MINUTES
AIR QUALITY COUNCIL
July 20, 2005
707 North Robinson
Oklahoma City, Oklahoma

Notice of Public Meeting  The Air Quality Council convened for its regular meeting at 9:00 a.m. July 20, 2005 in DEQ Multipurpose Room, 707 North Robinson, Oklahoma City, Oklahoma. Notice of the meeting was forwarded to the Office of the Secretary of State giving the date, time, and place of the meeting on December 10, 2004 and amended on January 27, 2005. Agendas were posted on the entrance doors at the meeting facility in Tulsa and at the DEQ Central Office in Oklahoma City at least twenty-four hours prior to the meeting.

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

Mr. Eddie Terrill recognized Mr. Joel Wilson for his 7 years serving the Council and welcomed Mr. Jerry Purkaple to the Council.

Members Present  Sharon Myers
                 David Branecky
                 Bob Curtis
                 Bob Lynch
                 Gary Martin
                 Jerry Purkaple
                 Rick Treeman
                 Laura Worthen

Members Absent  Don Smith

Others Present  Eddie Terrill
                Beverly Botchlet-Smith
                Scott Thomas
                Joyce Sheedy
                Pat Sullivan
                Cheryl Bradley
                Lisa Donovan
                Max Price
                Leon Ashford
                Matt Paque
                Dawson Lasseter
                Rhonda Jeffries
                Myrna Bruce

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

Approval of Minutes  Ms. Myers called for approval of the April 20, 2005 Minutes. Hearing no discussion, she called for a motion to approve the Minutes as presented. Mr. Martin made the motion with Mr. Curtis making the second.

Roll call
Rick Treeman  Abstain  Gary Martin  Yes
Bob Curtis   Abstain  Laura Worthen Yes
David Branecky  Yes  Sharon Myers  Yes
Bob Lynch   Yes
Jerry Purkaple  Abstain  Motion carried
Ms. Botchlet-Smith convened the hearing and called upon Mr. Leon Ashford who advised that proposal would update the standards to be consistent with the recent changes to the federal ozone standard. The one-hour standards ceased to exist for the State of Oklahoma on June 15th, 2005; therefore, revocation of the one-hour standards is desired. He added that staff recommended that the revised Appendices be forwarded to the Environmental Quality Board for adoption. Ms. Myers called for a motion. Mr. Branecky made motion as proposed and Mr. Curtis made the second.

(See transcript pages 9 - 13)

Roll call
Rick Treeman  Yes  Gary Martin  Yes
Bob Curtis  Yes  Laura Worthen  Yes
David Branecky  Yes  Sharon Myers  Yes
Bob Lynch  Yes
Jerry Purkaple  Yes  Motion carried

OAC 252:100-1 General Provisions
OAC 252:100-37 Control of Emission of Volatile Organic Compounds
OAC 252:100-39 Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas.

Mr. Max Price provided staff position stating that the proposal would change the definition for VOC to be consistent with 40 CFR 51.100. The proposal would also modify Subchapter 1-3 to add existing definitions contained in Subchapter 8. Mr. Price entered into the record comments received from the EPA objecting to this request. Due to these comments, staff’s recommendation was for Council to continue the hearing to the next meeting. Ms. Worthen made the motion to carry the rule forward. Mr. Lynch made the second.

(See transcript pages 13-18)

Roll call
Rick Treeman  Yes  Gary Martin  Yes
Bob Curtis  Yes  Laura Worthen  Yes
David Branecky  Yes  Sharon Myers  Yes
Bob Lynch  Yes
Jerry Purkaple  Yes  Motion carried

OAC 252:100-8 Permits for Part 70 Sources

Dr. Joyce Sheedy advised that the proposal would incorporate EPA revisions to the New Source Review (NSR) permitting program under the Federal Clean Air Act. She set forth the amendments proposed due to the NSR reform. She added that the United States Court of Appeals for the District of Columbia Circuit handed down their decision on June 24, 2005, in response to law suits challenging the changes as inconsistent with the Federal Clean Air Act. She advised that proposed revisions for this hearing do not reflect the Court’s decision. Dr. Sheedy entered into the record letters of comments from
Stanley Spruill and Tom Diggs, EPA Region 6, and from Trinity Consultants. She asked that Council withhold voting on the proposed revisions to Subchapter 8 until EPA advises states of the action the Agency will take in light of the court decision and the DEQ has the opportunity to incorporate the changes this will necessitate into the proposed revision.

