

REGULAR MEETING/HEARING AGENDA
AIR QUALITY ADVISORY COUNCIL
June 16, 2021, 9:00 a.m.
Department of Environmental Quality
707 North Robinson Avenue
Oklahoma City, OK

Please turn off cell phones

1. **Call to Order** – Laura Lodes, Chair
2. **Roll Call** – Quiana Fields
3. **Approval of Minutes**
 - A. October 21, 2020 Regular Meeting
 - B. November 12, 2020 Continued Meeting
4. **Election of Officers - Discussion and action by Council**
5. **Public Rulemaking Hearing**
 - A. **Chapter 100. Air Pollution Control**
 - Subchapter 7. Permits for Minor Facilities**
 - Part 3. Construction Permits**
 - 252:100-7-15. [AMENDED]**
 - Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources**
 - Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas**
 - 252:100-8-36.1. [AMENDED]**
 - Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)**
 - 252:100-37-16. [AMENDED]**
 - Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas**
 - Part 7. Specific Operations**
 - 252:100-39-45. [AMENDED]**

The Department of Environmental Quality (Department or DEQ) is proposing to make revisions in Subchapters 7, 8, 37, and 39 as part of the Department's review of Chapter 100 in response to Governor Stitt's Executive Order 2020-03. The Department is proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department is proposing to correct the rule and statute references in OAC 252:100-8-36.1 to the proper legal form. The Department is proposing to add an exemption to OAC 252:100-37-16(c) to formalize the Department's interpretation that loading operations from condensate tanks at natural gas compressor stations are not considered loading facilities for the purposes of this section. In OAC 252:100-39-45, the Department is proposing to correct the approval process for facilities that

incinerate petroleum solvent dry cleaning filters and to remove the outdated compliance schedule. The gist of this rule proposal and the underlying reason for the rulemaking is to remove outdated rule language and/or provide regulatory clarity.

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

B. Chapter 100. Air Pollution Control
Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources
Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
252:100-8-36.2. [AMENDED]

The Department is also proposing to amend the source obligation provisions for facilities subject to prevention of significant deterioration (PSD) in OAC 252:100-8-36.2 to more closely align Oklahoma’s rules with the U.S. Environmental Protection Agency (EPA) rules in 40 C.F.R. § 51.166(r). This proposed rulemaking is in response to requests from industry to add the “reasonable possibility” provisions. The gist of the proposed rules and the underlying reasons for the revisions are to make Oklahoma’s PSD source obligation provisions more similar to EPA’s provisions, thereby reducing the recordkeeping burden on Oklahoma’s permitted PSD facilities.

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

6. **Presentation** - Regional Haze Update – Cooper Garbe, EPS, Rules & Planning Section, AQD
7. **Presentation** – Fiscal Report – Kathy Aebischer, Asst. Division Director, Administrative Services Division
8. **Division Director's Report** - Kendal Stegmann, Division Director, AQD
9. **New Business** - Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.
10. **Adjournment** - The next regular meeting is scheduled for Wednesday, October 20, 2021 in Oklahoma City, Oklahoma.

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

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

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 7. Permits for Minor Facilities

Part 3. Construction Permits

252:100-7-15 [AMENDED]

Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources

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

252:100-8-36.1 [AMENDED]

252:100-8-36.2 [AMENDED]

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

Part 3. Control of VOCs in Storage and Loading Operations

252:100-37-16 [AMENDED]

Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas

Part 7. Specific Operations

252:100-39-45 [AMENDED]

SUMMARY:

The Department of Environmental Quality (Department or DEQ) is proposing to make revisions in Subchapters 7, 8, 37, and 39 as part of the Department's review of Chapter 100 in response to Governor Stitt's Executive Order 2020-03. The Department is proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department is proposing to correct the rule and statute references in OAC 252:100-8-36.1 to the proper legal form. The Department is proposing to add an exemption to OAC 252:100-37-16(c) to formalize the Department's interpretation that loading operations from condensate tanks at natural gas compressor stations are not considered loading facilities for the purposes of this section. In OAC 252:100-39-45, the Department is proposing to correct the approval process for facilities that incinerate petroleum solvent dry cleaning filters and to remove the outdated compliance schedule. The gist of this rule proposal and the underlying reason for the rulemaking is to remove outdated rule language and/or provide regulatory clarity.

The Department is also proposing to amend the source obligation provisions for facilities subject to prevention of significant deterioration (PSD) in OAC 252:100-8-36.2 to more closely align Oklahoma's rules with the U.S. Environmental Protection Agency (EPA) rules in 40 C.F.R. § 51.166(r). This proposed rulemaking is in response to requests from industry to add the "reasonable possibility" provisions. The gist of the proposed rules and the underlying reasons for the revisions are to make Oklahoma's PSD source obligation provisions more similar to EPA's provisions, thereby reducing the recordkeeping burden on Oklahoma's permitted PSD facilities.

AUTHORITY:

Environmental Quality Board; 27A Okla. Stat. (O.S.) §§ 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. §§ 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. §§ 2-5-101 through 2-5-117.

Oklahoma Uniform Permitting Act; 27A O.S. §§ 2-14-101 through 2-14-304.

COMMENT PERIOD:

Written comments may be submitted to the contact person from May 3, 2021, through June 2, 2021. Oral comments may be made at the June 16, 2021 hearing and at the September 14, 2021 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, June 16, 2021, via videoconference or teleconference in compliance with the Open Meetings Act, 25 O. S. § 307.1(B) as amended by SB 1031 (2021). Members of the Council and public may attend via videoconference or teleconference. Videoconference or teleconference details may be obtained from the contact person or online at <https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/> when the agenda of the hearing is published at least 24 hours prior to the meeting. In the event the current state of emergency has expired or been terminated by the Governor and the amended provisions of 25 O.S. § 307.1(B) are no longer in effect, the hearing shall take place at the same date and time at the DEQ Headquarters, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Tuesday, September 14, 2021, at the Southwest Technology Center, 711 W. Tamarack Rd., Altus, OK 73521. If necessary, the Environmental Quality Board meeting may take place at the specified date and time via videoconference or teleconference in compliance with the Open Meetings Act, 25 O.S. § 307.1(B) as amended by SB 1031 (2021). Videoconference or teleconference details may be obtained from the contact person or obtained online at <https://www.deq.ok.gov/council-meetings/environmental-quality-board/> for the Environmental Quality Board.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 and 27A O.S. § 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 C.F.R. Part 70 and 27A O.S. § 2-5-112(B)(9).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENTS:

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

CONTACT PERSON:

The contact person for this proposal is Melanie Foster, Environmental Programs Manager, who can be reached by phone at (405) 702-4100. Please email written comments to AQDRuleComments@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: Melanie Foster. The Air Quality Division fax number is (405) 702-4101.

PERSONS WITH DISABILITIES:

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

**DRAFT MINUTES
AIR QUALITY ADVISORY COUNCIL
October 21, 2020
Department of Environmental Quality
Oklahoma City, Oklahoma**

Official AQAC Approved
at June 16, 2021 meeting

Notice of Public Meeting – The Air Quality Advisory Council (AQAC) convened for its Regular (Virtual) Meeting at 9:00 a.m. on October 21, 2020. Notice of the meeting was forwarded to the Office of Secretary of State on August 25, 2020. The agenda was posted at the DEQ twenty-four hours prior to the meeting. Also, Ms. Beverly Botchlet-Smith acted as Protocol Officer and convened the hearings by the AQAC in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51 and Title 27A, Oklahoma Statutes, Sections 2-2-201 and 2-5-101 through 2-5-117. She entered the agenda and the Oklahoma Register Notice into the record and announced that if you wish to make a statement when it's time for public comments, please use the raise-hand function and the host will identify you. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

MEMBERS PRESENT

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

DEQ STAFF PRESENT

Kendal Stegmann
Beverly Botchlet-Smith
Cheryl Bradley
Madison Miller
Brooks Kirlin
Melanie Foster
Tom Richardson
Nancy Pearce
Quiana Fields

MEMBERS ABSENT

None

Approval of Minutes – Ms. Lodes called for a motion to approve the Minutes of the June 19, 2020 Regular Meeting. Mr. Taylor moved to approve and Mr. Keele made the second.

See transcript pages 4 - 5

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

Mr. Caves made a motion to approve the July 22, 2020 Special Meeting and Dr. Delano made the second.

See transcript pages 5 - 6

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

Meeting Schedule for Calendar Year 2021 – Ms. Lodes stated the proposed meeting scheduled dates are: January 20 in Oklahoma City, June 16 in Tulsa and October 20 in Oklahoma City. Following a brief discussion, Mr. Landers moved to approve the proposed dates and Mr. Keele made the second.

See transcript pages 6 - 9

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

Chapter 100. Air Pollution Control

OAC 252:100-2. Incorporation By Reference [AMENDED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

Ms. Nancy O'Brien, Environmental Programs Specialist of the AQD, stated the Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q. Following a question by the Council and none by the public, Ms. Lodes called for a motion, Mr. Landers moved to approve and Dr. Delano made the second.

See transcript pages 11 - 16

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

Chapter 110. Lead-Based Paint Management

Subchapter 3. Definitions [AMENDED]

Subchapter 5. Incorporation by Reference [AMENDED]

Subchapter 9. Additional Accreditation Requirements [AMENDED]

Subchapter 11. Additional LBP Certification Requirements [AMENDED]

Subchapter 13. Additional Work Practice Standards [AMENDED]

Subchapter 15. Additional Renovation, Repair, and Painting (RRP)

Requirements [AMENDED]

Mr. Brooks Kirlin, Professional Engineer of the AQD, stated the Department is proposing to amend OAC 252:110, Lead Based Paint Management, to update the incorporation by reference section (which includes EPA's new dust-lead hazard levels), to add provisions to implement the military reciprocity statute (59 O.S. §4100, *et seq.*, Military Service Occupation, Education and Credentialing Act), to update clearance levels to parallel federal dust-lead hazard changes, to clarify language in several provisions and to correct minor punctuation and grammar errors. The proposed updates to the dust hazard levels are necessary to maintain EPA approval for Oklahoma's Lead-Based Paint Program. Hearing questions and comments by the Council and staff and none by the public, Ms. Lodes called for a motion, Mr. Collins moved to approve and Mr. Taylor made the second.

See transcript pages 16 – 33

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes

Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Chapter 4. Rules and Procedure

Subchapter 7. Environmental Permit Process [AMENDED]

Mr. Tom Richardson, Professional Engineer of the AQD, stated the Department is proposing to amend the air quality portions of Chapter 4, Subchapter 7 to better align the Department’s issuance process and public participation procedures for Part 70 source construction and operating permits with the New Source Review permit requirements and Title V operating permit requirements. Mr. Richardson stated that the staff has recommended that the Council postpone their vote and discussion as well as from the public until after the Chapter 100 presentation. Mr. Collins moved that the Council postpone the discussion and vote on the proposed changes to Chapter 4 until after the discussion on Chapter 100. Mr. Elliott made the second.

See transcript pages 33 - 62

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

Ms. Lodes requested a brief recess before discussing Chapter 100. Mr. Caves made a motion to recess for 15 minutes and Mr. Taylor made the second.

See transcript pages 62 - 63

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

Ms. Lodes called the meeting back to order, whereupon Ms. Botchlet-Smith called upon Mr. Richardson to continue his presentation.

See transcript page 64

Chapter 100. Air Pollution Control

Subchapter 1. Definitions [AMENDED]

Subchapter 7. Permits for Minor Facilities [AMENDED]

Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources [AMENDED]

Mr. Richardson stated that the Department is proposing to amend definitions and permitting requirements in Subchapters 1, 7 and 8 to better align the Department’s permit requirements and issuance process for construction and operating permits with the NSR permit requirements and Title V operation permit requirements and make other minor updates. Following a lengthy discussion by the Council and comments by the public, Ms. Madison Miller, Environmental Attorney, advised that when this meeting adjourns it adjourns to meet at 9:00 am on November 12, 2020, via zoom, with call-in information to be posted by DEQ at least 24 hours in advance. Mr. Collins moved to what Ms. Miller stated and Dr. Delano made the second.

See transcript pages 64 - 174

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes

Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Mr. Collins moved that the Council postpone the vote for Chapter 4 and 100 until the November 12 meeting and Mr. Elliot made the second.

See transcript pages 175 - 177

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

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

See transcript page 177

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

New Business – None

Adjournment – Ms. Lodes called for a motion to adjourn the meeting. Mr. Taylor moved to approve and Dr. Delano made the second. The next scheduled regular continued meeting is on Thursday, November 12, 2020 via zoom. Meeting adjourned at 12:50 p.m.

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

Transcript is an official part of these Minutes.

I can't remember when they moved the National Brownfields Conference Did we check the Quality 10/21/2020

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY ADVISORY COUNCIL

AIR QUALITY ADVISORY COUNCIL MEETING

OCTOBER 21, 2020 - 9:00 A.M.

VIRTUAL ZOOM MEETING

REPORTED BY: ELISE GRAYSON CRUCHON, CSR

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1 BOARD MEMBERS PRESENT

2

3 MS. LAURA LODES, CHAIRMAN

4 MR. GARY COLLINS, VICE CHAIRMAN

5 MR. MATT CAVES

6 DR. ROBERT DELANO

7 MR. GREGORY ELLIOTT

8 MR. GARRY KEELE II

9 MR. STEVE LANDERS

10 MR. JOHN PRIVRAT

11 MR. JEFFREY TAYLOR

12

13 Also Present

14

15 Ms. Quiana Fields, Secretary Director Board and

16 Council

17 Ms. Kendal Stegmann, Division Director

18 Ms. Beverly Botchlet-Smith

19 Ms. Madison Miller

20 Ms. Melanie Foster

21 Mr. Malcolm Zachariah

22 Ms. Christina Hagens

23

24

25

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1 (Inaudible or indecipherable

2 testimony may be due to interruptions in

3 audio/video connection.)

4 (Meeting called to order at

5 9:05 a.m.)

6 CHAIRMAN LODES: I think we're ready

7 to call today's meeting of the Air Quality

8 Advisory Council to order. Would you please

9 call roll?

10 MS. FIELDS: Mr. Caves?

11 MR. CAVES: Here.

12 MS. FIELDS: Mr. Collins?

13 MR. COLLINS: Here.

14 MS. FIELDS: Dr. Delano?

15 DR. DELANO: Here.

16 MS. FIELDS: Mr. Elliott?

17 MR. ELLIOTT: Here.

18 MS. FIELDS: Mr. Keele?

19 MR. KEELE: Present.

20 MS. FIELDS: Mr. Landers?

21 MR. LANDERS: Present.

22 MS. FIELDS: Mr. Privrat?

23 MR. PRIVRAT: Present.

24 MS. FIELDS: Mr. Taylor?

25 MR. TAYLOR: Here.

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1 MS. FIELDS: Ms. Lodes?

2 CHAIRMAN LODES: Here.

3 MS. FIELDS: We have a quorum.

4 CHAIRMAN LODES: Thank you.

5 The next item on today's Agenda is

6 approval of the minutes from the June 17th,

7 2020, regular meeting and the July 22nd, 2020,

8 special meeting. We'll need to approve these

9 minute packages individually.

10 So do I have a motion or any

11 questions on the minutes from the June 17th,

12 2020, regular meeting?

13 (No oral response.)

14 CHAIRMAN LODES: Hearing no comments,

15 do I have motion to approve the minutes from

16 the June 17th, 2020, regular meeting?

17 MR. TAYLOR: I'll make motion to

18 approve the minutes from the June 17th regular

19 meeting.

20 MR. KEELE: Second.

21 CHAIRMAN LODES: I have a motion and

22 a second. Quiana, will you please call roll?

23 MS. FIELDS: Mr. Caves?

24 MR. CAVES: Yes.

25 MS. FIELDS: Mr. Collins?

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1 MR. COLLINS: Yes.

2 MS. FIELDS: Mister -- I mean --

3 excuse me. Dr. Delano?

