we are -- you know we do have the accountability to show where the money is being spent and we can justify that the money that we're needing is being spent to where it needs to go.

If we can do this other -- this final piece, I'd like to see it but it's going to be -- it may be in conjunction with a bigger effort nationwide.
MS. LODES: I believe -- my understanding is that this first piece is what's needed before we can even get to the much larger piece.

MR. TERRILL: Right. And it could be that maybe we can figure out a way to do it in a more cost effective manner and get the whole enchilada, but let's have the tamale first and then we'll look at he enchilada later.

MS. LODES: Then I think --

MR. HAUGHT: I think the fact that there is a need for this first piece kind of justified the look. Everybody wasn't really sure how all of those numbers were being accumulated.

MR. TERRILL: And this is kind of murky because every state does it differently. There is no standard that I'm aware of that EPA has to say this is how you should account for your time, and how you should allocate it to figure out whether or not your fees are being adjusted right.

We've had audits by EPA at least twice since I've been here, that says that our Title V fees are appropriate and being spent for the proper purposes. Now having said that, I wouldn't want to go to the bank on that. But they do the best they can with the information they've got.

And it's a slippery slope for them too, because if we didn't have an adequate program, well, what are they going to do? Say they're going to take it over? They can't run it. And they're not going to get us any more money, and they can't supply us any more money. So EPA says that -- the real desire of Congress, when they enacted the Title V program at that time, was to shift the burden to industry to pay for the air program.

Now that's exactly what they intend to do and that's what EPA would like to see happen but it's just not realistic. It just can't -- we're at the point where we've really got to make some decisions about how we're going to move these programs forward.
And we're not even talking about climate change and how -- who's going to pay for that. And who's going to do that work. But this is a very necessary first step, that gets you all the comfort that -- if we're going to ask for another $5.00 a ton, then you all need to be shown that it's needed and here's why. Not that we're there. Just that we're good. We're good.

(Inaudible multiple conversations)

MR. TERRILL: If we do that, we'll have a united purpose. We'll all be for it.

DR. LYNCH: Yeah, I wanted to make sure that the increase that we did vote for was justified before we start talking about additional.

MR. TERRILL: Yeah.

MS. LODES: Yeah.

DR. LYNCH: And this was to justify what was already put in place. It wasn't (inaudible) for additional fees down the road.

MR. TERRILL: But also it gives some comfort that how we're looking at this is justified for what we're looking at down the road, if that's necessary.

MS. LODES: I think, why don't we go ahead and direct to do this first step and the audit with the assumption you'll bring to us what you can by April. If it's completed, great; if not, we'll see this completed by July.

MR. TERRILL: We'll do an update in April as to where we are.

MS. LODES: Okay. Thank you.

MR. ALDRICH: Thank you all.

MS. LODES: We need a quick five minute break because I know we're getting close to noon, I'd like get through this.

(Agenda Items 7 and 8 not transcribed)

(Next Item is the Director's Report)
MR. TERRILL: I am cutting this down significantly but I do have several things I wanted to give you, but most of the stuff can wait. Ozone boundary issues as most of you know the Governor has got to make his recommendation relative to the State of Oklahoma and what the recommendations are for attainment and boundary. We had a couple of public hearings, and as you might suspect, most of the comments we got back was make that boundary as small as possible so you affect as few people as possible. For the most particular, we agree with that. We do have some hoops we have to jump through in order to justify that.

One thing we are doing is that we've recommended to the Governor and he's taking it under advisement subject to getting a letter from the COGs and other interested parties supporting this, we would like to see him just defer this recommendation until we see what the 2009 data is going to look like. It really doesn't do anything. The negotiation period won't start relative to final boundaries until the end of the year 2009, and by that time we'll have our 2009 data in and we can look at '07, '08, and '09 and determine where we are. It is possible that we're close enough, especially in Oklahoma City, to come back into attainment.

Tulsa, I think, is a little more problematic. If this drought doesn't break, we are all problematic because it is so dependent on weather; and having a drought this time of year is not going to help our hot, dry spells in the summertime. Anyway, we will just have to wait to see what the Governor decides to do but that is our recommendation that he send a letter to EPA deferring a declaration until such time as we either go out based on the 2009 data or the 2009 shows we are clean. That's kind of where we are with that.

We did get a Notice of Deficiency from EPA relative to our Regional Haze SIP. We knew this was coming. We are about a year overdue getting it in, but there's reasons why we haven't done that and it starts a two-year clock for us to get that in and we will continue to work. That kind of goes back to my comments earlier about a
National strategy. Regional Haze has a lot of the same pollutants that are involved in ozone and PM and I just think they need to address this nationally and not piecemeal these regulations, especially with a static standard. So we may end up having to do something but I would like to wait to see what EPA does with this and we'll address that in the next few months.