Following discussion, Mr. Treeman made motion to carry the rule over to the Council’s next regular meeting. Ms. Worthen made the second.

(See transcript pages 19 -40)

Roll call
Rick Treeman  Yes  Gary Martin  Yes
Bob Curtis  Yes  Laura Worthen  Yes
David Branecky  Yes  Sharon Myers  Yes
Bob Lynch  Yes
Jerry Purkaple  Yes  Motion carried

Division Director’s Report  Mr. Terrill provided an update on legislative funding, mentioned that Regional Haze continues to move forward. He introduced Mr. Kent Stafford for a presentation on the overview of the Air Pollutant Notification Systems, AIRNow, EnviroFlash, E-Alerts, and AQI.

New Business - None

Adjournment – The meeting adjourned at 10:10 a.m. The next regular meeting is scheduled for October 19, 2005 at the DEQ Multipurpose Room, Oklahoma City.

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

RICK TREEMAN, MEMBER
BOB CURTIS, MEMBER
SHARON MYERS, CHAIR
DAVID BRANECKY, MEMBER
ROBERT LYNCH, VICE-CHAIR
JERRY PURKAPLE, MEMBER
GARY MARTIN, MEMBER
LAURA WORTHEN, MEMBER
DON SMITH, MEMBER, ABSENT

STAFF

EDDIE TERRILL, DIRECTOR
MYRNA BRUCE, SECRETARY
BEVERLY BOTCHELET-SMITH, AQD

Christy A. Myers
Certified Shorthand Reporter
MS. MYERS: Let's call this meeting to order, please.

Myrna, would you call roll, please?

    MS. BRUCE: Mr. Treeman.
    MR. TREEMAN: Here.
    MS. BRUCE: Mr. Curtis.
    MR. CURTIS: Here.
    MS. BRUCE: Mr. Branecky.
    MR. BRANECKY: Here.
    MS. BRUCE: Mr. Lynch.
    MR. LYNCH: Here.
    MS. BRUCE: Mr. Purkaple.
    MR. PURKAPLE: Here.
    MS. BRUCE: Mr. Martin.
    MR. MARTIN: Here.
    MS. BRUCE: Ms. Worthen.
    MS. WORTHEN: Here.
    MS. BRUCE: Ms. Myers.
    MS. MYERS: Here.

    MS. BRUCE: And for the record, absent is Mr. Smith.

    We do have a quorum.

    MS. MYERS: Okay. The next item on the agenda is the Approval of Minutes

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from the April 20th meeting.

Are there any comments from the Council?

MR. MARTIN: I move approval.

MR. CURTIS: Second.

MS. MYERS: We have a motion to approve and a second.

Myrna, would you call roll, please.

MS. BRUCE: Mr. Treeman.

MR. TREEMAN: Abstain.

MS. BRUCE: Mr. Curtis.

MR. CURTIS: Abstain.

MS. BRUCE: Mr. Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Mr. Lynch.

MR. LYNCH: Yes.

MS. BRUCE: Mr. Purkaple.

MR. PURKAPLE: Abstain.

MS. BRUCE: Mr. Martin.

MR. MARTIN: Yes.

MS. BRUCE: Ms. Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: Ms. Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

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MS. MYERS: Okay. Next item on the agenda is the Resolution and Appreciation for Joel Wilson. Do you want me to read it into the record?

MR. TERRIL: You can.

MS. MYERS: Okay. I'll just go a head and read it into the record.

The Resolution reads:

Whereas, Mr. Joel F. Wilson was appointed to the Oklahoma Air Quality Council in 1998.

And whereas, Mr. Joel F. Wilson was a dedicated member of the Air Quality Council.

And whereas, Mr. Joel F. Wilson played an active part in the development of the rules and regulations that were passed by the Air Quality Council to promote clean air in Oklahoma.

And whereas, during his tenure as a Member of the Council, this Body has met the legislative charter to attain and preserve clean air in Oklahoma.

Now therefore, be it resolved that

Christy A. Myers
Certified Shorthand Reporter
the Members of the Oklahoma Air Quality
Council recognize and thank Mr. Joel Wilson
for his years of service toward making
Oklahoma a better place to live.

Signed today, July 20th, 2005.