4 DR. DELANO: Yes.

5 MS. FIELDS: Mr. Elliott?

6 MR. ELLIOTT: Yes.

7 MS. FIELDS: Mr. Keele?

8 MR. KEELE: Yes.

9 MS. FIELDS: Mr. Landers?

10 MR. LANDERS: Yes.

11 MS. FIELDS: Mr. Privrat?

12 MR. PRIVRAT: Yes.

13 MS. FIELDS: Mr. Taylor?

14 MR. TAYLOR: Yes.

15 MS. FIELDS: Ms. Lodes?

16 CHAIRMAN LODES: Yes.

17 MS. FIELDS: Motion passed.

18 CHAIRMAN LODES: Thank you.

19 MR. CAVES: Can I make a motion to

20 approve the July 22nd, 2020 special meeting

21 minutes?

22 DR. DELANO: I second that.

23 CHAIRMAN LODES: Thank you. I have a

24 motion and a second. Quiana, will you please

25 call roll?

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1 MS. FIELDS: Mr. Caves?
 2 MR. CAVES: Yes.
 3 MS. FIELDS: Mr. Collins?
 4 MR. COLLINS: Yes.
 5 MS. FIELDS: Dr. Delano?
 6 DR. DELANO: Yes.
 7 MS. FIELDS: Mr. Elliott?
 8 MR. ELLIOTT: Yes.
 9 MS. FIELDS: Mr. Keele?
 10 MR. KEELE: Yes.
 11 MS. FIELDS: Mr. Landers?
 12 MR. LANDERS: Yes.
 13 MS. FIELDS: Mr. Privrat?
 14 MR. PRIVRAT: Yes.
 15 MS. FIELDS: Mr. Taylor?
 16 MR. TAYLOR: Yes.
 17 MS. FIELDS: Ms. Lodes?
 18 CHAIRMAN LODES: Yes.
 19 MS. FIELDS: Motion passed.
 20 CHAIRMAN LODES: Thank you. The next
 21 thing on today's Agenda is the meeting
 22 schedule for calendar year 2021. The current
 23 staff suggestions are Wednesday, January 20th,
 24 2021, in Oklahoma City, Wednesday, June 16th,
 25 2021, in Tulsa, and Wednesday October 20th.

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1 group to put that off. That will be a big
 2 draw for a lot of people.
 3 MR. ZACHARIAH: Looking -- It seems
 4 it's September 27th through 30th, 2021,
 5 MR. KEELE: Perfect. Thanks.
 6 CHAIRMAN LODES: Is there any other
 7 discussion on these proposed dates?
 8 (No oral response.)
 9 CHAIRMAN LODES: Hearing none. Do I
 10 have a motion to approve these dates?
 11 MR. LANDERS: I'll make a motion to
 12 approve.
 13 MR. KEELE: Second.
 14 CHAIRMAN LODES: I have a motion and
 15 a second. Call roll.
 16 MS. FIELDS: Mr. Caves?
 17 MR. CAVES: Yes.
 18 MS. FIELDS: Mr. Collins?
 19 MR. COLLINS: Yes.
 20 MS. FIELDS: Dr. Delano?
 21 DR. DELANO: Yes.
 22 MS. FIELDS: Mr. Elliott?
 23 MR. ELLIOTT: Yes.
 24 MS. FIELDS: Mr. Keele?
 25 MR. KEELE: Yes.

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1 2021, in Oklahoma City.
 2 I haven't looked -- Do we know --
 3 that's not going to be a problem with EFO in
 4 October, correct? Did y'all check that?
 5 MS. FOSTER: I believe we did check
 6 that and I don't believe it should conflict.
 7 CHAIRMAN LODES: Okay. Seems like
 8 that's the only one that we're ever trying to
 9 make sure we worked it out.
 10 Any questions or concerns regarding
 11 the -- those proposed meetings schedule?
 12 MR. KEELE: This is Garry Keele. By
 13 chance, do we know -- I can't remember when
 14 they moved the National Brownfields Conference
 15 back in the fall. I think it's September.
 16 Did we check against that one, too, because
 17 that one will probably draw some people.
 18 MS. FOSTER: This is Melanie. No, I
 19 don't know that we did double-check that one.
 20 Let me see if I can find that one real quick.
 21 Erin, do you know that (inaudible) --
 22 MR. KEELE: I think that -- I can't
 23 get to my calendar the way I'm on Zoom, so I
 24 would check there, but I think it's September,
 25 but maybe it doesn't matter enough for this

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1 MS. FIELDS: Mr. Landers?
 2 MR. LANDERS: Yes.
 3 MS. FIELDS: Mr. Privrat?
 4 MR. PRIVRAT: Yes.
 5 MS. FIELDS: Mr. Taylor?
 6 MR. TAYLOR: Yes.
 7 MS. FIELDS: Ms. Lodes?
 8 CHAIRMAN LODES: Yes.
 9 MS. FIELDS: Motion passed.
 10 CHAIRMAN LODES: Thank you. It is
 11 now time to enter the Public Rulemaking
 12 Hearing. Beverly.
 13 MS. BOTCHLET-SMITH: Good morning.
 14 I'm Beverly Botchlet-Smith. I'm the assistant
 15 director of the Air Quality Division, and as
 16 such I will act as the protocol officer for
 17 today's hearings. The hearings will be
 18 convened by the Air Quality Council in
 19 compliance with the Oklahoma Administrative
 20 Procedures Act and Title 40 of the Code of
 21 Federal Regulations, Part 51, as well as the
 22 authority of Title 27A of the Oklahoma
 23 Statutes, Section 2-2-201 and Sections 2-5-101
 24 through 2-5-117.
 25 Notice of the October 21st, 2020,

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1 virtual hearings were advertised in the
 2 Oklahoma Register for the purpose of receiving
 3 comments pertaining to the proposed OAC Title
 4 252, Chapter 4, Chapter 100, and Chapter 110
 5 rules as listed on the Agenda, and will be
 6 entered into each record, along with the
 7 Oklahoma Register filing.

8 Notice of the meeting was filed with
 9 the Secretary of State on August 25th, 2020.
 10 The Agenda and links to access the virtual
 11 meeting were posted on the website at least 24
 12 hours prior to the meeting pursuant to Title
 13 25 of the Oklahoma Statutes, Section 311.

14 If you wish to make a statement when
 15 it's time to make a public comment, please use
 16 the raise-hand function found either at the
 17 bottom of your screen or under the
 18 participant's tab, depending on your device.

19 If you're attending this meeting by
 20 calling in, then you will raise your hand by
 21 pressing *9 on your keypad.

22 When it is your turn to speak, the
 23 host will identify you by announcing your
 24 displayed name or the last four digits of your
 25 phone number, and then you will be unmuted.

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1 the Air Quality Division. The Department is
 2 proposing to update language in Subchapter 2,
 3 Incorporation by Reference to reflect the new
 4 date of incorporation for Appendix Q.

5 In addition, the Department is
 6 proposing to revoke the current Chapter 100,
 7 Appendix Q, Incorporation by Reference and
 8 adopt a New Appendix Q. This proposal is a
 9 part of the annual update of Title 40, Code of
 10 Federal Regulations, Incorporation by
 11 Reference in Chapter 100. The Oklahoma rules
 12 on rulemaking dictate the procedure for
 13 amending a rule Appendix by revoking the old
 14 and creating an entirely new Appendix.

15 The proposed changes to Appendix Q
 16 reflect federal regulations, mostly New Source
 17 Performance Standards or NSPS and National
 18 Emissions Standards for hazardous air
 19 pollutants, NESHAPs, which have been
 20 implemented as of June 30th, 2020.

21 The update would incorporate any
 22 amendments to standards currently listed in
 23 Appendix Q. A list of standards currently,
 24 included in Appendix Q, that have been
 25 modified since July 1, 2019, was provided in

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1 You must first identify yourself by
 2 stating your name and your affiliation, and
 3 then you will have three minutes to make your
 4 comment on the record.

5 When your time expires, you will be
 6 notified and your line will be muted, as we
 7 move on to the next person who is requesting
 8 to speak.

9 So let's move on to what is marked as
 10 Agenda item No. 5A on the Hearing Agenda, that
 11 is Chapter 100, Air Pollution Control, OAC
 12 252:100-2, Incorporation by Reference, and
 13 Appendix Q, Incorporation by Reference.

14 Today the presentation for this will
 15 be made by Nancy Pearce, who is an
 16 Environmental Program Specialist with our
 17 Rules and Planning Section.

18 Nancy.

19 MS. PEARCE: Good morning. Can you
 20 hear me?

21 (Board members answer "yes"
 22 collectively.)

23 MS. PEARCE: Madame Chair, Members of
 24 the Council, Ladies and Gentlemen, I am Nancy
 25 Pearce, Environmental Programs Specialist with

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1 your packet. No new standards have been added
 2 this year.

3 Notice was published in the Oklahoma
 4 Register on September 15th, 2020, for these
 5 proposed changes. The Notice requested
 6 written comments from the public and other
 7 interested parties. No comments have been
 8 received as of today. Staff requests the
 9 Council recommend this rulemaking to the
 10 Environmental Quality Board for permanent
 11 adoption.

12 Thank you.

13 MS. BOTCHLET-SMITH: At this time,
 14 we'll take questions from the Council.

15 (No oral response.)

16 CHAIRMAN LODES: Do we have any
 17 questions?

18 MR. KEELE: This is Garry Keele. I
 19 mean, this is just the normal incorporation we
 20 do year by year, correct?

21 MS. PEARCE: Yes, that's correct.
 22 It's just to update the date basically so that
 23 anything that has been passed or, you
 24 know, modified in the past year is included.

25 MR. KEELE: Perfect. Thank you.

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1 MS. PEARCE: You're welcome.
 2 MS. BOTCHLET-SMITH: Any other
 3 questions at this time?
 4 While you think a moment, I would
 5 like to mention to ensure the public's able to
 6 hear everything the Council, questions or
 7 discussions on this rule, they all will be
 8 made audibly and chat features in Zoom are not
 9 used.
 10 If we don't have any other questions
 11 from the Council at this time, we can move on
 12 to take questions from the public.
 13 Remember to let the Council know you
 14 would like to make a public comment, you must
 15 use the raise-hand function on your device or
 16 press *9 on your telephone keypad. The host
 17 will unmute your line when it's your turn to
 18 speak. You may also need to unmute yourself
 19 using the microphone icon or *6 on your
 20 keypad. Remember to state your name and your
 21 affiliation for the record before beginning
 22 your comment. You may also need to spell your
 23 name for the record.
 24 The host will proceed with calling on
 25 the first commenter. Do we have any comments

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1 from the public?
 2 MS. HAGENS: We're currently not
 3 seeing any raised hands, but we will wait a
 4 few moments so people can navigate to that
 5 button.
 6 And as Beverly said, depending on
 7 your device, this feature will be found in
 8 possibly a different part of your screen, so
 9 either at the bottom under participants or at
 10 the top right, if you're on a tablet.
 11 (No response.)
 12 MS. HAGENS: Still not seeing any
 13 hands.
 14 CHAIRMAN LODES: The Agency has asked
 15 that we pass this proposed rulemaking. Do I
 16 have a motion?
 17 MR. LANDERS: I'll make a motion to
 18 approve.
 19 DR. DELANO: I'll second that.
 20 CHAIRMAN LODES: I have a motion and
 21 a second. Quiana will you please call roll?
 22 MS. FIELDS: Mr. Caves?
 23 MR. CAVES: Yes.
 24 MS. FIELDS: Mr. Collins?
 25 MR. COLLINS: Yes.

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1 MS. FIELDS: Dr. Delano?
 2 DR. DELANO: Yes.
 3 MS. FIELDS: Mr. Elliott?
 4 MR. ELLIOTT: Yes.
 5 MS. FIELDS: Mr. Keele?
 6 MR. KEELE: Yes.
 7 MS. FIELDS: Mr. Landers?
 8 MR. LANDERS: Yes.
 9 MS. FIELDS: Mr. Privrat?
 10 MR. PRIVRAT: Yes.
 11 MS. FIELDS: Mr. Taylor?
 12 MR. TAYLOR: Yes.
 13 MS. FIELDS: Ms. Lodes?
 14 CHAIRMAN LODES: Yes.
 15 MS. FIELDS: Motion passed.
 16 MS. BOTCHLET-SMITH: The next item on
 17 today's Agenda is item 5B. This is Chapter
 18 110, Lead-Based Paint Management, and within
 19 that chapter, Subchapter 3, Definitions,
 20 Subchapter 5, Incorporation by Reference,
 21 Subchapter 9, Additional Accreditation
 22 Requirements, Subchapter 11, Additional
 23 Lead-Based Paint Certification Requirements,
 24 Subchapter 13, Additional Work Practice
 25 Standards, and Subchapter 15, Additional

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1 Renovation, Repair, and Painting Requirements.
 2 The presentation will be done by Mr. Brooks
 3 Kirlin, Professional Engineer from the Rules
 4 and Planning Section.
 5 MR. ZACHARIAH: Brooks, you're muted.
 6 MR. KIRLIN: I'm not sure. Can you
 7 hear me? Let me change -- I need to -- Let me
 8 change equipment. I don't know what the deal
 9 is.
 10 CHAIRMAN LODES: Brooks, we can hear
 11 you.
 12 MR. KEELE: We can hear you, Brooks.
 13 MR. KIRLIN: You can hear me?
 14 CHAIRMAN LODES: We can hear you.
 15 MR. DELANO: We can hear you.
 16 MR. KIRLIN: Okay. Sorry. I have no
 17 idea what -- Let me try that again. Thank
 18 you, Bev.
 19 Good morning, Madame Chair, Members
 20 of the Council, Ladies and Gentlemen, as Bev
 21 mentioned, I am Brooks Kirlin an engineer with
 22 the Air Quality Rules and Planning Section.
 23 Next slide, please.
 24 The Department is proposing to amend
 25 several requirements in Chapter 110,

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1 Lead-Based Paint Management, including the
 2 Renovation, Repair and Painting rule, or RRP
 3 Rule. We presented most of these proposed
 4 provisions at the June Council meeting. I
 5 will point out the few differences from that
 6 proposal, mostly eliminating outdated
 7 language, as we go through the rules.
 8 The Lead-Based Paint and RRP rules,
 9 which are federal programs delegated to the
 10 State, establish standards with accreditation,
 11 training, certification and recordkeeping
 12 requirements for persons performing Lead-Based
 13 Paint abatement projects and other renovations
 14 for compensation in housing built before 1978,
 15 referred to as target housing and
 16 child-occupied facilities.
 17 The Lead-Based Paint or LBP program
 18 is critical because there is no safe level of
 19 exposure to lead. And many of those who are
 20 most likely to be exposed are members of
 21 disadvantaged communities, and the most
 22 vulnerable to its effects young children
 23 living or being cared for in older housing or
 24 other facilities.
 25 Next slide, please. The two most

Page 20

1 clearance levels, and EPA had not, at the time
 2 of the June Council meeting, updated the
 3 clearance levels in 40 CFR, Section
 4 745.227(e). This could potentially lead to a
 5 situation where an abatement project in
 6 Oklahoma could remove the bulk of the old
 7 lead-based paint, but leave behind dust at
 8 levels that are harmful.
 9 The day after the June Council
 10 meeting, EPA announced a proposal to, in fact,
 11 lower the dust-lead clearance levels, which
 12 was published in the Federal Register on June
 13 24th. Therefore, we are proposing to add a
 14 new Section 110-13-7, which would specify LBP
 15 abatement project clearances -- clearance
 16 levels for lead in dust rather than leaving
 17 EPA's old clearance levels incorporated by
 18 reference. I might point out that, obviously,
 19 their levels are a proposal at this point and
 20 have -- will not take a -- will not go final
 21 until later.
 22 Next slide, please. The clearance
 23 levels we are proposing in the new Section
 24 110-13-7 are intended to parallel EPA's
 25 revised dust-lead hazard levels, their

Page 19

1 significant changes we're proposing are to
 2 update the dust-lead hazard and clearance
 3 levels. And to add provisions to implement
 4 Oklahoma's military reciprocity rule.
 5 We're also proposing to update the
 6 Incorporations by Reference section, to make
 7 various clarifications, updates and
 8 corrections to existing language, and remove
 9 several outdated provisions.
 10 At the risk of skipping around in the
 11 proposed rule, I'd like to cover the two
 12 significant changes first, and then go through
 13 the additional less significant changes in
 14 order.
 15 Next slide. The main impetus for
 16 this rule change is that the US Environmental
 17 Protection Agency lowered its dust-lead hazard
 18 levels in 40 CFR, Section 745.227(h) following
 19 a court decision. EPA requires DEQ, under our
 20 delegated obligations, to incorporate the
 21 hazard level changes into our rules by January
 22 6th, 2022. We would accomplish this change by
 23 updating the Incorporation by reference date
 24 in Section 252:110-5-1.
 25 The court decision did not address

Page 21

1 proposed dust-lead clearance levels, and
 2 clearance levels already being used by the US
 3 Department of Housing and Urban Development's
 4 Office of Healthy Homes and Lead Hazard
 5 Control. Note the Department is proposing a
 6 clearance level for window troughs in line
 7 with HUD's clearance levels, since EPA did not
 8 propose a change. This is not a change from
 9 the June proposal.
 10 Because DEQ has determined that the
 11 dust-lead clearance levels included in the
 12 proposed Section 110-13-7 are more stringent
 13 than the clearance levels as they currently
 14 exist in the corresponding federal rule, we
 15 have prepared an Economic Impact and
 16 Environmental Benefit Statement, as required.
 17 A copy is included in your packet.
 18 Next slide, please. The second
 19 significant change we are proposing is to
 20 Subchapter 11, which would add a new Section
 21 110-11-7.1, to lay out the provisions
 22 implementing Oklahoma's military reciprocity
 23 bill called the Military Service Occupation,
 24 Education, and Credentialing Act.
 25 The new section provides that any

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1 active duty military and/or their spouse who
 2 are already certified by another state as an
 3 LBP Contractor may request a reciprocal
 4 certification from DEQ when they are
 5 transferred or discharged from the military to
 6 Oklahoma. This would allow them to continue
 7 working as an LBP Contractor with no, or at
 8 least fewer delays or fees. Similar
 9 provisions have been added in the Subchapter
 10 15 RRP requirements. There's no change --
 11 This is no change from the June proposal in
 12 this section.