The only other thing is that I'm going to speak at the Climate Change -- Climate Registry meeting in February. They've divided up -- the Climate Registry is a registry we joined a few years ago that's putting together a voluntary methodology for accounting of CO2 emissions or greenhouse gas emissions, not CO2, greenhouse gas emissions and also third party verifying those so that they can be traded or sold. And it's kind of the anticipation that this might be a model for the nation. Whether that becomes correct or not, I don't know; but forty states, several provinces in Canada and Mexico, several tribes all belong to this. Right now it is still putting together the methodologies, protocols and all that but they are having a series of regional meetings. We were asked to go to Denver, but I didn't feel like we had a lot in common with the western states so we opted to go to the southeast, which is Tampa. We couldn't get the Secretary of Environment to go, so I am going to go and talk about what we are doing relative to climate change, which won't take long, and leave a lot of time for the other states to talk. But we are all in the same boat. I don't think anybody that is going to be there is doing a whole lot with this but if your company believes that this is something you want to become involved with, the Climate Registry would be one you might want to investigate. I told them that I would put a plug in for that because they are trying to get companies to voluntarily join. It will cost you to join. There's a money catch to all of this, but hopefully when EPA comes up with their final rule relative to greenhouse gas, it will clarify that they are going to do something separate, or they are going to embrace the Climate Registry and this is the route they are going to go because they need to make a decision as to who is going to collect this data and how it's going to be evaluated. And if
it's going to be the Climate Registry, they need to say that and move on down the road. The rule -- the federal rule has been at ONB for a while now, so now we have a change in administration. I think that rule is going to come back to EPA and we'll see when it comes out. Hopefully, it will be out in the next two or three months. I can tell you there is a lot of effort among a lot of states trying to make the Climate Registry the body to which you will have to submit your information to in order for it to go into either a cap and trade system, or to just any accounting where you've got reductions that have to be made. So, it wouldn't -- if you are not aware of what the Climate Registry is doing, I would go to their website or contact me and I'll get you information. You can kind of see where this is going.

Anyway, the next meeting is in Denver, the Tampa one is February 3 -- the Denver meeting is February 26 and there's a Columbus, Ohio meeting in March. And they kind of divided it up among the states. And like I said, they wanted us to go to Denver but we opted to go to the southeast.

Anyway, that's all I've got. You guys need to keep track of what is going to EPA. A lot of big changes, a lot of new faces, and a lot of faces that we all know, not necessarily new to us but it's going to be a different direction. That's all I've got. Any questions? Yes.

MR. CLARK: Eddie, can you comment on the news report that recently found high levels of air toxics near schools in Sand Springs?

MR. TERRILL: My blunt statement is that I thought that was irresponsible of USA Today to publish that without going through a little bit more rigorous methodology relative to how they did that. It threw up a lot of concerns with folks. And I don't doubt that there are some areas who have toxics that do impact schools, and not just schools but citizens that live around these particular sources. But to make the blanket statement like they did, we don't have any data to back any of what they said.
In fact, our data that we've got relative to the toxics monitoring in Tulsa says just the opposite. Having said that, we think there is enough of a concern that we are going to expedite the look that we were taking as far as our normal toxic program in the Tinker area of Oklahoma City, in Midwest City area and one other area. We are looking across the state with this. This is not a new issue. But the model they used -- our folks, that know more about this than I do, were not surprised that they got the results they got because the model was not designed to do what they did with it. It was designed to be used as a screening tool to say there might be a risk here, you need to go back and investigate it. It wasn't designed to say -- actually it was designed to weigh the risk across the community and say this might have a better chance of having an issue than this area over here. But you don't want the baseline -- the baseline may have been so small that there was no issue anywhere but relative to one area over another, yeah, this one does have a greater risk.

Not to say though that they didn't bring to light an issue that has been out there for a while, in that sometimes people build schools where they shouldn't be built and they do that for money reasons. They are getting schools built, they are trying to do what is best for their community and sometimes they get a deal that's too good to pass up, they build where they shouldn't be built.

I can't name you the number of stories I heard from folks within EPA, about in their community -- about folks getting a good deal on land for a school and it turns out to be next to a smelter or something else that impacts those kids. This is really an issue we need to be looking at about where we are putting our kids and how we are educating them, and what are the acceptable risks for our kids. And the other big thing that nobody really knows is, what is the impact on the kids that are in development stages both physically and mentally to these toxins that we are all exposed to every day.
You know, at what point are we going to say, well, we don't want any more of it, or it's acceptable for the lifestyle we enjoy. But it's nothing that money and a lot of research can't be thrown at.

But we saw that, we looked at it immediately. We don't think there is that big of a concern, but we do want to verify and make sure, if nothing else, to give those folks that were on that list some additional level of comfort that there is not anything going on. But we don't believe that the issues they cited were valid.

I would be more concerned about the mom and pop things that we didn't know about that is just out there, than I would be about the sources they identified. But that's just my first take. We will be glad to revisit that as we get more data in the next few months, but we are going to address that.

I did have on this list to talk about our DERA grant. We got some money for school bus retrofits this year. We must have made it too complicated. But we did a public presentation trying to get folks to sign up, and we only got one for sure signed up. So if you all know of school districts, or work with school districts or on school boards, that think they might have an interest, we reopened the comment period. We want to work with folks to try and figure out why it was they didn't want to take free money to retrofit these school buses to make it safer for their kids to be on. We really need to get this. One way or the other, we're going to do this retrofit and we would like to use it in areas that get the biggest bang for the buck.

We did get -- we do have a project that we are doing in Tulsa relative to trash trucks. We think we've got that off the ground. That was a different project, but we are going to reduce diesel emissions from trash trucks in the Tulsa area to some degree. But we really would like to spend this DERA money for good things relative to school buses.
So if any of you know of a school system that could benefit from this, give me a call, or Beverly a call, or have them call us and we'll tell you how to get plugged in to that money. Thank you.

MS. LODES: I don't believe there was any new business, so that will conclude this Air Quality Council meeting. Thank you.

(Meeting Concluded)
CERTIFICATE

STATE OF OKLAHOMA )
COUNTY OF OKLAHOMA )

I, CHRISTY A. MYERS, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the above meeting is the truth, the whole truth, and nothing but the truth; that the foregoing meeting was taken down in shorthand by me and thereafter transcribed under my direction; that said meeting was taken on the 21st day of January, 2009, at Oklahoma City, Oklahoma; and that I am neither attorney for, nor relative of any of said parties, nor otherwise interested in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this, the 6th day of March, 2009.

CHRISTY A. MYERS, C.S.R.
Certificate No. 00310