MR. TERRIL: Joel couldn’t be
here today. He had other obligations and
he’s trying to get some things done in his
other job. He’s not working in the
environmental area anymore, but he’s trying
to get, where he works, the refinery, fixed
up to make a low sulfur diesel and
gasoline. So in a way he still is working
for the environment.

We’ll miss Joel. He did an
excellent job, I thought, representing not
only his industry but his constituents as
well. He always asked good questions and
made us think about what we were doing and
that’s part of the roll I think the Council
plays.

But when we lose one, we gain
another. And today we’ve got Mr. Jerry
Purkaple who is representing the refining
industry. He also works for Conoco-

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Phillips, in Ponca City. He's a graduate of Texas Tech University, with a BA in microbiology. He's got 20 years of up-stream and down-stream experience in the refinery, and in the last eight years he's been working in the environmental group. He's got permitting experience and compliance experience.

So, I don't think we'll miss a beat.

I think Jerry will do an excellent job representing his industry and his constituents and we welcome him and look forward to working with him.

MR. PURKAPLE: Thank you.

MS. MYERS: Good to have you, Jerry.

MR. PURKAPLE: Thank you.

MS. MYERS: And now we are moving into the Rulemaking Hearing.

And Beverly.

MS. BOTCHLET-SMITH: Good Morning. I am Beverly Botchlet-Smith, Assistant Director of the Air Quality Division. As such, I will be serving as the Protocol Officer for today's hearings.

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

These hearings were advertised in the Oklahoma Register for the purpose of receiving comments pertaining to the proposed OAC Title 252, Chapter 100 rule as listed on the Agenda and will be entered into each record along with the Oklahoma Register filing. Notice of Meeting was filed with the Secretary of State on December 10, 2004 and amended on January 27, 2005. The Agenda was duly posted 24 hours prior to the meeting on the doors of the DEQ.

If you wish to make a statement, it is very important that you complete the form at the registration table, and then you will be called upon at the appropriate time. Audience members, please come to the Christy A. Myers

Certified Shorthand Reporter

podium to make your comments and state your
At this time, we will proceed with what is marked as Agenda Item Number 5 on the Hearing Agenda, OAC 252:100 Appendix E, Primary Ambient Air Quality Standards; and OAC 252:100 Appendix F, Secondary Ambient Air Quality Standards.

We call upon Leon Ashford who will give the staff position on the proposed rule.

MR. ASHFORD: Council Members, members of the audience, the staff proposes to update Appendices E, Primary Ambient Air Quality Standards and Appendix F, Secondary Ambient Air Quality Standards to be consistent with recent changes to the Federal Ozone Standard.

Appendices E and F, or the term Ambient Air Quality Standards, are referenced in three locations within the air pollution rules. In Subchapter 3 at Sections 1, 2, and 3, the rules state that these Appendices innumerate the primary and secondary Ambient Air Quality Standards.
Subchapter 7, Section 15 (D) contains a requirement that minor source construction permits shall prohibit the exceedence of the Ambient Air Quality Standards. Subchapter 8 at Sections 35(B), 3(B) and 52 (2) and (3) contain requirements that construction permits not issue if emissions of a criteria pollutant would cause or contribute to a violation of the applicable Ambient Air Quality Standard.

The Subchapter 8 requirement applies to both PSD and nonattainment area construction permits.

The National Ambient Air Quality Standards, or NAAQS, specify the maximum acceptable level of pollutants for outdoor air.

The Clean Air Act requires EPA to set National Ambient Air Quality Standards for pollutants considered to be harmful to public health and to the environment.

NAAQS have been established for 6 primary or criteria pollutants. Carbon Monoxide, Nitrogen Oxides, Lead, Sulfur Dioxide, Ozone and particulates, which are
divided into PM-10 and PM-2.5.

The DEQ, as the Oklahoma Agency designated to administer the Federal Clean Air Act requirements in Oklahoma, is required to draw up a State Implementation Plan that includes measures to achieve acceptable air quality. That is air quality that meets the NAAQS.

The Clean Air Act further requires that the EPA periodically review and revise the NAAQS. On April 15th, 2004, EPA designated Oklahoma as attainment for the eight-hour ozone standard and set an effective date of June 15th, 2004. The one-hour ozone standard ceases to exist for areas one year after their eight-hour ozone designation. The one hour standards cease to exist for the State of Oklahoma on June 15th, 2005. To be consistent with Federal Standards, revocation of the one-hour ozone standard is desired.

Staff recommends that the revised appendices E and F be forwarded to the Environmental Quality Board for adoption.