13 Next slide, please. Now going a
 14 little more quickly through additional, less
 15 significant changes in order, I'll start back
 16 on page 1 of the rule proposal, with updates
 17 to a couple of definitions in Section 110-3-1.
 18 No changes from June here. I realize that
 19 several of the following slides are very busy,
 20 but their main purpose is to help you navigate
 21 through your copy of the proposals to the
 22 changes as I mention them.

23 Next slide, please. In Section
 24 110-5-1, we are proposing to update the date
 25 for the incorporation by reference of federal

Page 24

1 Section 15-3. This is new from the June
 2 Council meeting.

3 Next slide, please. To add a new --
 4 I'm sorry. To add a new Section 15-3.1.

5 Next slide. And to significantly
 6 reword Sections 15-4.

7 Next slide. And 15-5, to update and
 8 clarify requirements.

9 Next slide, please. As I previously
 10 mentioned, we are adding language to implement
 11 the military reciprocity provisions to the RRP
 12 requirements in Subchapter 15, in Section 15-4
 13 for individual renovators.

14 Next slide, please. And Section
 15 15-5, for those applying as a renovation firm.

16 Next slide, please. Notice of the
 17 proposed rule changes was published in the
 18 Oklahoma Register on September 15, 2020, and
 19 comments were requested from members of the
 20 public. No comments on the proposal have been
 21 received. This is the second time this
 22 proposal has been presented to the Council for
 23 consideration.

24 We are requesting that the Council
 25 recommend the rule as proposed to the

Page 23

1 requirements, excluding a few additional
 2 provisions that are no longer appropriate or
 3 relevant.

4 Next slide. And adding a few
 5 clarifying phrases, again, this is the same as
 6 in the June proposal.

7 Next slide, please. Now we do have a
 8 tweak here. In June we proposed to add a new
 9 Section 110-9-1.2 in Subchapter 9, to clarify
 10 certification documentation requirements.

11 Next slide, please. Following
 12 further discussion, staff decided that the
 13 change fit better as a subsection to existing
 14 Section 9-1.1. We changed the plural
 15 "certificates." The term certificates is
 16 singular, "certificate," but, otherwise, the
 17 wording is precisely the same as in June.

18 Next slide, please. A couple of new
 19 changes. We are eliminating some outdated
 20 language in Subchapter 11, Section 11-3.

21 Next slide. And in Subchapter 13,
 22 Section 13-5.

23 Next slide. Finally, for the RRP
 24 requirements in Subchapter 15, we are
 25 proposing to delete some outdated language in

Page 25

1 Environmental Quality Board for adoption as a
 2 permanent rule. The Department believes it is
 3 important to move a proposal forward since EPA
 4 expects DEQ to update the hazard level changes
 5 in our rules by July [sic] 6th, 2022.

6 Last slide, please. Thank you.

7 Any questions?

8 MS. BOTCHLET-SMITH: Thank you
 9 Brooks. Again, I'd like to remind you to
 10 ensure the public is able to listen to the
 11 Council's deliberation on this rule. All
 12 questions from the Council will be made
 13 audibly, and the chat features are not being
 14 used. So, at this time, we would take
 15 questions from the Council.

16 MR. ZACHARIAH: Also, we'd like them
 17 to identify, the Council member to identify
 18 themselves. Thanks.

19 MS. BOTCHLET-SMITH: Thank you,
 20 Malcolm.

21 MR. KEELE: Hey there, this is Garry
 22 Keele. I do have a question. Brooks, if I
 23 heard you correctly, on the clearance levels
 24 it sounds like the proposed level in this rule
 25 is more stringent than what's currently on the

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1 books for EPA, but EPA has proposed or finally
 2 proposed clearance levels that haven't gone
 3 final yet; is that correct?
 4 MR. KIRLIN: That's correct. Now,
 5 they did not propose a change to the trough
 6 levels, but we are proposing to lower those,
 7 the trough levels to match -- actually go
 8 along more with the HUD approach,
 9 because it's -- it doesn't make -- we weren't
 10 really sure of the logic behind not lowering
 11 them to match the window sill levels.
 12 MS. MILLER: And because it's tech --
 13 This is Madison Miller, DEQ legal. It's
 14 technically feasible to meet those lower
 15 clearance levels, so it makes sense to -- for
 16 the troughs to be technically feasible as
 17 well.
 18 MR. KEELE: One last question. Has
 19 the Agency, is there a plan to do outreach to
 20 the developers and vendors that will be
 21 subject of this rule?
 22 I may have asked that before, but I
 23 would suspect there will be confusion in that
 24 community about this.
 25 Thanks.

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1 kind of changes are being made. You're
 2 talking about developers and people that
 3 remediate, you know, lead-based paint or run
 4 an O&M plant. And I was just curious if there
 5 was a, sort of a targeted outreach to that
 6 group to know -- so they would know that these
 7 changes have been made.
 8 MS. SCHULTZ: Yes. Dara Schultz with
 9 DEQ again. Yes, we do have some plans to do
 10 that, but I'll defer to Heather on exactly the
 11 plan. Heather.
 12 MS. LERCH: Good morning, this is
 13 Heather Lerch with DEQ. We have a very close
 14 relationship with our training providers, and
 15 this is a relatively small community of
 16 stakeholders that we work with on a regular
 17 basis. So these professionals are required
 18 not only to take an initial class when they
 19 begin work, but they also have to take
 20 refresher courses. And by informing our
 21 training provider, and maintaining good
 22 communication with those people who teach the
 23 classes, we ensure that these -- this -- the
 24 changes to these rules are passed along in the
 25 classes that they take each year.

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1 MR. KIRLIN: I'm not sure. I would
 2 need to defer to one of our program people.
 3 Is -- Dara or Heather would like to speak to
 4 that?
 5 MS. MILLER: This is Madison Miller
 6 again. It's my understanding that we have
 7 been doing some outreach, and that we have had
 8 discussions with them. And bringing this to
 9 the June Council was our -- was a way of, you
 10 know, conducting some outreach by proposing it
 11 to the public and, I think at that time, we
 12 said we want feedback on this. So having said
 13 that, I'll defer to Dara.
 14 MS. SCHULTZ: Yes, this is Dara
 15 Schultz with DEQ. I think part of the
 16 question I missed. I think it was breaking
 17 up. But was the question just, how or whether
 18 we were going to notify the public of this.
 19 MR. KEELE: No. This is Garry Keele
 20 again. I'm sorry. Not so much notification.
 21 I mean, these meetings count as public
 22 notification in theory. The problem is, is
 23 that people in that world, that work with this
 24 rule, may not, unlike people that do normal
 25 air permitting, may not be aware that these

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1 So even if we don't -- and aren't
 2 able to reach them through traditional
 3 outreach means, which is something we haven't
 4 discussed, and it would be a good thing for us
 5 to discuss internally. But even if we don't
 6 reach them for that means, at a minimum, they
 7 would hear it in their classes.
 8 MR. KEELE: Thank you.
 9 MS. BOTCHLET-SMITH: Other questions
 10 from the Council?
 11 MR. PRIVRAT: This is John Privrat.
 12 I have questions -- or two question on the
 13 military reciprocity. First question, is my
 14 understanding correct that this is just
 15 matching state law? And, secondly, how many
 16 people do we think would take advantage of
 17 this opportunity?
 18 MR. KIRLIN: Yes, this is intended to
 19 match what's on the books and state law. And
 20 I'm not sure that we've done a study or really
 21 know how many would take advantage.
 22 MR. PRIVRAT: Okay. Thank you.
 23 MR. COLLINS: Yeah, this is Gary
 24 Collins. Brooks, can you -- I know this was
 25 discussed at the June meeting but can you just

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1 refresh us again, give us a summary of the
 2 differences on the clearance levels between
 3 the EPA rule?
 4 MR. KIRLIN: Sure. Can we pull up
 5 the -- There you go. Okay. So the lead-dust
 6 levels, hazard levels are 10, 10 micrograms
 7 per square foot, or 100 micrograms per square
 8 foot for interior window sills. Previously,
 9 they were 40 and 250, that's what they are
 10 now. The dust-lead clearance levels, you can
 11 see the existing ones are 40 micrograms per
 12 square foot for floors, 250 micrograms per
 13 square foot for interior window sills, and
 14 100 -- 400 for window troughs. So their
 15 proposal is 10 for floors, 100 for interior
 16 window sills, and they would retain the 400.
 17 But we're -- for the window troughs, I'm
 18 sorry. And so we're adopting the first few
 19 numbers and we're proposing the window troughs
 20 be at the 100 that HUD has said is achievable
 21 and that they've used.
 22 MR. COLLINS: Okay. Hey, that's
 23 great. Thank you.
 24 MR. KIRLIN: Thank you, Malcolm.
 25 MS. BOTCHLET-SMITH: Any other

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1 have any final questions.
 2 (No oral response.)
 3 CHAIRMAN LODES: Hearing no final
 4 questions, the DEQ has recommended -- staff
 5 has recommended that we pass this rule as
 6 proposed. Do I have a motion?
 7 MR. COLLINS: Laura, this is Gary
 8 Collins. I move that we approve the proposed
 9 modifications to OAC 252:110, Lead-Based Paint
 10 Management.
 11 CHAIRMAN LODES: Thank you. Do I
 12 have a second?
 13 MR. TAYLOR: I'll second that.
 14 CHAIRMAN LODES: Thank you. I have a
 15 motion and a second. Quiana, will you please
 16 call roll?
 17 MS. FIELDS: Mr. Caves?
 18 MR. CAVES: Yes.
 19 MS. FIELDS: Mr. Collins?
 20 MR. COLLINS: Yes.
 21 MS. FIELDS: Dr. Delano?
 22 DR. DELANO: (No oral response.)
 23 MS. FIELDS: Dr. Delano?
 24 DR. DELANO: Yes.
 25 MS. FIELDS: Mr. Elliott?

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1 questions from the Council?
 2 (No oral response.)
 3 MS. BOTCHLET-SMITH: We'd like to
 4 give the public an opportunity to ask
 5 questions at this time.
 6 Please remember if you want to make a
 7 public comment, You need to use the raise-hand
 8 function on your computer or press *9 on your
 9 telephone keypad, and the host will unmute
 10 your line when it is your turn.
 11 Do we have any requesting to speak?
 12 MS. HAGENS: We currently don't have
 13 anyone showing their hands raised, but we will
 14 let everyone have a second and take a look at
 15 that slide and troubleshoot if they're able to
 16 get to that.
 17 MS. BOTCHLET-SMITH: If you do wish
 18 to comment, please remember you'll need to
 19 state your name and affiliation for the record
 20 before you begin your comment. And you may
 21 need to spell your name. Any commenters?
 22 (No response.)
 23 MS. HAGENS: Still not seeing any
 24 hands raised.
 25 MS. BOTCHLET-SMITH: Council, do you

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1 MR. ELLIOTT: (No oral response.)
 2 MS. FIELDS: Mr. Elliott?
 3 MR. ELLIOTT: (No oral response.)
 4 MS. FIELDS: We'll go back to him.
 5 Mr. Keele?
 6 MR. KEELE: Yes.
 7 MS. FIELDS: Mr. Landers?
 8 MR. LANDERS: Yes.
 9 MS. FIELDS: Mr. Privrat?
 10 MR. PRIVRAT: Yes.
 11 MS. FIELDS: Mr. Taylor?
 12 MR. TAYLOR: Yes.
 13 MS. FIELDS: Mr. Elliott?
 14 CHAIRMAN LODES: Gary, you need to
 15 unmute yourself.
 16 MS. FIELDS: Mr. Elliott?
 17 MR. ELLIOTT: Yes.
 18 MS. FIELDS: Ms. Lodes?
 19 CHAIRMAN LODES: Yes.
 20 MS. FIELDS: Motion passed.
 21 CHAIRMAN LODES: Thank you.
 22 MS. BOTCHLET-SMITH: The next item on
 23 today's Agenda is item 5C. This is Chapter 4,
 24 Rules of Practice and Procedure, Subchapter 7,
 25 Environmental Permit Process, and Tom

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1 Richardson is a Professional Engineer and our
2 Rules and Planning Staff, will give the staff
3 presentation. Tom.
4 MR. RICHARDSON: Good morning, Madame
5 Chair, Members of the Council, Ladies and
6 Gentlemen. Before I begin, I should ask if
7 you can hear me?
8 CHAIRMAN LODES: Yes, we can.
9 MR. RICHARDSON: Thank you.
10 I am Tom Richardson, an engineer in
11 the Air Quality Division's Rules in Planning
12 Section. My purpose today is to provide a
13 brief recap of our plans to amend our state
14 permitting rules to better bring them into
15 alignment with federal rules and statutes. In
16 addition, I will share updated draft rule
17 language targeted at addressing specific
18 issues identified by our colleagues at EPA
19 Region 6.
20 I would also note that many of our
21 most recent updates were based on input from
22 Oklahoma stakeholders who have shared their
23 thoughts and suggestions.
24 Today's presentation will briefly
25 revisit a number of the topics presented

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1 resolve those conflicts to ensure that our
2 permitting SIP is federally approvable. As we
3 did in June and July, we would like to
4 recognize our successful collaboration with
5 the EPA Region 6 staff, and Adina Wiley, in
6 particular.
7 Next slide. Summary of the Issues We
8 Need to Address. Our current PSD construction
9 permitting program has been reviewed and
10 approved. The remaining issues to address are
11 related to the incorporation of the conditions
12 of a major source construction permit into a
13 Title V operating permit for a facility that
14 does not yet have a Title V permit, a number
15 of issues related to minor New Source Review,
16 or NSR, including new permitting thresholds
17 for minor modifications to Title V operating
18 permits, the exemption of replacement units
19 from Subchapter 7 construction permit
20 requirements, and formal adoption of the term
21 FESOP or Federally Enforceable State Operating
22 Permit to characterize our minor source,
23 Subchapter 7, operating permit program. We
24 will also add definitions of New Source
25 Review, NSR, and NSR Permit to our definitions