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questions from the Council regarding the
proposed rule?

Any questions from the public?
Sharon.

MS. MYERS: Well, if there are no
further comments or questions then we'll
entertain a motion.

MR. BRANECKY: I move we adopt
Appendix E and F as proposed by the
Department as a permanent rule.

MR. CURTIS: Second.

MS. MYERS: We have a motion and
a second. Okay.

Myrna, could you call roll please.

MS. BRUCE: Mr. Treeman.

MR. TREEMAN: Yes.

MS. BRUCE: Mr. Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Mr. Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Mr. Lynch.

MR. LYNCH: Yes.

MS. BRUCE: Mr. Purkaple.

MR. PURKAPLE: Yes.

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MR. MARTIN: Yes.

MS. BRUCE: Ms. Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: Ms. Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.


And we call upon Max Price to give the staff position.

MR. PRICE: Madam Chairman,

Members of the Council, ladies and gentlemen, before 1994, EPA evaluated ozone producing potential of compounds on a molar basis. In 1994, however, EPA began to evaluate ozone producing of compounds on a mass basis. Acetone was the first compound to be exempted as a VOC on a mass basis, and that's the Federal Register on June 16, 1995.
On a mass basis, Acetone was found to have less ozone producing potential than EPA’s benchmark, ethane, and was exempted as a VOC under 40 CFR 51.100 (s)(1). On a molar basis, Acetone has about twice the ozone producing potential as ethane. Sections 252:100-1-3, 252:100-37-2 and 252:100-39-2 incorporate by reference the 40 CFR exemptions for VOC in our state definitions.

In 2004, EPA determined that it would discontinue evaluating compounds on a mass basis and evaluate all future compounds on a molar basis with the exception of 17 compounds for which they had already received VOC exemption petitions.

On November 29th, 2004, EPA exempted Tert-Butyl-Acetate (TBAc) as a Volatile Organic Compound (VOC) from all federal emission limitations and content regulations. TBAc is .4 times as reactive as ethane on a mass basis, but 1.5 times as reactive as ethane on a molar basis. In doing so, EPA changed the structure of 40
CFR 51.100 (S) by adding an additional paragraph, Paragraph (5). Since Paragraph (5) is new, it is not referenced in the definitions for VOC in Sections 252:100-1-3, 252:100-37-2 and 252:100-39-2, TBAc is still a VOC in our rules.

We are proposing to change the definition for VOC to exempt TBAc specifically. Unlike 40 CFR 51.100 (s)(5) the proposed amendments will exempt TBAc as a VOC for all purposes including inventories and reports. We believe this approach is more rational than EPA's approach of creating a special class of VOC which has an insignificant ozone creation potential, one-half that of Acetone, yet must be inventoried and reported.

We also note at this time that Section 252:100-1-3 is also being modified by the addition of existing definitions contained in subchapter 8. This is a non-substantive housekeeping change due to the New Source Review rulemaking that Dr. Sheedy will address after this presentation.

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This week we received written comments from EPA concerning this proposal. These comments will be made part of the record. EPA objects to our proposal to exempt TBAc as a VOC for all purposes. Because of their objection, we request that the Council carry these proposals over to the next Air Quality Council Meeting so that staff may have time to consult with EPA on this matter and review any other comments that may be forthcoming on this subject. Thank you.

MS. BOTCHELET-SMITH: Do we have questions from the Council? Do we have any questions from the public regarding this rule? Sharon.

MS. MYERS: If we have no further comments or questions, we’ll entertain a motion.

MS. WORTHEN: I move that we carry the rule forward.

MS. MYERS: We have a motion to carry it forward.

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MR. LYNCH: I'll second it.

MS. MYERS: Myrna, would you call roll, please.

MS. BRUCE: Mr. Treeman.

MR. TREEMAN: Yes.

MS. BRUCE: Mr. Curtis.

MR. CURTIS: Yes.

MS. BRUCE: Mr. Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Mr. Lynch.

MR. LYNCH: Yes.

MS. BRUCE: Mr. Purkaple.

MR. PURKAPLE: Yes.

MS. BRUCE: Mr. Martin.

MR. MARTIN: Yes.

MS. BRUCE: Ms. Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: Ms. Myers.

MS. MYERS: Yes.

MS. BRUCE: Motion passed.

MR. TERRILL: I wanted to say something to the Board.

MS. MYERS: Okay.

MR. TERRILL: Before we move on,

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if there is anyone here that came today for
this particular rule, we'd be interested in knowing whether or not you have any objection to the notion EPA had about creating a special class and tracking this, even though it's not considered a VOC. We didn't write a rule that way because it didn't make a lot of sense to us to do that and we are going to need some clarification from EPA as to why that is. It could be that we won't have any choice in the matter. If it's a federal requirement, we may be creating problems for folks who are using this as part of their process that we don't intend to do, but if it's an interpretation, we may decide to push it back.

So, if anyone's here that came because of this particular rule, we'd be interested in knowing whether or not you feel like this is an unwarranted burden, having to track this even though it is not a VOC. And we would appreciate it if you would give us those comments before our next Council meeting or preferably in the next couple of weeks because we are
probably going to have conversations with EPA sometime in August.

MS. BOTCHLET-SMITH: The next item on the agenda is OAC 252:100-8, Permits for Part 70 Sources. And Dr. Joyce Sheedy will present the staff's position.

DR. SHEEDY: Madam Chair, Members of the Council, ladies and gentlemen, the Department is proposing revisions to Parts 7 and 9 of Subchapter 8, Part 70 sources, to incorporate the NSR Reform. However, we are also taking the opportunity to update and clarify these rules regarding the PSD program and the NSR nonattainment program. Therefore, the proposed amendments also include some other NSR revisions not previously incorporated by the Department and we are proposing to move some definitions from Section 8-1.1 of Subchapter 8 to Subchapter 1.

We propose to move the definitions of Act, Actual Emissions, Administrator, EPA, NESHAP, NSPS, Part 70 Permit, Part 70 Program, and

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Subchapter 8 to Section 3 of subchapter 1 without making any substantive changes. We also propose to move the definition of Secondary Emissions from Section 8-1.1 to Subchapter 1, however, we are proposing a substantive change. Emissions from trains will no longer be included in the secondary emissions. We are doing this so that our definition will match the Federal definition.

We propose to move the definition of LAER from Section 8-51 to Subchapter 1. We are proposing changes in the language, but we don't think these are substantive changes, it's just updating the language.

We propose to add the definition of RACT to Subchapter 1. This term is currently defined in OAC 252:100-39-47(c)(4). The language has been updated, but we don't believe there is a substantive change to that definition. We propose to add the definition of Federally Enforceable to Subchapter 1. This definition is not new, but it has not previously been defined in our rules. We propose adding these definitions to
Subchapter 1 because they are general in nature and are used in more than one Subchapter.

We also propose some clean up type changes to terms already defined in Subchapter 1. We propose to change the term reviewing authority in the definition of Complete to Director; revise the definition of Stack to make clear that a pipe may be a stack, but flares are not; and make clear in the term stationary source that the air pollutants of concern are those subject to OAC 252:100.

We are also proposing to move from Section 1.1 of Subchapter 8 to Section 31 of Subchapter 8, the definitions that are used only in Parts 7 and 9 of Subchapter 8. That includes the definition of Allowable Emissions, paragraph (A) of the definition of Begin actual construction, the definition of Commence, the definition of Construction, the definition of

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Emissions unit, the definition of Necessary preconstruction approvals or
permits, the definition of Potential to emit, and the definition of Stationary source.

Only the definitions of Emissions unit and Stationary source have substantive changes. These changes are due to the NSR reform.

The primary change brought about by the NSR reform is the revision to the method of determining what should be classified as a modification subject to major NSR review.

EPA promulgated this revision in 2002. New York and other states, as well as environmental organizations, filed suit challenging the changes as inconsistent with the Federal Clean Air Act. A group of electric utilities and other industry representatives challenged EPA’s method of calculating emissions increases at a facility. The United States Court of Appeals for the District of Columbia Circuit handed down their decision on June 24, 2005.

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They found the following elements as permissible interpretations of the Federal Clean Air Act; the use of past emissions and projected future actual emissions, rather than potential emissions, in measuring increases; the use of a 10-year lookback period in selecting the 2-years baseline period for measuring past actual emissions; the use of a 5-year lookback period in certain circumstances; the abandonment of a provision authorizing states to use source-specific allowable emissions in measuring baseline emissions; the exclusion of increases due to unrelated demand growth from the measurement of projected future actual emissions; and the Plantwide Applicability Limitations on the PAL Program.