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1 during both the June and July Council meetings
2 before exploring a number of additional
3 proposed changes to our rules.
4 Next slide. Before we get into the
5 details of our proposal, I would like to
6 provide a brief recap of why we are
7 undertaking this effort. I will also discuss
8 some key elements added since the July Council
9 meeting and additional changes added, based on
10 stakeholder feedback, after the posting of the
11 proposed rule text for public comment. Then
12 we will move on to the specific changes we are
13 proposing.
14 Next slide. SIP Backlog and EPA
15 Collaboration. As we noted in June, EPA staff
16 members have been working their way through a
17 large number of State Implementation Plans, or
18 SIPs, that were submitted previously, but not
19 yet acted on. And, of course, our concern
20 again today is the backlog of Oklahoma SIP
21 submissions and changes already incorporated
22 into the Oklahoma Administrative Code. Our
23 goal is to address conflicts between our
24 current practices and the relevant federal
25 rules, and we have been working with EPA to

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1 in Subchapter 1.
2 Next slide. Major vs Minor NSR.
3 This slide was first presented in June. I
4 would like to return to it briefly to clarify
5 the distinction EPA draws between minor NSR
6 and major NSR and how that compares and
7 contrasts with our major, Subchapter 8, and
8 minor, Subchapter 7, permit classifications.
9 For EPA, major NSR includes
10 Prevention of Significant Deterioration, or
11 PSD, permits (for areas in attainment of the
12 National Ambient Air Quality Standards) and
13 nonattainment NSR for areas out of attainment.
14 Happily, Oklahoma has no nonattainment areas.
15 EPA considers any preconstruction
16 permit not issued under the PSD or
17 nonattainment NSR programs to be minor NSR.
18 As a result, all construction permits issued
19 for minor facilities, covered in Subchapter 7,
20 are minor NSR. In addition, most of the
21 Oklahoma DEQ construction permits issued to
22 major sources, Subchapter 8, are also
23 considered by EPA to represent minor NSR
24 permits.
25 As mentioned previously, EPA is

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1 satisfied with our PSD, major NSR, permitting
 2 program. But EPA has concerns about a number
 3 of aspects of our minor NSR program. The most
 4 significant issue is that federal rules
 5 require that all minor NSR permits undergo a
 6 30-day public review period. To meet this
 7 requirement we will need to make a number of
 8 changes to our program and to our rules.
 9 Next slide. Major source
 10 construction permits undergo Tier II public
 11 review. This satisfies EPA's requirements and
 12 does not require a change.
 13 The next category is minor
 14 modifications to Title V operating permits.
 15 Under current DEQ policy, a Title V facility
 16 owner/operator may, after submitting an
 17 application for a minor modification, or minor
 18 mod, that is administratively complete and
 19 technically accurate, proceed with changes
 20 authorized by the permit before the operating
 21 permit is issued. The owner/operator assumes
 22 a certain amount of risk, because the change
 23 may not truly constitute a minor modification
 24 and that determination is made by DEQ during
 25 the technical review of the permit. However,

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1 be issued without public review. EPA
 2 considers those permits to constitute minor
 3 NSR and, therefore, subject to public review.
 4 This will require a change in policy and a
 5 change in our rules. However, to ease this
 6 burden we are proposing to exempt installation
 7 of replacement units from the requirement for
 8 a Subchapter 7 construction permit.
 9 GPs and PBRs are issued by DEQ after
 10 undergoing public review. This is acceptable
 11 to EPA and we will continue this practice.
 12 Authorizations to construct and
 13 operate under GPs and PBRs currently do not
 14 require separate public review, because the
 15 underlying permits have already undergone
 16 public review. EPA does not object to this
 17 process and we will continue.
 18 Next slide. These changes to our
 19 rules will require public review for a number
 20 of permits which were previously exempt from
 21 that requirement. The initial Title V permit,
 22 which could previously be issued as an
 23 administrative amendment, will now undergo
 24 Tier II public review. The permit that is
 25 issued when a facility accepts limits to

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1 this mechanism and DEQ's commitment to
 2 expedited administrative review, has allowed
 3 facilities to proceed with minor changes with
 4 very little delay.
 5 Alas, EPA rules state that any
 6 physical change or change in the method of
 7 operation to a facility that results in a
 8 change in emissions would require an NSR
 9 permit, either major or minor, unless the
 10 State has formally adopted an exemption for
 11 some projects and incorporated that exemption
 12 into the SIP.
 13 We are proposing to establish such a
 14 threshold for projects with potential emission
 15 increases of no more than 10-tons per year of
 16 any regulated air pollutant. Projects below
 17 this threshold may proceed as minor
 18 modifications without the need for a minor
 19 NSR, construction permit. Projects that
 20 exceed the threshold will require construction
 21 permits with public review.
 22 Subchapter 7 establishes our rules
 23 for individual facility minor source
 24 construction permits, the third category shown
 25 on this slide. Currently, those permits may

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1 change the facility from a major source, Title
 2 V permit, to a synthetic minor permit will
 3 also be Tier II. This has been historic
 4 practice in our program, but our rules will be
 5 modified to make this policy explicit. The
 6 other permitting actions newly required to
 7 undergo public review will be considered Tier
 8 I permits with web-based public noticing
 9 requirements.
 10 Next slide. Subchapter 7 Operating
 11 Permits. The only operating permit program
 12 explicitly established by EPA is the Title V
 13 program. To bring our Subchapter 7 minor
 14 facility operating permit fully into the SIP,
 15 we are proposing to modify our program in
 16 accordance with EPA's rules on establishing
 17 Federally Enforceable State Operating Permits,
 18 or FESOPs. EPA's program grafts the FESOP
 19 program onto the rules established for minor
 20 NSR. We will adopt this approach to ensure
 21 that our program is SIP approvable. Somewhat
 22 analogous to the requirement for the initial
 23 Title V operating permit, an initial FESOP
 24 would need to go through 30-day public review.
 25 Next slide. Since sharing earlier

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1 versions of our proposed changes, we have
 2 received questions about the traditional NSR
 3 process and the enhanced NSR process. And we
 4 should note that enhanced NSR may be a new
 5 term for our program, but it describes what we
 6 have been doing for years.

7 The key difference between the
 8 processes is that, under enhanced NSR, EPA
 9 integrates their review of the implications of
 10 the NSR permit requirements, with a full
 11 determination of procedural and compliance
 12 requirements under the Part 70 source, Title
 13 V, operating permit. The public notice must
 14 specify that this is taking place because
 15 incorporation of the requirements into the
 16 Title V operating permit may be accomplished,
 17 later, through an administrative amendment.
 18 The enhanced NSR process includes a full
 19 30-day public review and a 45-day EPA review.

20 In contrast, under traditional NSR,
 21 the 30-day public review process also
 22 represents EPA's opportunity to review the
 23 permit. EPA is not given a separate
 24 opportunity to review the permit after
 25 completion of the public review. However,

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1 FESOP enhanced NSR, the minor NSR permit, or
 2 construction permit, undergoes a 30-day public
 3 review period during which EPA is provided an
 4 opportunity to comment. Under traditional
 5 NSR, this process is repeated when the FESOP
 6 is issued.

7 Under FESOP enhanced NSR - which is
 8 only available to a facility that already has
 9 a FESOP - the public notice for the NSR permit
 10 indicates that this will be the only
 11 opportunity for public review. When the
 12 operating permit is modified, under Subchapter
 13 7 rules, the operating permit modification
 14 will not undergo a second round of public or
 15 EPA review.

16 Next slide. The proposed changes to
 17 the rules posted on September 15 include a
 18 10-ton per year exemption threshold for
 19 projects not subject to major NSR (PSD) or
 20 which constitute significant modifications to
 21 a Title V operating permit. Facility changes
 22 involving exclusively trivial or insignificant
 23 activities do not require submission of an
 24 application for a modification to the Title V
 25 operating permit.

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1 when the requirements of the NSR permit are
 2 incorporated into the Title V permit, there is
 3 another 30-day public and a 45-day EPA review.

4 The next two slides are repeated from
 5 the July special meeting. I will go through
 6 these quickly to highlight these alternative
 7 mechanisms.

8 Next slide. This chart shows how the
 9 process will work for permits issued under
 10 Subchapter 8. Note that minor modifications
 11 will require NSR permits if they exceed the
 12 permitting threshold to be discussed later,
 13 but, under traditional NSR there is not a
 14 second round of public review when the minor
 15 modification is incorporated into the Title V
 16 operating permit.

17 Next slide. Under Subchapter 7,
 18 things are different. Instead of a Title V
 19 operating permit, there is a FESOP. The
 20 45-day EPA review does not get added on to the
 21 operating permit public review. Instead, EPA
 22 has the opportunity to review the permit along
 23 with the public during the 30-day public
 24 review period.

25 Under both traditional NSR and under

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1 For permits qualifying as minor
 2 modifications to existing Title V operating
 3 permits, those with project emissions less
 4 than or equal to the threshold level may
 5 proceed without a minor NSR, construction
 6 permit. Projects exceeding the threshold will
 7 need to wait on the issuance of the minor NSR
 8 permit.

9 To help clarify the method of
 10 calculation to determine whether a project
 11 exceeds the emission threshold, we have added
 12 additional text pointing to the Tribal NSR
 13 Rule. This proposed change to the rule text
 14 was posted yesterday. Please note that we are
 15 adopting the calculation approach, but not the
 16 project emission thresholds or other aspects
 17 of the rule. We believe the calculation
 18 method described in the Tribal NSR Rule is
 19 sound, but we expect to issue guidance to help
 20 clarify areas where there may be confusion
 21 about how we will implement these
 22 requirements.

23 Next slide. Yesterday, we posted an
 24 outline and summary of the 110(L)
 25 demonstration on the web. This is not the

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1 formal 110(L) demonstration that we will
 2 submit, along with our rule changes, when we
 3 update our SIP. However, this outline and
 4 summary shares the approach we plan to take to
 5 justify the adoption of the 10-ton per year
 6 threshold which will exempt some minor
 7 modifications to Title V operating permits
 8 from the requirement to go through NSR.
 9 A draft of the formal 110(L)
 10 demonstration will be made available for
 11 public review and comment before it is
 12 submitted to EPA along with our SIP updates.
 13 Next slide. Based on feedback from
 14 Oklahoma Stakeholders, we are proposing an
 15 exemption from the requirement for a minor NSR
 16 permit, Subchapter 7 construction permit, for
 17 the replacement of any unit where there will
 18 be no change in emission limits in the
 19 existing permit. This should be of particular
 20 assistance to owner/operators of compressor
 21 stations due to the need to swap engines
 22 routinely for maintenance or other reasons.
 23 Next slide. To help illustrate how
 24 projects will be permitted under our new
 25 rules, I will present three different

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1 a facility with a Title V operating permit,
 2 again not a PSD major, proposes a project
 3 which will involve a change in the method of
 4 operation which will result in project
 5 emission increases greater than 10-tons per
 6 year of at least one regulated air pollutant.
 7 The project qualifies as a minor
 8 modification. Because the project exceeds the
 9 emission threshold, the permittee will need to
 10 apply for a minor NSR, construction permit,
 11 and will need to wait until the permit is
 12 issued before instituting the change in the
 13 method of operation. The permittee may pursue
 14 either traditional or enhanced NSR. Under
 15 enhanced NSR, the construction permit
 16 undergoes a 30-day public and 45-day EPA
 17 review.
 18 Later, when the requirements are
 19 incorporated into the Title V permit, that
 20 change may be accomplished with an
 21 administrative amendment.
 22 Alternatively, if the permittee
 23 chooses traditional NSR, the construction
 24 permit has a 30-day combined public and EPA
 25 review.

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1 permitting scenarios. Please note that actual
 2 cases may be more complicated and we encourage
 3 early contact with permitting staff to ensure
 4 best outcomes. We are planning on issuing a
 5 guidance document with an expanded list of
 6 scenarios for assistance in evaluating
 7 permitting requirements.
 8 Next slide. The first scenario
 9 involves a facility with a Title V operating
 10 permit, but the facility is not a PSD major.
 11 The permittee plans to add an emergency
 12 generator and project emissions will be less
 13 than the thresholds. The project does not
 14 need a construction permit, or minor NSR
 15 permit, but the permit will need to -- the
 16 permittee, rather, will need to submit an
 17 application for a minor modification. On
 18 submission of the application, assuming it is
 19 complete and proper, the permittee may install
 20 and operate the engine. Permitting staff will
 21 prepare a proposed version of the operating
 22 permit modification and will submit it to EPA
 23 for a 45-day review. There is no need for
 24 public review.
 25 Next slide. In the second scenario,

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1 Later, when the requirements are
 2 incorporated into the Title V permit, the
 3 minor modification will undergo a 45-day EPA
 4 review. No public review of the minor
 5 modification of the operating permit is
 6 required.
 7 Next slide. In scenario three, the
 8 applicant wants to construct a new facility
 9 that will, eventually, need a Title V
 10 operating permit. However, the facility will
 11 not be a PSD major facility, so the
 12 construction permit will be considered to be
 13 minor NSR. Minor NSR just means not PSD.
 14 This is a new facility - there is no
 15 existing Title V operating permit - so the
 16 permitting action is not eligible for enhanced
 17 NSR. The Subchapter 8 construction permit, or
 18 minor NSR permit, will be Tier II with public
 19 notice in the newspaper.
 20 After startup when the permittee
 21 applies for the initial Title V operating
 22 permit, that process will also be Tier II with
 23 the public notice appearing in a newspaper.
 24 Next slide. Outline and Summary of
 25 Proposed Rule Changes - Chapter 4. The next

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1 seven slides provide an outline and brief
 2 summary of the proposed rule changes, broken
 3 down by chapter and subchapter. I plan on
 4 moving quickly through this outline, because I
 5 will take more time when presenting the actual
 6 textual changes to the rules.

7 However, I would like to highlight a
 8 few of the proposed changes to Chapter 4. As
 9 we have already mentioned, the process of
 10 enhanced NSR, a process that was our normal
 11 procedure, is now limited to facilities that
 12 already have Title V permits. This is current
 13 policy. With the proposed changes, this
 14 policy will be incorporated into our rules.
 15 Under this policy the initial Title V
 16 operating permit will undergo Tier II public
 17 review.

18 We are also selecting the web as our
 19 consistent noticing procedure. Oklahoma
 20 statute requires certain notices to be
 21 published in the newspaper, but those
 22 requirements will be considered supplemental
 23 to our designation of the web as our official
 24 vehicle to satisfy federal requirements in 40
 25 CFR Part 51.

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1 added for construction permits.

2 Next slide. A clarification was
 3 added that construction permits, or NSR
 4 permits, do not expire; rather the
 5 authorization to construct under the NSR
 6 permit expires if construction does not take
 7 place.

8 Small changes were made to remove
 9 problematic null and void language, to
 10 identify different types of operating permit,
 11 and to clarify that, 180 days after startup of
 12 any emission unit authorized by a construction
 13 permit, the applicant must apply for the
 14 initial operating permit or a modified version
 15 of an existing operating permit.

16 Construction permits may undergo
 17 traditional NSR or FESOP enhanced NSR to
 18 accommodate requirements for public and EPA
 19 review.

20 Next slide. Changes to Subchapter 8
 21 are summarized on three different slides.
 22 This slide highlights the addition of
 23 traditional NSR as an option and the formal
 24 use of enhanced NSR to describe that option
 25 for facilities that already have Title V

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1 Other changes to Chapter 4 include
 2 the option of FESOP enhanced NSR for minor
 3 source facilities and the requirement to
 4 undergo Tier II public review when a facility
 5 moves from a Title V operating permit to a
 6 synthetic minor operating permit.

7 Next slide. Two new definitions and
 8 one new acronym will be added to Chapter 100,
 9 Subchapter 1. Because New Source Review, NSR,
 10 will be used in both Subchapters 7 and 8, we
 11 thought it best to define the terms here.

12 Next slide. Changes to subchapter 7
 13 are spread over two slides. Changes include
 14 the definition of FESOP and the requirement
 15 for individual minor source construction
 16 permits to undergo public review in accordance
 17 with EPA Part 51 requirements for NSR.
 18 Language was added to clarify that the 5-ton
 19 per year project emission increase threshold
 20 for Subchapter 7 permitting applies to
 21 permitted emission increases. The new
 22 requirement -- sorry -- the new replacement
 23 unit exemption has also been added. And a new
 24 duty-to-comply requirement was added for
 25 operating permits and a clarification was

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1 permits. The addition of the words "or change
 2 in the method of operation" brings our rule
 3 language in line with EPA. Minor
 4 modifications to Title V operating permits
 5 will need minor NSR permits, construction
 6 permits, first, unless project emission
 7 increases are below the threshold described.
 8 Potential emission increases for a project
 9 will be calculated following the approach from
 10 the Tribal NSR Rule.

11 Next slide. Slide 60 summarizes
 12 additional proposed rule changes in Subchapter
 13 8. In response to a stakeholder request, we
 14 are proposing to remove outdated language
 15 establishing the initial schedule for
 16 submission of Title V operating permits.
 17 Language has been added to clarify that it is
 18 the enhanced NSR process that allows a
 19 facility, with an existing Title V operating
 20 permit, to incorporate changes from an NSR
 21 permit into the Title V operating permit
 22 through an administrative amendment.

23 We are clarifying the language
 24 describing our process for sharing draft and
 25 proposed permits with EPA for their review.

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1 In particular, we are noting that the petition
 2 process only relates to the review of a Title
 3 V operating permit. Other administrative
 4 remedies are available to parties who wish to
 5 contest an NSR permit.
 6 Next slide. We are further
 7 clarifying that, if EPA objects to an NSR
 8 permit and that permit is going through the
 9 enhanced NSR process, DEQ may choose to issue
 10 the NSR permit over EPA's objection. If that
 11 were to take place, we would still need to
 12 address EPA's objection during the Title V
 13 permit review.
 14 Next slide. Our Path Forward. We
 15 posted a version of the rules, with proposed
 16 changes, on the web on September 15 for public
 17 review. After receiving stakeholder feedback,
 18 we made additional changes and posted an
 19 update on the web yesterday. As I go through
 20 the changes, I plan to show when the
 21 particular change was first presented and
 22 whether the rule was updated recently.
 23 But before I start going over the
 24 details, as I did in June and July, I would
 25 like to give a tip of the hat to Brooks Kirlin

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1 the rule text documents included in the packet
 2 and on the web.
 3 In addition, where the changes were
 4 presented during the June or July meetings,
 5 the slides have been marked accordingly. New
 6 changes will also be labeled as such.
 7 The changes shown on this slide
 8 include an additional reference to the
 9 enabling statute and changes to the rules so
 10 that enhanced NSR may only be used to modify
 11 an existing Title V permit. With these
 12 changes in place, the initial Title V permit
 13 will require Tier II public review. And,
 14 based on stakeholder assistance, we are fixing
 15 a typo in the included language.
 16 Next slide. EPA requires us to pick
 17 one consistent noticing method for public
 18 review. New paragraph 6 states that our
 19 official method will be publication on the
 20 web. Oklahoma statute also requires public
 21 noticing of various permitting actions and
 22 requires public notices to be published in the
 23 newspaper. Paragraph 6 will have no effect on
 24 those requirements.
 25 New paragraph 7 states that all new

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1 as the primary author of all the changes to
 2 the rules we are presenting. I cannot count
 3 the number of times I suggested specific rule
 4 language, but Brooks offered edits, adding
 5 clarity and focus. Thank you, Brooks!
 6 And I would also like to note that I
 7 may re-direct particularly difficult questions
 8 to Brooks, or to other members of the team, as
 9 necessary. Thank you, in advance, to everyone
 10 involved.
 11 I would also like to note, in
 12 advance, that staff will recommend that the
 13 Council adopt the proposed rule changes shared
 14 today.
 15 With that, we would like to turn to
 16 the specific rule language, starting with
 17 Chapter 4.
 18 Next slide. If you are not able to
 19 view the presentation, please turn in your
 20 packets to the proposed amendments to rule
 21 text in Chapter 4, Subchapter 7.
 22 Next slide. Please note that, in
 23 this presentation, much of the rule language
 24 not being changed has been omitted. The
 25 complete text of each section is included in

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1 requirements for Tier I public review will be
 2 noticed exclusively on the web. These
 3 permitting actions are not required by
 4 Oklahoma statute to be published in the
 5 newspaper.
 6 The slight change mentioned here is
 7 the indenting of these paragraphs.
 8 Next slide. Paragraph 8 allows minor
 9 source facilities to use FESOP enhanced NSR to
 10 incorporate requirements from a minor NSR
 11 permit, which went through public and EPA
 12 review, into an existing minor source
 13 operating permit through a Subchapter 7
 14 operating permit modification without
 15 additional public or EPA review.
 16 Paragraph 9 states that DEQ will post
 17 Tier I individual minor source operating
 18 permits on the web for public review. The
 19 highlighted text was added to clarify that, if
 20 the FESOP is amended without following
 21 issuance of a construction permit that adopted
 22 the enhanced NSR process, the modified FESOP
 23 must undergo public review on the web. Thanks
 24 to a stakeholder for suggesting that
 25 clarification.

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1 Paragraph 10 states that additional
 2 notices may be posted on the web at the
 3 Director's discretion.
 4 Next slide. The deletions in Section
 5 32, Air quality applications - Tier I,
 6 paragraph (b), codify the requirement that
 7 initial Title V permits must undergo Tier II
 8 public review. Enhanced NSR will no longer be
 9 available for the initial Title V operating
 10 permit.
 11 Next slide. New language in
 12 paragraph 1, subparagraph (A) notes that some
 13 Subchapter 8 minor NSR permits issued after
 14 adoption of these rules will undergo Tier I
 15 public review on the web. Additional changes
 16 allow these minor NSR permits to use enhanced
 17 NSR.
 18 Next slide. The added text shown in
 19 subsection (a), paragraph 2, formally
 20 incorporates the requirement for a permit
 21 incorporating limits to move the facility from
 22 the Title V operating permit to a synthetic
 23 minor permit to go through Tier II public
 24 review.
 25 The changes to subsection (b) codify

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1 you want to take a break, given the length of
 2 the meeting. And if you should do that,
 3 you're also going to need a motion for a
 4 recess so -- for the Council to discuss their
 5 preference on those items.
 6 CHAIRMAN LODES: I know one thing we
 7 had discussed was deferring the discussion and
 8 vote on Chapter 4 until after we've had our
 9 Chapter 100 discussion. My recommendation is
 10 we make that motion and vote, and we also do a
 11 brief recess, like a ten-minute recess, since
 12 it's 10:10, before we get into what may be a
 13 lengthy discussion on Chapter 100 -- or 7 and
 14 8.
 15 Other Council members?
 16 MS. BOTCHLET-SMITH: In doing that,
 17 please, Council members, if you'd remember to
 18 announce yourself when you make a motion just
 19 as a courtesy for our court reporter.
 20 Thank you.
 21 MR. LANDERS: This is Steve
 22 Landers (inaudible) --
 23 MR. ELLIOTT: Go ahead.
 24 CHAIRMAN LODES: Steve?
 25 MR. LANDERS: No, I wasn't making a

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1 the change in policy requiring an initial
 2 Title V permit to undergo Tier II public
 3 review.
 4 Next slide. That concludes my
 5 presentation on our proposed changes to
 6 Chapter 4.
 7 I would like to restate the staff's
 8 recommendations:
 9 AQD staff recommends the Council pass
 10 Chapter 4. However, given the interrelatedness
 11 of Chapter 4 with the Chapter 100 proposed
 12 changes that follow, it may behoove the
 13 Council to vote to postpone discussion by the
 14 Council and comment from the public until
 15 after I have completed my Chapter 100
 16 presentation.
 17 Thank you. I will now ask Beverly
 18 Botchlet-Smith, our protocol officer for
 19 today's meeting, to discuss the next step in
 20 the process.
 21 MS. BOTCHLET-SMITH: So, Laura, at
 22 this point, we have a couple of paths here.
 23 You can discuss a motion to delay this vote
 24 till after the hearing the next presentation.
 25 Or the other option would be to decide when

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1 motion. I just was agreeing with your
 2 suggestion.
 3 CHAIRMAN LODES: Okay. Gary --
 4 MR. COLLINS: Hey, Laura, so this is
 5 Gary Collins. Yeah, I move that we postpone
 6 the discussion and the vote on the proposed
 7 changes to Chapter 4 until after the
 8 discussion on Chapter 100.
 9 CHAIRMAN LODES: I have a motion. Do
 10 I have a second?
 11 MR. ELLIOTT: This is Greg. I'll
 12 second that.
 13 CHAIRMAN LODES: Quiana, will you
 14 please call roll?
 15 MS. FIELDS: Mr. Caves?
 16 MR. CAVES: Yes.
 17 MS. FIELDS: Mr. Collins?
 18 MR. COLLINS: Yes.
 19 MS. FIELDS: Dr. Delano?
 20 DR. DELANO: Yes.
 21 MS. FIELDS: Mr. Elliott?
 22 MR. ELLIOTT: Yes.
 23 MS. FIELDS: Mr. Keele?
 24 MR. KEELE: Yes.
 25 MS. FIELDS: Mr. Landers?

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1 MR. LANDERS: Yes.
 2 MS. FIELDS: Mr. Privrat?
 3 MR. PRIVRAT: Yes.
 4 MS. FIELDS: Mr. Taylor?
 5 MR. TAYLOR: Yes.
 6 MS. FIELDS: Ms. Lodes?
 7 CHAIRMAN LODES: Yes.
 8 MS. FIELDS: Motion passed.
 9 CHAIRMAN LODES: We'll be delaying
 10 the discussion and vote on Chapter 4 until we
 11 do 100.
 12 The second thing we had requested is,
 13 Council, do I have a motion for a brief
 14 recess, say, 15 minutes?
 15 MR. CAVES: This is Matt Caves. I'd
 16 make a motion to recess for 15 minutes.
 17 CHAIRMAN LODES: Thank you.
 18 MR. TAYLOR: I'll second that.
 19 CHAIRMAN LODES: Quiana, will you
 20 please call roll?
 21 MS. FIELDS: Mr. Caves?
 22 MR. CAVES: Yes.
 23 MS. FIELDS: Mr. Collins?
 24 MR. COLLINS: Yes.
 25 MS. FIELDS: Dr. Delano?

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1 a brief break, so we can -- so those of us who
 2 are on camera can stand up and move for a
 3 second. Anybody that needs to go get a coffee
 4 or anything else and we'll reconvene at 10:30.
 5 Thank you.
 6 (Whereupon, at this point in the
 7 proceedings, a brief recess was had.)
 8 BACK ON THE RECORD.
 9 CHAIRMAN LODES: I'd like to call
 10 today's meeting back to order. I believe we
 11 were with -- Tom was going to begin the
 12 presentation on Chapter 100, the changes to
 13 100, subchapters 1, 7 and 8.
 14 Beverly.
 15 MS. BOTCHLET-SMITH: Yes, the next
 16 item on our Agenda is item 5D, and this is
 17 Chapter 100, Air Pollution Control, Subchapter
 18 1, Definitions, Subchapter 7, Permits for
 19 Minor Facilities, Subchapter 8, Permits for
 20 Part 70 Sources and Major New Source Review,
 21 Sources, excuse me, for NSR.
 22 And Tom, will continue with his
 23 presentation.
 24 MR. RICHARDSON: Thank you, Beverly.
 25 Once again, I should check, Beverly, can you

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1 DR. DELANO: Yes.
 2 MS. FIELDS: Mr. Elliott?
 3 MR. ELLIOTT: Yes.
 4 MS. FIELDS: Mr. Keele?
 5 MR. KEELE: Yes.
 6 MS. FIELDS: Mr. Landers?
 7 MR. LANDERS: Yes.
 8 MS. FIELDS: Mr. Privrat?
 9 MR. PRIVRAT: Yes.
 10 MS. FIELDS: Mr. Taylor?
 11 MR. TAYLOR: Yes.
 12 MS. FIELDS: Ms. Lodes?
 13 CHAIRMAN LODES: Yes.
 14 MS. FIELDS: Motion passed.
 15 MS. BOTCHLET-SMITH: Laura, what time
 16 do you have that we will reconvene?
 17 CHAIRMAN LODES: My computer says
 18 it's 10:13, so we're going to do a 15-minute
 19 recess. That's 10:28. Shoot for 10:30 when I
 20 actually call it all back to order, since
 21 that's a nice round number.
 22 MS. BOTCHLET-SMITH: Okay. I just
 23 wanted to state that for any members of the
 24 public.
 25 CHAIRMAN LODES: We're going to take

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1 confirm that you can hear me?
 2 MS. BOTCHLET-SMITH: When I unmute
 3 myself, yes. Yes, Tom, we can hear you.
 4 MR. RICHARDSON: Thank you very much.
 5 We are now on slide 75. If you're not able to
 6 follow the presentation, please turn in your
 7 packets to the proposed amendments to rule
 8 text in Chapter 100, Subchapters 1, 7 and 8.
 9 Next slide. This slide shows the
 10 definitions for New Source Review or NSR and
 11 NSR permit that will be added to Subchapter 1.
 12 And NSR is added to the list of acronyms. The
 13 version initially posted showed the definition
 14 of Title V permit to be underlined. That was
 15 an error. That definition was added in the
 16 rule changes that became effective September
 17 15, 2020. We are not proposing any changes to
 18 this definition.
 19 Next slide. The next set of slides
 20 present changes we are proposing to Subchapter
 21 7.
 22 On this slide new definitions for
 23 FESOP and FESOP enhanced NSR process are added
 24 to Section 1.1. All subchapter 7 minor source
 25 operating permits are considered to be FESOPs.

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1 FESOP enhanced NSR, in Subchapter 7,
 2 is similar to enhanced NSR in Subchapter 8, in
 3 that it allows changes from an NSR permit,
 4 which has undergone public review and EPA
 5 review, to be incorporated into an existing
 6 minor source operating permit without
 7 undergoing another round of public and EPA
 8 review. The difference is that in FESOP
 9 enhanced NSR there is no 45-day EPA review
 10 period. EPA is given an opportunity to review
 11 the NSR permit along with the public.
 12 The clarification noted is the
 13 language stating that FESOP and operating
 14 permit when used in this subchapter are
 15 synonymous. We received a request to replace
 16 all instances of operating permit with FESOP,
 17 but that would -- that change would have been
 18 cumbersome. We hope this language is
 19 sufficient.
 20 Another slight change is the removal
 21 of smart quotes and the substitution of the
 22 not-so-smart kind. For typographical reasons,
 23 the OAC does not like smart quotes.
 24 Next slide. This slide shows two
 25 different definitions -- sorry -- two

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1 specified in the permit. A typo was corrected
 2 thanks to stakeholder feedback.
 3 Next slide. Subsection (e) was
 4 altered to conform with duty to comply
 5 language added later for operating permits.
 6 Next slide. Subsection (f) includes
 7 language stating that NSR permits do not
 8 technically expire. They are superseded by
 9 later permits. However, the authority to
 10 construct under an NSR permit will expire
 11 under certain circumstances, primarily overly
 12 long delays in the initiation of construction.
 13 In addition, problematic null and void
 14 language has been removed.
 15 Subsection (h) was added to clarify
 16 when the authorization to construct expires.
 17 The correction noted was a formatting
 18 change: a hard return was removed after the
 19 word modify, because there was no formatted
 20 paragraph to follow, just continued text.
 21 Next slide. Section 18, subsection
 22 (a), paragraph (2) states that the requirement
 23 to apply for an operating permit or a modified
 24 operating permit is triggered 180 days after
 25 startup of any emission unit authorized by a

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1 additional definitions added to Subchapter 7:
 2 replacement unit and traditional NSR process.
 3 The definition of replacement unit was updated
 4 yesterday, based on stakeholder feedback, to
 5 include a reference to the definition of
 6 reconstruction in 40 CFR Part 63. We had,
 7 inadvertently, failed to include a definition
 8 of traditional NSR process in Subchapter 7.
 9 Thanks to a stakeholder for bringing that
 10 oversight to our attention.
 11 Next slide. This slide shows changes
 12 to the requirements for a construction permit
 13 under Subchapter 7. The first change
 14 clarifies that it is modification of a unit
 15 resulting in a permitted emissions increase
 16 greater than 5-tons per year that triggers the
 17 requirement to get a Subchapter 7 construction
 18 permit.
 19 The second change exempts replacement
 20 units from the requirement for a construction
 21 permit, as long as the replacement unit does
 22 not require a change in an emission limit. In
 23 spite of this exemption, the permittee will be
 24 required to notify the Department within 15
 25 days of startup of the replacement unit or as

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1 construction permit.
 2 Subsection (b) adds mention of the
 3 three types of operating permit available to
 4 better mirror the language related to types of
 5 construction permits.
 6 In subsection (f), paragraph (3)
 7 states that the facilities that already have
 8 operating permits may use the FESOP enhanced
 9 NSR process for additional modifications to
 10 the facility.
 11 Next slide. The duty-to-comply
 12 language for operating permits was added based
 13 on input from EPA Region 6.
 14 Next slide. The next set of slides
 15 show proposed changes to Subchapter 8.
 16 This slide shows the new definitions
 17 which will be added to Subchapter 8: Enhanced
 18 NSR process and Traditional NSR process. As
 19 we have noted a number of times, the enhanced
 20 NSR process is the process we have been using
 21 in Oklahoma for years. However, we now
 22 require a facility to already have a Title V
 23 operating permit to be eligible for the
 24 enhanced NSR process. The traditional NSR
 25 process will also be provided as an option.