The Court concluded that two aspects of the 2002 rule rest on impermissible interpretations of the Federal Clean Air Act and a third is arbitrary and capricious. The Court determined that EPA erred in promulgating the Clean Unit
applicability test, which measures emissions increases by looking to whether emissions limitations have changed. Because the plain language of the Clean Air Act indicates that Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions, the Court held that EPA lacked authority to promulgate the Clean Unit provisions and vacated that portion of the 2002 rule.

The Court ruled that EPA also erred in exempting from NSR, certain Pollution Control Projects (PCP) that decrease emission of some pollutants that cause collateral increases in other pollutants. The statute authorizes no such exception. The Court held that EPA lacks authority to create Pollution Control Project exemptions from NSR and vacated those parts of both the 1992 rule and 2002 rule.

Then the Court ruled that EPA acted arbitrarily and capriciously in determining that sources making changes need not keep records of their emissions if they see no
reasonable possibility that these changes constitute modifications for NSR purposes. The Agency failed to provide a reasoned explanation for how, absent such records, it can ensure compliance with NSR. The Court remanded the record-keeping provisions to EPA either to provide an acceptable explanation of its reasonable possibility standard or to devise an appropriately supported alternative. Since the Court decision occurred after our proposed revisions to Subchapter 8 were put on the website and made available to the public, the proposed revisions do not reflect the Courts decision. The Department will amend the proposed revisions to Subchapter 8 to incorporate the Courts ruling. We've received a letter of comments from Donald C. Whitney of Trinity Consultants dated July 1st, 2005. We also received comments by email on July 13th, 2005, from Stanley Spruiell of EPA Region 6, and a letter dated July 13th, 2005 from Tom Diggs of EPA Region 6. These comments
and staff’s responses will be part of the Hearing Record. A copy of these comments and staff responses have been provided to the Council and are available on the sign-in table for the public. Unless requested to do so, I won’t go over these comments in detail.

Staff request that the Council withhold voting on the proposed revisions to Subchapter 8 until EPA advises states of the action the Agency will take in light of the Court decision and the DEQ has the opportunity to incorporate the changes this will necessitate into the proposed revision. At this time we are required to adopt and submit the revision to the NSR program, to EPA, by January 2nd, 2006. We suspect this date will probably be changed but we don’t know that at this point.

That concludes my presentation.

MS. BOTCHLET-SMITH: Do we have questions from the Council of Dr. Sheedy?

Do we have any questions from the public regarding the proposed rule?

Are we sure we do not have any
questions for the Council at this time?

MR. BRANECKY: I have a question.

MR. TERRILL: Don't ask a hard question.

MR. BRANECKY: Under the definition of baseline actual emissions, there seems to be a change from the Federal definition. I was curious why? In your proposal, you propose using the same 24 month period shall be used for all pollutants. I think that is different from the Federal proposal.

DR. SHEEDY: It is different.

MR. BRANECKY: Why is that?

DR. SHEEDY: I believe I thought that it would just be easier.

MR. TERRILL: It's a matter of record-keeping.

DR. SHEEDY: Record keeping.

MR. TERRILL: That's a lot of it. And we realize that would probably generate some comment and discussion as we move forward on this. But we felt like

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that way this rule is setup, it already puts us in a kind of adversarial position
with the company because of the lack of
ability to determine exactly what s
happened and records that you have to
maintain and all that and what may or may
not be available going back 10 years. And
it s hard enough when you ve got a two year
period looking at all the pollutants, let
alone a two year period looking at each
different pollutant.

So, we attempted to clarify and make
it a little bit simpler for us and
hopefully for the facility. But we figured
as part of the discussion, that would be a
major area that we would have to hash out.
It could be we will have to go back to what
was originally proposed, but we feel like
this is a better starting point for
discussion. And we would like to be
convinced why it s better to have the
Federal proposal as opposed to what we ve
got here.

Let me go ahead and propose this.

Let me just mention this. The Court --

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believe, until the 15th of August to make some kind of decision as to whether or not they are going to appeal the parts that they lost on or not. And so I figured EPA will take every bit of that time. I suspect that the Plaintiffs will, too. So, we won't really know anything until sometime the middle of August, as to where this is going to go.

If you've got projects, pollution control projects, that you've done in the last eight or nine years that relied on the guidance that EPA has out, you probably want to follow that part of it real closely. Because not only did EPA have remanded the portion that they proposed in this rule, but they also had the original pollution control guidance remanded, as well.