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1 Under traditional NSR, EPA and the
 2 public share a 30-day review window for an NSR
 3 permit. Under traditional NSR, when those
 4 requirements are incorporated into the Title V
 5 operating permit, there is both a 30-day
 6 public and a 45-day EPA review period. Except
 7 for minor mods, which have no public review
 8 period when the operating permit is modified.
 9 The traditional NSR process speeds up
 10 issuance of the NSR permit, compared to the
 11 enhanced NSR process, but there is another
 12 round of public review, except for minor mods,
 13 and EPA review when the requirements are
 14 incorporated into the Title V permit.
 15 Next slide. The additional text in
 16 subsection (a) makes significant changes to
 17 the requirements for minor NSR permits under
 18 Subchapter 8. The "or change in the method of
 19 operation" language brings our requirement for
 20 construction permits more formally in line
 21 with EPA's requirements for New Source Review,
 22 or NSR.
 23 The new language in subparagraph (B),
 24 unit (iv) or, unit roman numeral four, states
 25 that a construction permit will be required

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1 requirement, or for a facility that becomes
 2 newly subject and will need to obtain a Title
 3 V operating permit.
 4 Next slide. New subsection (c)
 5 states that the enhanced NSR process is
 6 available for facilities with existing Title V
 7 permits.
 8 Next slide. In Section 5, subsection
 9 (d), paragraph (3), language will be added
 10 requiring the applicant to choose between
 11 traditional NSR and enhanced NSR when applying
 12 for a major source construction permit, if the
 13 facility already has a Title V operating
 14 permit. Note: a facility may change that
 15 initial request up to the date that the notice
 16 is published.
 17 Next slide. The changes to
 18 subsection (a), paragraph (1), subparagraph
 19 (E) clarify that an administrative amendment
 20 may be used to incorporate applicable
 21 requirements from a Tier II construction
 22 permit into an existing, not an initial, Title
 23 V permit.
 24 Next slide. Changes shown to Section
 25 8, subsection (f), clarify the types of

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1 for a minor modification to allow a physical
 2 change or a change in the method of operation
 3 that results in a potential emissions increase
 4 of more than 10-tons per year of any regulated
 5 air pollutant. The reference to the
 6 calculation approach in 40 CFR, Section
 7 49.153(b) is meant to clarify how project
 8 emission increases will be determined. We are
 9 basing our approach on EPA's calculation
 10 method in the Tribal NSR Rule. We intend to
 11 offer guidance to clarify how we will apply
 12 that approach.
 13 Next slide. The deletions on the
 14 next two slides were made based on the
 15 stakeholder request. The deleted rule text
 16 set up the original schedule for the
 17 submission of initial Title V applications for
 18 facilities that were operating and became
 19 subject to Title V permitting requirements
 20 when the program was established.
 21 Next slide. This slide shows
 22 additional deletions, but also the text that
 23 will be retained to establish the ongoing
 24 requirement for any facility that slipped
 25 through unnoticed to abide by this

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1 permits that undergo public review, have
 2 comments addressed, and then are submitted to
 3 EPA for the 45-day review period.
 4 Paragraphs (1) and (2) refer to the
 5 initial and modified Title V operating permits
 6 under traditional NSR.
 7 Paragraph (3) refers to construction
 8 permits undergoing enhanced NSR, where EPA
 9 performs a review of both the NSR issues and
 10 the procedural and compliance requirements
 11 under the Title V operating permit program at
 12 the same time. The formatting update changed
 13 Subparagraphs (A), (B), and (C) to Paragraphs
 14 (1), (2), and (3) as shown.
 15 Subsection (g) provides the
 16 additional clarification of the requirement
 17 that the DEQ notify EPA and any affected state
 18 if the DEQ refuses to accept recommendations
 19 submitted during the review period.
 20 Subsection (h) clarifies that, if the
 21 45-day EPA review period expires and EPA has
 22 not submitted comments, or if EPA provides
 23 notice to the DEQ that EPA has no objection to
 24 either a Title V permit or a permit undergoing
 25 enhanced NSR, the DEQ will issue the permit

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1 unless an administrative hearing has been
 2 requested following DEQ Tier III procedures.
 3 Next slide. Subsection (i),
 4 paragraph (1) clarifies that DEQ may not issue
 5 a Title V permit to which EPA has objected
 6 during the 45-day EPA review period. The
 7 rules governing such an objection are specific
 8 to Title V operating permits. Because
 9 enhanced NSR provides EPA with an opportunity
 10 to review both the NSR permit and the
 11 procedural and compliance requirements under
 12 the Title V operating permit program, EPA may
 13 issue an objection with regard to the Title V
 14 permit modification which would otherwise be
 15 issued as an administrative amendment.
 16 Paragraph (5) requires the DEQ to
 17 consult with the EPA to try to resolve issues
 18 associated with any objection. The new
 19 language allows the DEQ to, at the Director's
 20 discretion, issue an NSR permit under the
 21 traditional NSR process in spite of an
 22 objection EPA has made during the 45-day
 23 review of the permit under the enhanced NSR
 24 process. The DEQ would still need to work
 25 with EPA to resolve the dispute prior to

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1 I just want to restate that to ensure the
 2 public is able to hear all of the Council's
 3 deliberation on this rule and Chapter 4, the
 4 questions from the Council will all be made
 5 audibly. There are no chat functions in Zoom
 6 enabled and being used by the Council.
 7 So, at this time, do we have any
 8 questions from the Council for Chapter 4 or
 9 Subchapter 7 and 8 under Chapter 100?
 10 CHAIRMAN LODES: I have a number of
 11 questions. One of them is, we'll start with
 12 Subchapter 7. So in Subchapter 7, we're now
 13 going to require public notice for minor
 14 source permits.
 15 My understanding from discussions
 16 with staff is that they feel like the existing
 17 issued permits need to go through a 30-day
 18 public notice process, and that the Agency
 19 intends to do a batch to notice the currently
 20 issued individual minor source permits in
 21 batches; is this correct?
 22 MR. RICHARDSON: Uh, Laura. Yes. So
 23 that's an issue, we believe -- while we do
 24 believe our current SIP and aspects of our
 25 program are in the SIP. And we do believe

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1 issuance of the Title V operating permit
 2 modification.
 3 Next slide. The language added to
 4 subsection (j) clarifies that the petition
 5 process is associated with the issuance of the
 6 Title V operating permit. There are other
 7 administrative remedies available to parties
 8 who object to an NSR permit, but the petition
 9 process is exclusively associated with 40 CFR
 10 Part 70, the Title V operating permit process.
 11 Next slide. That concludes my
 12 presentation on our proposed changes to
 13 Chapter 100, Subchapters 1, 7, and 8.
 14 Please note that staff is
 15 recommending that the Council adopt the
 16 proposed rule changes to both Chapter 4 and
 17 Chapter 100 during today's meeting.
 18 Thank you.
 19 Once again, I will ask Beverly
 20 Botchlet-Smith to discuss the next steps in
 21 the process.
 22 MS. BOTCHLET-SMITH: The Council will
 23 now have an opportunity to ask questions of
 24 staff. Before you start with that, I notice
 25 we've had some new people join the meeting so

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1 that our current Subchapter 7 operating
 2 permits are, at least in our conception,
 3 federally enforceable.
 4 We do believe that the formal
 5 adoption of FESOP requires an upgrade. And we
 6 believe that all of the existing operating
 7 permits would benefit from going through that
 8 upgrade. For one thing, that will make them
 9 eligible for the FESOP enhanced NSR process.
 10 But, in addition, we feel like that
 11 upgrade is kind of synonymous with when you,
 12 maybe, upgrade your software. That it brings
 13 the existing operating permits up to grade,
 14 and they now will be unambiguously part of the
 15 SIP.
 16 In addition, that upgrade process
 17 would only take place after EPA has formally
 18 approved these additions to our SIP. So the
 19 additions to the SIP would be finalized in the
 20 Federal Register. And then we would begin
 21 this batch process of upgrading existing
 22 Subchapter 7 operating permits.
 23 CHAIRMAN LODES: So that's something
 24 that I would like clarified. Because my
 25 concern is that we're opening a bit of

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1 Pandora's box here. If I got an issued permit
 2 ten years ago that was issued, we -- our SIP
 3 was last approved, the 99 version of
 4 Subchapter 7 was approved in 2017 by the EPA,
 5 so it's -- You know, I realize that we've had
 6 variations -- we've had changes to Subchapter
 7 7 since then, but these were issued permits
 8 with an approved SIP.

9 So if you're going to suddenly go out
 10 and send this permit out for public notice,
 11 what happens if somebody comes back or the EPA
 12 come backs and they want something changed in
 13 that? The facility doesn't have an open
 14 construction permit. They may not have an
 15 open construction process. So are they now
 16 going to have to change or make facility
 17 modifications outside of a normal construction
 18 process for something that the DEQ issued as a
 19 State-issued permit 10 years ago?

20 MR. RICHARDSON: So those are
 21 significant questions. So I think there are
 22 some issues that would just -- that would
 23 really constitute just bring the permit up to
 24 reflect existing requirements. An example
 25 would be a facility might have an emission

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1 practice, we believe it's actually protective,
 2 both of the public and the permit holder, to
 3 ensure that if a permit is upgraded to a
 4 current FESOP, that it does so and reflects
 5 the current requirements.

6 And I think there will always be
 7 issues that need to be worked out in the
 8 details of a particular facility's permit.

9 But we do believe going forward that
 10 this fixes potential gaps, potential issues
 11 with our existing SIP. And that going
 12 forward, we will consider all operating
 13 permits to be FESOPs. We believe by upgrading
 14 existing operating permits to FESOPs, we
 15 benefit both the public, the permit holder and
 16 others.

17 CHAIRMAN LODES: To me it seems like
 18 we're retroactively applying a regulation, and
 19 also I -- my point of concern would be, say an
 20 asphalt roofing manufacturer has built a
 21 facility the last 15 years, 20 years ago.
 22 They were authorized properly by an individual
 23 minor source permit, but somebody came in and
 24 put a neighborhood next to them after that
 25 permit was issued, and now the neighbors

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1 unit that was, at the time, not subject to any
 2 federal NESHAP requirements. But then
 3 EPA adopts -- say, for example, NESHAP subpart
 4 4Z, so an engine becomes subject to that as an
 5 existing engine.

6 So whether or not those requirements
 7 were incorporated in that operating permit
 8 when it was issued, say, 20 years ago, that
 9 unit is still subject to those NESHAP
 10 requirements. So it would not be problematic,
 11 I would think, to add that to the specific
 12 conditions in the permit to reflect the
 13 existing applicable requirements. And there
 14 are other issues that might need to be
 15 upgraded into the FESOP.

16 And these are open questions that
 17 we're discussing in-house, and we would
 18 discuss that.

19 In addition, there may be public
 20 comments. And if those public comments are
 21 substantive, we would need to address the
 22 public comments.

23 But if a permit was issued 20 years
 24 ago, and that permit is so completely,
 25 hypothetically, out of phase with current

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1 complain about that facility.

2 Are they going to have a substantive
 3 reason to file a complaint? Is the facility
 4 now going to be required to make
 5 modifications, even though they were issued a
 6 federally enforceable permit at the time of
 7 issuance 20 years ago?

8 Because we had a -- I go back to we
 9 have an approved SIP for Subchapter 7 today.

10 MR. RICHARDSON: So, Laura, I guess
 11 the concern you're raising, so if the facility
 12 was constructed, say, 20 years ago. At the
 13 time, it met all of the established Oklahoma
 14 rules, federal rules; it has an operating
 15 permit that we believe is federally
 16 enforceable and that is reflective of the SIP
 17 that was present at the time that permit was
 18 issued. So this upgrade we're referring to --
 19 you're suggesting there might be public
 20 comments from the neighbors saying they would
 21 like changes to the facility.

22 There's a difference between
 23 substantive comments made on a construction
 24 permit and substantive comments made on an
 25 existing facility, so I think those would be

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1 addressed as such.

2 So, for example, when a construction

3 permit is open for public review, it is

4 unlikely that a comment made on existing

5 equipment merits any additional, concrete

6 change to the operating permit.

7 I can't, of course, rule that out,

8 but I think what we would focus on is that the

9 comments would be made on upgrading an

10 existing facility's operating permit to a

11 FESOP, not revisiting what was done when the

12 facility was initially constructed. Or if the

13 facility was constructed before, gosh,

14 before there was even an operating permit

15 program, many, many years ago, I think those

16 issues would be irrelevant to this particular

17 upgrade.

18 CHAIRMAN LODES: Just to me I feel

19 like we're opening a Pandora's box of

20 requirements. Because if you're not going to

21 allow -- if the public comments aren't going

22 to be a substantive change to the permit,

23 what's the -- and if we're making no changes,

24 and the permit meets the -- the facility

25 hasn't made any changes, and they meet the

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1 example, I think the recordkeeping is one,

2 also, standard conditions. I think it would

3 not be inappropriate to reissue the FESOP with

4 the current, standard permit conditions rather

5 than the standard conditions that were in

6 place 20 years ago.

7 CHAIRMAN LODES: So who's going to

8 pay the fee for reopening and modifying these

9 permits?

10 MR. RICHARDSON: So our current

11 thinking is that there would be no fee

12 required for this upgrade. However, during

13 the interim, after the rules are passed, if a

14 facility needs a construction permit to make a

15 modification, then that would have to go

16 through the traditional NSR process,

17 because there would be, at least if the rules

18 are adopted, there would be no existing FESOP.

19 They would have an existing operating permit

20 but it would not yet be a FESOP in a formal

21 manner. So if they requested a construction

22 permit, there would be fees for that

23 construction permit going forward.

24 But this upgrade I'm referring to,

25 we're not, at least at present, envisioning

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1 requirements, what's the point of the public

2 notice? Are we retroactively applying a

3 regulation to facilities because the EPA

4 changed their mind on how they wanted us to

5 run our program?

6 MR. RICHARDSON: Well, let me address

7 the second part of the question first. So I

8 don't believe any of these changes would be

9 retroactive. So they would be date forward,

10 and let me give you a concrete example.

11 So 20 years ago our specific

12 conditions had record requirements, that

13 records be maintained for two years, and

14 that's changed. And now when we issue

15 operating permits, there's a five-year

16 recordkeeping requirement. I think it would

17 not be inappropriate, when we make this

18 upgrade, if we decided date forward to put

19 that five-year recordkeeping requirement in

20 place. But that wouldn't, retroactively,

21 affect records that were kept by the permit up

22 until the FESOP is issued for that permit at

23 some point in the future.

24 So I think those are the sorts of

25 issues that we would be looking at. For

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1 any costs associated with that for the permit

2 holder.

3 CHAIRMAN LODES: So I guess my thing

4 is if a facility wants to make a change, yes,

5 they need to come in file for a construction

6 permit and go through the normal process.

7 But if they're not making any change,

8 why do they need to do anything to their

9 permit? If their -- because their permit,

10 I'll go again, we have a SIP-approved program

11 today. They have a federally enforceable

12 permit issued under an approved SIP today. If

13 they don't want to make any changes to it, why

14 should they have to change it? I mean, yes,

15 they have to comply with quad Z, if they're

16 subject to it. But I don't understand the

17 purpose in us reopening, I don't know how

18 many, a thousand permits in the State of

19 Oklahoma, and putting them through public

20 notice, then who's going to pay for the costs

21 of the facilities' time to respond to

22 questions, if the public responds?

23 You know, there's a lot there. The

24 neighborhood, you know, the low-income housing

25 neighborhood that went up next door to the

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1 facility after the facility was built, decides
 2 to complain, who's going to pay for the time
 3 and effort by the company to respond on a
 4 permit that was issued, in accordance with all
 5 laws and regulations at the time, and they're
 6 in compliance today?
 7 MS. STEGMANN: Can I say something
 8 real quick? I appreciate your comments,
 9 Laura. I'm just wondering on these, these
 10 seem to me worst-case scenarios. I'm not sure
 11 how often they would come up, because a lot of
 12 those questions are going to be dealing if --
 13 with zoning issues.
 14 We're looking at just what they can
 15 and cannot do under air quality regulations.
 16 Not based on a citizen's, you know, complaint,
 17 basically. I just think those situations
 18 would be very rare, because we don't get a lot
 19 of comments, as it is. So, I mean, I
 20 appreciate your concern for these existing
 21 sources, but I really don't think that is a
 22 major issue.
 23 MR. LANDERS: I guess asked a
 24 different way, what is the harm in just
 25 waiting until a facility needs a construction

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1 today, I think we need to focus on, today
 2 going forward, for new construction. Does
 3 that make sense?
 4 CHAIRMAN LODES: I just don't want to
 5 do something that's then going to hinder my
 6 existing sources. I don't want the, you
 7 know, the law of unintended consequences here.
 8 I do this and suddenly, I mean, this wasn't
 9 here before. This reads as though my existing
 10 facilities don't have a FESOP today, and my
 11 argument is, they do. They have a federally
 12 enforceable permit.
 13 DR. DELANO: Yes. I would like to
 14 say one thing if I might. I agree with Laura.
 15 I think this needs further discussion.
 16 For your example, if you have an
 17 existing permit and some low housing is built
 18 in your area, and you have to redo your permit
 19 based on that, I say that should already be --
 20 that already should have been ironed out
 21 before housing came into that area. So -- or
 22 something else, whatever that is.
 23 CHAIRMAN LODES: So in my mind --
 24 DR. DELANO: So I -- Go ahead, Laura.
 25 CHAIRMAN LODES: No, go ahead, Bob.

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1 permit to do this upgrade?
 2 CHAIRMAN LODES: I mean, that's my
 3 thought. Why do we need to change them today?
 4 Why not just let them wait until they want to
 5 come in and make a change?
 6 MR. LANDERS: I'm not arguing either
 7 way. I mean, just saying what is the downside
 8 to not doing it?
 9 MS. STEGMANN: I mean, I understand.
 10 I mean, we haven't set -- when dealing with
 11 existing sources, we haven't set it in stone
 12 exactly how we're going to do it. I think
 13 that's going to be a conversation after we get
 14 this package passed. So, I mean, I would
 15 rather focus on new construction, and the new
 16 permits rather than existing, because that can
 17 be a discussion and a dialogue, you know,
 18 outside of this conversation. I just would
 19 prefer us to focus on new construction.
 20 CHAIRMAN LODES: Okay. And I'm fine
 21 with that. I just don't --
 22 MS. STEGMANN: I mean, that is part
 23 of -- that -- we can open a dialogue with
 24 stakeholders in how the best way to get -- to
 25 deal with existing sources. But I think

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1 DR. DELANO: Again, I -- we should
 2 know what areas that we have businesses in,
 3 you would not purposely build some housing
 4 area into that sector and then make the
 5 businesses change. So I don't know. I think
 6 this needs further discussion myself. That's
 7 all I have.
 8 MR. LANDERS: And I would be curious
 9 as to whether, Kendal, you have the staff that
 10 could go work on, literally, dozens or
 11 hundreds or thousands of these. I don't know
 12 how many permits there are, and start popping
 13 those out. I mean, do you have resources to
 14 do that even right now?
 15 MS. STEGMANN: Not right now, no, to
 16 be honest. I mean, like I said before, this
 17 has not been -- this is -- we haven't decided
 18 exactly. We were -- you know, this is one
 19 proposal that we're discussing as a batch way
 20 of getting public notice out for these
 21 permits. But we can continue to discuss what
 22 needs to be done for existing sources.
 23 CHAIRMAN LODES: Well then I guess --
 24 so in my mind, where we've got the definition
 25 of a Federally Enforceable State Operating

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1 Permit or FESOP, means an operating permit
 2 issued under Subchapter 7 of this chapter,
 3 including operating issued under the
 4 provisions, you know. To me, cannot we put a
 5 date in there and say permits issued prior to
 6 X date are considered FESOPs? And then we
 7 don't have to batch reopen all these permits.
 8 MS. FOSTER: So this is Melanie
 9 Foster. EPA would not approve of us going
 10 forward with putting in a date and saying
 11 they're FESOPs. Because, technically, the way
 12 our rules are written, the FESOP terminology
 13 is very specific, and we have to be explicit
 14 in our program, which is what we're attempting
 15 to be with these rule revisions.
 16 And so until our SIP says that we
 17 have a FESOP -- Now, I'm not saying our
 18 permits aren't federally enforceable. I'm
 19 saying we do not have what they would term a
 20 FESOP currently. And so until we're explicit,
 21 we would not be able to put a date certain and
 22 say all existing are. That just wouldn't be
 23 able to be approved by EPA. Because we've
 24 already had dialogue, and we know that until
 25 they formally approve this, even into our

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1 doesn't have anything to do with the FESOP
 2 issue. But the actual conditions that they
 3 have are going to be based on existing NSPSS
 4 that they're subject to, existing NESHAPs, and
 5 just our normal standard conditions for any
 6 facility.
 7 But, again, Phillip, Lee, Tom, please
 8 correct me if I said anything in error.
 9 I'll say one last point on this is
 10 that we currently close our minor source, as
 11 in Subchapter 7, construction permits,
 12 because it just makes sense once we roll them
 13 into an operating permit, that's another
 14 thing, that I think you guys know probably
 15 from the major source side, that the
 16 conditions that make things federally
 17 enforceable tend to be in the minor NSR or
 18 major NSR realm, right?
 19 That's what happens in Title V. You
 20 must put it into the major NSR, you know, or
 21 minor NSR permit first, then roll it into the
 22 Title V, because that's your foundational
 23 condition. And because we're closing out our
 24 minor source permits, which makes good sense,
 25 then when the operating permit goes forward,

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1 program, we can't move forward with explicitly
 2 saying that these are FESOPs.
 3 There's nothing, as we've written in
 4 the rule currently, that makes us push
 5 existing facilities through the FESOP program.
 6 We currently thinks it's a good idea for our
 7 existing sources to become an explicit FESOP.
 8 But there is the option, as we have this
 9 dialogue that Kendal has mentioned, with
 10 existing sources that there may be reasons why
 11 we decide that existing sources may choose or
 12 we may choose not to want to push them through
 13 the process, and I think that is an option,
 14 you know, going forward.
 15 But to speak to Dr. Delano's point,
 16 and I'm not the permitting authority, so I
 17 will defer to Phillip Fielder or Lee or
 18 somebody, but there should not be any
 19 conditions, again, there may be zoning issues,
 20 as Kendal mentioned, but as far as permits go
 21 there shouldn't be conditions that change
 22 based on where they're located.
 23 If they're having -- Let's say
 24 fugitive dust emissions now, that's something
 25 that should be fixed, you know, now. That

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1 having this explicit FESOP ensures that
 2 there's no question that those conditions that
 3 are in that closed minor NSR permit are still
 4 federally enforceable.
 5 CHAIRMAN LODES: Well, I guess, and
 6 this is my fundamental reason for the
 7 questions is the way our FESOP definition
 8 reads and such here, it appears to me that
 9 once this rule package is issued and goes
 10 final into our rules, that facilities who
 11 haven't gone through a 30-day public notice
 12 period do not appear to have a Federally
 13 Enforceable State Operating Permit. When I
 14 would argue they have one, because they were
 15 under an approved SIP at the time, and it is
 16 federally enforceable.
 17 So are you then going to -- it gives
 18 the appearance from an enforcement perspective
 19 that I've got an individual minor source
 20 permit. It's a synthetic minor. We're
 21 authorized to emit 90 tons of NOX. We now
 22 have the appearance that we don't have a
 23 federally enforceable limit that made us a
 24 synthetic minor source.
 25 And that's my biggest concern right

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1 here is the way it's written today, it gives
 2 that appearance, that we don't have federally
 3 enforceable limits. And so maybe that's a
 4 tweak in a definition or something to be clear
 5 that we do have federally enforceable limits
 6 for these sources if they choose to not reopen
 7 their permit.

8 MR. COLLINS: Laura, hey, this is
 9 Gary Collins. Can you restate that one more
 10 time so -- what's your concern?

11 CHAIRMAN LODGES: So the way this new
 12 version of Subchapter 7 reads, it talks about
 13 a Federally Enforceable State Operating
 14 Permit, and it talks about it going through
 15 the public notice. My concern is if I have a
 16 synthetic minor source permit today, and we've
 17 relied on these state-issued permit limits to
 18 show that we're not a Title V applicable
 19 source, but the way this reads, it reads as
 20 though I don't have a federally enforceable
 21 permit now. I have a compliance risk because,
 22 all of a sudden, what I thought was a
 23 state-issued federally enforceable permit, it
 24 doesn't read that way once this rule comes
 25 into effect.

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1 federally enforceable limit but maybe you
 2 don't really have one.

3 MS. STEGMANN: When we're talking
 4 about synthetic minors, that goes through the
 5 public comment process, correct?

6 CHAIRMAN LODGES: No, it doesn't. Our
 7 individual minor source permits today have
 8 never gone through a public notice process.

9 MS. STEGMANN: If they're trying to
 10 get out of a Title V, they don't go through a
 11 Tier II.

12 CHAIRMAN LODGES: If they're trying to
 13 get out of Title V. But I go out and I build
 14 a new facility today, and I take runtime
 15 limits on some piece of equipment, or
 16 throughput limits on a piece of equipment, so
 17 that I never get into Title V. I have a
 18 synthetic minor source permit issued at a
 19 greenfield site today and it will never have
 20 gone through public notice.

21 MR. FIELDER: Right. Laura, this is
 22 Phillip Fielder, the air quality. Hey, so
 23 I'll fill in my two cents, but I think you're
 24 right. And I don't know -- maybe we just say
 25 it. EPA's interpretation is this: Our

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1 MR. COLLINS: Yeah, I get it.

2 MR. LANDERS: But because it's not
 3 technically a FESOP; is that what you're
 4 saying?

5 CHAIRMAN LODGES: Based off the
 6 definition of FESOP and such in here, we don't
 7 have anything that protects my existing
 8 facilities -- or protects our existing
 9 facilities to show that they have, yes, they
 10 have a federally enforceable limit today that
 11 kept them out of Title V.

12 MR. LANDERS: It almost sounds like
 13 you're now saying you should go through that
 14 process.

15 CHAIRMAN LODGES: Well, but -- That's
 16 what I'm saying. You know, I got an issued
 17 permit. When I did my construction permit, I
 18 did everything according to the Oklahoma rules
 19 at the time they were in place. I got my
 20 federally enforceable limit at the time, and
 21 now we're changing the rules of the game and
 22 we're saying, nope, now you got to put
 23 yourself at risk. We're going to make you
 24 reopen the permit, because we're now issuing a
 25 rule that says, yeah, you thought you had a

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1 program was deficient at the time. When we
 2 issued those NSR permits to avoid -- to get
 3 federally enforceable limits, they should have
 4 had public review. That has been EPA's
 5 communication to us. Yes, you're right, we've
 6 issued these permits over the years, and they
 7 have said, hey, we failed. We allowed the DEQ
 8 or the -- Oklahoma regulations to proceed in
 9 this fashion. How do we go back and address
 10 that, and do we -- do we -- knowing that's
 11 what the discussion we're having. Their
 12 criteria for a FESOP is the same as it is for
 13 a NSR permit. When you get an NSR permit,
 14 they're saying, hey, a FESOP can take the
 15 place of an NSR permit, and under our
 16 regulations all minor NSR permits should have
 17 had public review. And they're saying -- they
 18 came up with this FESOP procedure to allow
 19 states to issue state operating permits, that
 20 are also enforceable without having to rely on
 21 that NSR permit without canceling it, and it
 22 also allows Title V facilities to go directly
 23 to the FESOP without going to the NSR public
 24 review process.

25 So it's kind of this dual thing. Not

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1 many states do it. It's not necessary. But
 2 even if we didn't do it, we have all these NSR
 3 permits out there that are still problematic
 4 based on EPA's issue with our historical
 5 process that had been approved.
 6 So there is a distinction --
 7 CHAIRMAN LODS: Phillip --
 8 MR. FIELDER: There is a distinction
 9 between, oh, do I have conditions in my permit
 10 that would be considered federally
 11 enforceable? Do I have the monitoring? Do I
 12 have the recordkeeping? Do I have the
 13 emission limits? Yes, but do you have that
 14 one -- one of the critical elements, which to
 15 EPA, whether we agree with them or not, is
 16 this public review, but, yes, you're
 17 exactly right. Historically, we did not
 18 require that. How do we interpret that?
 19 And, again, I think that is a
 20 discussion after these rules changes on how
 21 we're going to deal with that. What is the
 22 vulnerability of the facilities? And I think,
 23 initially, we thought, well, we'll assist the
 24 facilities and get them in there, that
 25 vulnerability is not there. I don't think, on

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1 Register, and has been issued by the EPA. So
 2 trying to say these permits today are
 3 magically not in compliance, I have a hard
 4 time swallowing EPA, because you gave us an
 5 approved SIP.
 6 MR. COLLINS: Hey, Phillip, this is
 7 Gary Collins. Hey, so based on that
 8 evaluation, based on that analysis, do we
 9 think we have permits that were issued in
 10 which the permittee thought he had, a FESOP,
 11 avoided some type of federal reporting or
 12 federal regulation, because he thought he had
 13 a FESOP? And now we come back and say, well,
 14 you really didn't have a FESOP. So what are
 15 the consequences of that? Do we think -- Are
 16 those situations as well?
 17 MR. FIELDER: Correct. Now, the
 18 FESOP is a special program that, again, we
 19 don't have to implement. It was something we
 20 believed was -- we would implement for the
 21 flexibility of the facilities. It was a nice
 22 little tool they could utilize. But -- so the
 23 process would say, hey, if -- like, Laura's
 24 example, if I built this facility and I want
 25 to take -- I'm a potential major and I don't

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1 our position, there is no -- we believe it
 2 works the way it has worked as far as how the
 3 permit is set up.
 4 Now, you know, permits years ago
 5 don't have -- we got better at writing
 6 permits, and they may not have that clear
 7 enforceability if Sierra Club or somebody else
 8 comes in, so you got that issue also. But
 9 that is EPA's position to us. But I get your
 10 point to say, hey, if we clearly, based on the
 11 wording of the rules, would that -- could
 12 someone say, well, this is clearly not a
 13 FESOP? Well, right. But someone could also
 14 look at the criteria for an NSR permit if they
 15 go to our SIP and what EPA requires. Well,
 16 those NSR permits didn't go through public
 17 review neither, so you're going to have that
 18 vulnerability anyway.
 19 CHAIRMAN LODS: But, Phillip, EPA
 20 approved Subchapter 7 252:100-7-15,
 21 Construction Permits, on May 15th, of 2017.
 22 We have an approved SIP for construction
 23 permits today. EPA may have changed their
 24 mind, that's nifty and all, but we have an
 25 approved SIP that has gone through the Federal

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1 want to take these limits, that NSR permit is
 2 the mechanism to get those federally
 3 enforceable limits there to avoid that.
 4 So, and I agree with Laura here, and
 5 it's almost getting into a very legal stance,
 6 if we put those basic elements into that
 7 permit, to create the actual enforceability,
 8 but it didn't get that one item, which EPA
 9 says is the public review, to give them that
 10 opportunity to comment, what does that do?
 11 And Sierra Club has done this under
 12 other circumstances where they have said a SIP
 13 has failed to meet the EPA requirements. It's
 14 not only because EPA approved it, Sierra Club
 15 has come in and challenged EPA themselves on
 16 the fact they approved a deficient program,
 17 and, yes, I would say if that was to happen,
 18 Sierra Club would have standing to say, oh,
 19 no, this permit failed to meet the full
 20 portions of that approved federally
 21 enforceable permit. And it is not federally
 22 enforceable and, therefore, that is a
 23 potential major source. I mean, that's worst
 24 case. You know, like we're not -- Sierra Club
 25 usually doesn't focus on these minor sources.