So, right now there is no pollution control project guidance out there that EPA can follow and I guess it does put it in some jeopardy, anyone who relied on that and went a head and did the projects. Not that you will get hooked on that, you'll
get hooked on not following PSD.

I figure EPA will probably try to fix that because too many folks across the country relied on that guidance and did good projects and it doesn't make sense not to try to fix that part of it. But you need to be aware of it anyway just in case that they don't or it doesn't come out -- they don't fix it in the manner that is acceptable to your situation.

So, what I would like to do is propose to the Council and the group, that we post on the website and make available for comment by August 5th, our revised rule based on what EPA has done relative to having to pull the "clean units" part of it and also the "pollution control project" part of it.

And then we will take comments for three weeks, until August 26th. Then either September 8th or 9th, depending on when we can get a room available, we will have a conference with anyone who would like to come in and talk about the rule, similar to what we have done in the past.

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And if anyone wants to form a workgroup, they are welcome to do that. However you all want to do that is up to you all. But we figured it's -- since they kicked out two parts of this -- the rest of it are kind of all related anyway, so there probably wouldn't be a need to have a workgroup looking at the other three areas.

So we'll just do -- take comments and do it similar to what we did with our toxics rule. We figured that would be easier on everyone but, again, if any of EFO or any of the other trade associations want to form a workgroup and submit comments as a group, that's fine, too. It really doesn't make any difference to us, but we just figured it would be easier to do that. And if, in the event, the EPA pushes the time frame back, we may go a head and have the initial workgroup meeting to see what people are thinking because I think we will eventually have to pass these three portions of the rule anyway in some form, that's pretty close to the way it is now, depending on what they do with the
record-keeping part of it that was remanded.

So, there’s really no sense in not doing that work. I really don’t think that we will be held to that January time frame to get this passed. I think it will be more like the summer of 2006 or possibly even January of 2007, depending on what happens with the Courts. But I do think we need to go a head and start this just in case we’re wrong about that and EPA says don’t move a head with the parts that the Court said were okay. If we don’t get it done by January, I don’t think it’s that big of a deal. We may want to have a special meeting in December or so, if it looks like we are close, just to get it done, before we start moving on to other things. But if we don’t and the holidays come up, and we want to have a meeting in January or February and take it to the Board after that, as long as we are making reasonable progress, I think EPA will be fine with that because I don’t think they want to come get the program.

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So, that’s what we are proposing. I’ll run through it again. August 5th, we’ll have our revised version up on the website for comment, we’ll take comment through the 26th, have a public meeting either the 8th or the 9th of September to -- interested parties can come in and we’ll go over the rule, and hopefully by then have some kind of idea of where we are going to go in the future.

MS. MYERS: When you post that Eddie, can you also post specifics that are different from the Federal Rule? A list of where the changes have occurred and what’s different about it so that we have a better opportunity to look at it.

MR. TERRILL: Yeah. There’s not very many of those so it shouldn’t be a problem.

MR. BRANECKY: Because it won’t do us any good to comment on what’s in the Federal Rule.

MR. TERRILL: No. It won’t do you any good to comment on what’s in the Federal Rule because there is nothing we
can do about that. That's just the way it is.

Although, we can make -- be more stringent. If we're as stringent as the Fed's or more, then we can do that. We'll just have to go through an equivalency-type determination from Region 6. So, it's possible that we could. If you see things in that that you want to clarify, you can't comment on them, it just means that we will have to go through the equivalency process.

So, I wouldn't say that you couldn't but what we'll do is we'll highlight the parts that we've changed and the rest of it we'll just have to comment, but I won't promise you that we will make those changes.

MS. MYERS: Are the State Air Directors going to file any comments on the portions of the rules that were vacated? For instance, on the PCP projects, the US and Air Director that has had some of those projects occur within your boundaries have any right to comment to EPA on that, or is there a move of their Director's Association to do that?
MR. TERRILL: We've got a Board meeting of -- our National Association is in -- starts a week from Saturday. And I am sure this will come up. I haven't -- I think it's been so soon after that, I think the EPA -- we had a conference call with EPA last week and they are still trying to digest exactly what the Court said and what their response is going to be. And so I don't know. There's a pretty good chance we will, especially with a need for EPA to resolve this Polluton Control Project issue because, like I said, there's been too many companies that have relied on that over the last 10 years have done some good projects, to be hung out because EPA failed to do what they should have done to start with and codify those rules so that they wouldn't have this problem.

So, there is a pretty good chance we'll make some kind of comments, but I don't know exactly what format they'll take.

MR. PURKAPLE: I have a question.

For companies that may be assessing
projects on into the future, is this close
enough to be able to evaluate, to begin in
looking at those projects in the context of
the reform or should we still be looking at
those with the rules as they exist now?

(Multiple conversations)

MR. TERRILL: Yeah.

MR. PURKAPLE: I m new, is this a
fair question?

MR. TERRILL: It s a fair
question, it s just a hard one. You
stepped right into Joel s shoes really
well. I would say that the likelihood that
we will not -- we ll have some sort of rule
passed, I would imagine, no later than
probably a year from right now, would be my
guess. And I think that it ll
substantially look like what the Feds have
proposed with the exception of the baseline
that we ll have the discussion with and you
all and see where we ll end up going there.
So, if you are looking at projects that are
a year out, I don t know why you couldn t

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1 look at doing them under the new rules.
2 Let me talk to the lawyers and give you a
better answer. We may post that -- that's a good question and it's probably one we probably ought to post on our website and it will probably be in the vague terms that you're still going to be on your own, basically, but we will try to give you some guidance. You never want us to give any definitive answer in this business because you never know what's going to happen.

I think a lot of it will be determined based on what happens by the 15th and what's appealed and what's not. And that will give a better indication of where we think we can go. So, let me talk to our lawyers and our technical folks and get you an answer posted probably sometime after the 15th of August; is that okay?

MR. PURKAPLE: Okay. Yeah.

MR. TERRILL: That's a good question.

MR. PURKAPLE: Is this the seat Joel sat in?

MR. TERRILL: He did ask really good questions and that is one that I am sure other folks have had and one we
probably need to address so that you can
have a little bit of certainty, or as much
as can be given, as you move forward.

MR. PURKAPLE: Thank you.

DR. SHEEDY: I just want to say
about the comments that we received that
the comments from Stanley Spruiell of EPA,
Region 6, I think he identified in there,
pretty much every place where we were
different from the Federal Rule. So if you
want to get an advance look at it before we
have our stuff on the web, his comments
were pretty good at identifying those
areas.

MS. BOTCHLET-SMITH: Do we have
any further questions?

MR. TERRILL: Does anyone have
any objections to that schedule or the
format that we’re going to use to collect
comments?

We’ll post something on our website
late this week or early next, that puts
those dates out there so you can have

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something to refer to. And again,
depending on what the Court does, it s
possible that we can push that September meeting, if it looks like that doesn't give folks enough time. But don't count on that happening. I think we will probably go ahead and do the original meeting on the 8th and then the group can decide how quickly - if there is a need to meet again and how quickly that needs to be based on what we think the time frame that we've got to work with EPA.

MS. MYERS: Are there any other questions or comments? I guess at this point we need to vote to carry it over. We need to entertain a motion to carry the rule over to the next Council meeting.

MR. TREEMAN: So moved.

MS. MYERS: We have a motion. Do we have a second?

MS. WORTHEN: I'll second it.

MS. MYERS: Did you get that? Myrna, would you call roll please.

MS. BRUCE: Mr. Treeman.

MR. TREEMAN: Yes.

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MS. BRUCE: Mr. Curtis.

MR. CURTIS: Yes.
MS. BRUCE: Mr. Branecky.

MR. BRANECKY: Yes.

MS. BRUCE: Mr. Lynch.

MR. LYNCH: Yes.

MS. BRUCE: Mr. Purkaple.

MR. PURKAPLE: Yes.

MS. BRUCE: Mr. Martin.

MR. MARTIN: Yes.

MS. BRUCE: Ms. Worthen.

MS. WORTHEN: Yes.

MS. BRUCE: Ms. Myers.

MS. MYERS: Yes.

MS. BOTCHLET-SMITH: That concludes the hearing portion of today’s meeting. Thank you.

(End of Proceedings)

Christy A. Myers
Certified Shorthand Reporter
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
proceedings is the truth, the whole truth,
and nothing but the truth; that the
foregoing proceedings were tape recorded
and taken in shorthand by me and thereafter
transcribed under my direction; that said
proceedings were taken on the 20th day of
July, 2005, 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
3rd day of August, 2005.

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

Christy A. Myers
Certified Shorthand Reporter