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1 These things are -- and I say Sierra Club, but
 2 other environmental groups.
 3 But that is the core of the issue,
 4 and what is our -- And, Laura, I can't answer
 5 that. What is our legal obligation? What is
 6 our vulnerabilities when EPA did approve that
 7 SIP, as she described? I'm not saying that we
 8 couldn't argue against that and win that
 9 argument, but that's what we're talking about
 10 here.
 11 CHAIRMAN LODES: Correct. And that's
 12 why I want it clear that existing sources, who
 13 got an approved permit issued under our SIP,
 14 as it stands today, which was approved by the
 15 EPA, because both the operating permit and the
 16 construction permit sections were approved by
 17 the EPA on May 17th -- or May of 2017, that's
 18 what I want clear. Because this says an
 19 effective date of June 14th of 2017. When I
 20 go to the EPA's website and I look at our
 21 approved SIP.
 22 MS. MILLER: This is Madison Miller.
 23 I have something to add to this. So I think,
 24 Laura, in response to that, I think our
 25 concern would be that EPA would then not

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1 us that we had --
 2 MS. MILLER: So the regulatory
 3 citation is 51 -- 40 CFR 51.160-164, and then
 4 that's based on Title I of the Clean Air Act.
 5 Specifically, it would be Section
 6 110(a) (2) (C) .
 7 MS. FOSTER: Laura, this is a
 8 Melanie. Yes, we did get a letter, a formal
 9 comment from Region 6 in support of the
 10 rulemaking changes. And one of the things
 11 that they do mention in there, and I'll just
 12 read it for the record is, it says, "The
 13 proposed provisions are the result of a
 14 multi-year collaborative effort between the
 15 EPA Region 6 and the ODEQ to identify and
 16 address areas of concern in the Oklahoma Air
 17 Permit Program.
 18 We believe these proposed revisions
 19 will serve to clarify how the Oklahoma Air
 20 Permit program addresses the program
 21 requirements of New Source Review, NSR, and
 22 Title V.
 23 Title I of the Clean Air Act requires
 24 public notice for minor NSR at 40 CFR 51.160
 25 to 51.164. The ODEQ's proposed revisions will

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1 approve these rules that we are trying to pass
 2 now, if it has that provision.
 3 And I wanted to mention a Federal
 4 Register that came out from EPA in 2014 when
 5 EPA was approving Texas's FESOP program. EPA
 6 explicitly stated that because those permits
 7 were not -- the previous permits, because they
 8 were not issued under the regulations that EPA
 9 is approving today, there can be no assurance
 10 that the State-only permits fully comply with
 11 the elements of the FESOP, and today's action
 12 cannot make those State-only permits federally
 13 approved unless and until a permit is
 14 reissued.
 15 So I understand where you're coming
 16 from, but I just wanted to bring that up.
 17 Because when EPA approves these rules, that
 18 statement is probably going into the Federal
 19 Register, so I just wanted to highlight that.
 20 CHAIRMAN LODES: And that right
 21 there, Madison, is my concern. They put that
 22 in there and -- I mean, what is EPA's
 23 regulatory citation for basically forcing us
 24 to change Subchapter 7 that they approved?
 25 Did we get a formal letter from EPA telling

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1 meet these federal requirements by requiring
 2 electronic notice for all minor NSR permit
 3 actions."
 4 It goes on to say about Title V
 5 having a separate public notice under 40 CFR
 6 70.7 and that our proposed provisions also
 7 meet those federal requirements by requiring a
 8 public notice for all initial Title Vs.
 9 There's additional, you know,
 10 comments on the other parts and pieces, but
 11 that is one specific thing where they've
 12 called out that these changes would address
 13 those public notice minor NSR.
 14 And, again, I'll kind of maybe circle
 15 back to Phillip, one of, hopefully, one of
 16 Phillip's points is that because there is this
 17 ambiguity, that's the reason why we want to be
 18 very specific about the FESOP. And that's why
 19 we were suggesting that we would want to batch
 20 all of these facilities through the process to
 21 make them formally a FESOP, just because we
 22 don't want our facilities to have the
 23 regulatory uncertainty.
 24 Again, we feel like we probably could
 25 defend as, Laura, you mentioned that we

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1 have -- had a SIP-approved program, but that
 2 does not mean that somebody else could not
 3 attempt to challenge that. And if we could
 4 pass the FESOP requirements and push everybody
 5 through it, again, not that we have to, but if
 6 we did, then we would circumvent any potential
 7 argument that those other entities might have
 8 that we did not follow all of EPA's
 9 requirements for our sources to have federally
 10 enforceable limits.

11 CHAIRMAN LODGES: Okay.

12 MR. RICHARDSON: Laura, I would also
 13 point out that we probably don't want to force
 14 EPA's hand. In other words, we really don't
 15 want to force them to issue a letter of
 16 deficiency. I think we're better off moving
 17 forward in trying to address these issues
 18 collaboratively than by forcing EPA to make a
 19 formal declaration that we have a problem.

20 And maybe a simple analogy, let's say
 21 you have a parking garage, and it's working,
 22 and your cars are there, but you know you have
 23 some problems. We want to build a new parking
 24 garage. Move all the cars into that garage
 25 before the City condemns the existing parking

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1 you're right, are probably equal in the
 2 possibility of happening or not happening,
 3 right? But we still have the EPA review of
 4 our program as a -- kind of a third factor
 5 that we have to worry about.

6 And sorry, Garry, I may have cut you
 7 off.

8 MR. KEELE: No, you're fine. So
 9 sitting here listening to an interesting,
 10 fascinating sort of conversation.

11 Is it possible that EPA would approve
 12 the program, the FESOP on a go-forward basis
 13 where we allowed companies under the 2017
 14 version to opt in if they wanted to versus --
 15 and if they don't want to, just to assume the
 16 risk of staying in a position of maybe lacking
 17 clarity on whether or not they fit in the SIP,
 18 at least in EPA's mind.

19 Do we feel like EPA will pass the
 20 program going forward that way versus us
 21 having to cleanup these retro items -- you
 22 know, to the early part of this conversation,
 23 I have -- I anticipate that if we batched
 24 everybody in or tried to that most would go
 25 through without issue. But I also guarantee

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1 garage, I guess that's how I would address it.
 2 MR. KEELE: This is Garry Keele. I'm
 3 sorry. Go ahead, Steve.

4 MR. LANDERS: Well, I was just going
 5 to say so you stand the risk of being
 6 challenged, let's say by an NGO, either for
 7 not -- having a permit that did not go through
 8 the public review process. Or if you now send
 9 them through the public review process to
 10 upgrade them to a FESOP, they can then
 11 challenge the permit itself. So, I mean, it's
 12 almost like you're picking the lesser of two
 13 evils -- or the lesser of two risks, I should
 14 say.

15 Because an NGO could challenge either
 16 way, is what we're saying. We don't send them
 17 through public review, they could challenge
 18 whether they are a major source or not. And
 19 if we send them through public, they could
 20 challenge the permit.

21 MS. FOSTER: So, Steve, this is
 22 Melanie. I think that's a good point. I
 23 think you have a risk on both sides. But the
 24 third factor that we have to think about is
 25 the EPA factor here. So those other two,

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1 there will be some that will be messy.
 2 So I'm just wondering is it possible
 3 to move -- to sort of split the difference
 4 here and move forward in a way -- you
 5 know, sort of set a date, and then the others
 6 that don't want to opt in can assume some
 7 risk.

8 MS. FOSTER: So, Gary, this is
 9 Melanie again. Yeah, I think to an earlier
 10 point, hopefully, that I made, and then also
 11 to Madison's point about how EPA addressed it
 12 in another rulemaking, I don't feel that our
 13 rules as written push new facilities -- or, I
 14 mean, existing facilities to go through the
 15 FESOP. But as Laura pointed out, that will
 16 create the potential optics, right, that you
 17 either are or you are not?

18 But I think, yeah, that's a
 19 possibility that we could look at with these
 20 dialogues that Kendal mentioned is do existing
 21 sources, do we go through the batch process,
 22 or do we look at risk and decide based on risk
 23 whether facilities want to or don't want to.
 24 Again, like an SM-80, or somebody who has
 25 taken a federally enforceable limit, maybe

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1 they're less -- maybe they're more risk
 2 averse, I should say, to sitting on the bubble
 3 and wondering which way they go. And so they
 4 want to go into it or maybe they're not.
 5 Phillip, Madison?
 6 MR. LANDERS: Gary's proposal sounds
 7 pretty good to me. That way the company or
 8 the facility gets to make the decision on the
 9 risk they choose. It's not us.
 10 MR. FIELDER: Melanie, this is
 11 Phillip in Permitting. So, yeah, maybe you
 12 should just clarify again, the current status
 13 of the rules does not force existing
 14 facilities to do anything.
 15 It's like Melanie said and Laura
 16 said, it's the optics of, hey, the definition
 17 says you're a FESOP if you do this, if you
 18 meet this. Knowing that you're an existing
 19 permitted facility that hasn't met that, and
 20 you don't have a FESOP, so what are the
 21 consequences of that?
 22 The current rule structure does not
 23 force those existing facilities to do
 24 anything. And that is what everybody has been
 25 talking about. The conversations that we may

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1 through, or we don't commit to fixing other
 2 than an opt in sort of option? I guess
 3 that's -- will they find it still unapprovable
 4 if we don't commit to fixing the group that
 5 they don't agree with now?
 6 MS. FOSTER: So this is Melanie. My
 7 understanding from our discussions with EPA is
 8 they will just be ruling -- ruling on the
 9 rules themselves. They will just be approving
 10 the rules themselves which set up the FESOP
 11 program, you know, essentially going forward.
 12 Because that, again, as Madison mentioned how
 13 they've done another rulemaking.
 14 So they will approve those before we
 15 do anything. We will not be able to batch
 16 these -- you know, these groups through until
 17 after their approval to make sure that then
 18 they are true, explicit FESOPs. So I don't
 19 think their approval will not hinge on what we
 20 are planning to do. It will just then have
 21 that risk going forward again for those
 22 facilities if we or they decide that we don't
 23 have to do them all. But, no, the approval
 24 should move forward, because the rule doesn't
 25 explicitly say that we have to do this for

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1 have or will have after this. What do we do
 2 with that? Remember, a lot of those minor
 3 source permits, you know, facility, when we
 4 talk about risk, are true minors, and even
 5 though EPA, even in those cases,
 6 believes public review is necessitated,
 7 there's very little risk there for that
 8 facility with regard to major source,
 9 obviously. And so you're going to have
 10 several different discussions to be had, when
 11 we decide how best to -- and it may just be
 12 rolling out a few options for these existing
 13 facilities to take advantage of. And one of
 14 them would be, hey, we're going to let -- we
 15 want the State to voluntarily batch us
 16 through. So those are all conversations that
 17 need to be had after this, hopefully, after
 18 these rulemakings.
 19 MR. KEELE: Hey, this is Garry Keele
 20 again. Just to be clear, I understand all of
 21 that, what both Phillip and Melanie have said,
 22 I appreciate that.
 23 I guess my question more specifically
 24 is, will EPA find this set of rules approvable
 25 if we don't go back and batch everybody

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1 existing sources.
 2 MR. KEELE: Thank you.
 3 DR. DELANO: Hi, this is --
 4 MS. STEGMANN: Yeah, Garry, I like
 5 the opt-in option. I think that is a
 6 discussion we can have with EPA on -- I mean,
 7 they seem to be open to negotiation and just
 8 our individual needs, and what our
 9 stakeholders need, so I think we can have an
 10 open discussion with EPA on dealing with
 11 existing sources, and how to weigh that risk
 12 for them, and how we, you know, give them
 13 guidance on that. But, yes, we can definitely
 14 open that conversation with EPA.
 15 CHAIRMAN LODES: So I'm looking at
 16 Federal Register, Volume 85, No. 146 issued on
 17 Wednesday, July 29th of 2020, and this is in
 18 response to Florida's SIP, and it states:
 19 As discussed in the NPRM, there are
 20 no specific public notice requirements for
 21 issuance of minor source air permits in the
 22 Clean Air Act or implementing regulation. And
 23 Florida's rule complies with the EPA'S FESOP
 24 guidance.
 25 The commenter does not challenge the

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1 rationale for approving a SIP revision or
 2 explain why FESOP submitted for said purposes
 3 must undergo a 30-day comment. In this
 4 rulemaking, EPA approved Florida going to a
 5 14-day notice instead of 30.
 6 And so that clearly states to me, and
 7 this again is in the Federal Register issued
 8 by EPA, where it says there's no specific
 9 public notice requirements for issuance of
 10 minor source permits in the Clean Air Act.
 11 MS. FOSTER: Not for operating
 12 permits. There is definitely explicit for
 13 minor NSR. But, again, we do not technically,
 14 per EPA's regulations, even have to have a
 15 minor operating permit program, but we do,
 16 obviously, and we definitely think it makes
 17 great sense for our regulated community. But
 18 that is correct that a minor operating permit,
 19 just on its face, does not -- is not required
 20 or would not have to have public notice.
 21 Our portion is this, again, FESOP
 22 explicit terminology, because we're closing
 23 out the construction permit. We're making the
 24 operating permit the be-all, end-all permit
 25 that does have the operating -- I mean the

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1 what benefits it could provide to our sources.
 2 So we opted to include this as an option, but
 3 the real issue is, our minor source NSR
 4 program and public review, and so that's why I
 5 brought that up earlier to the previous
 6 comment where, yeah, we could -- the issue
 7 isn't the FESOP. It is that NSR public review
 8 element. So this is just an option, the FESOP
 9 that we included as we thought was a good tool
 10 to have for everybody.
 11 CHAIRMAN LODES: So then if the
 12 30-day relates to a construction permit, and
 13 you can have a 14-day or none for an operating
 14 permit, then we are now writing this FESOP
 15 enhanced NSR permit as a 30-day public notice.
 16 Could we not restructure this
 17 Chapter slightly differently to say,
 18 Construction permits do the 30-day notice?
 19 But if it's strictly an operating permit
 20 change, it could be the 14-day?
 21 MR. FIELDER: That is a comment we
 22 received, and we did respond. And I'll let
 23 Tom speak to that or somebody else.
 24 But, yeah, that was a different angle
 25 than Florida's from all the other FESOP

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1 public notice portion.
 2 And, again, we've got the enhanced
 3 option for that, too, so that if you had an
 4 exiting FESOP, you know, you would have all
 5 that public notice happen at the construction
 6 phase.
 7 Because, again, all minor NSR permits
 8 do have to go through public notice. So it
 9 will be streamlined once we have existing
 10 FESOPs, the construction process will handle
 11 that public notice.
 12 But I think to your point, Laura,
 13 that's accurate. It's just that our -- what
 14 we're trying to accomplish is slightly
 15 different.
 16 MR. FIELDER: Right. Melanie, let
 17 me -- this is Phillip. Let me just touch on
 18 that a second too. So that is correct. This
 19 discussion started with EPA about our minor
 20 NSR program and not our minor operating
 21 permit. Through this discussions with EPA, we
 22 became aware of this. We starting talking
 23 about operating permits and how that rolls
 24 into the -- what does it play in this system?
 25 And we became familiar with FESOP process, and

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1 programs that we've seen, and so --
 2 CHAIRMAN LODES: The response to
 3 comments that I saw, they said that that was
 4 just a proposal, but I'm looking at the
 5 Federal Register which says this rule is
 6 effective on August 28th of this year. So
 7 this is a newly issued rule that I have the
 8 Federal Register open and it's in effect
 9 today.
 10 MR. FIELDER: Right. It occurred
 11 right in the middle of our rulemaking, so we
 12 are aware of that, yes.
 13 MR. RICHARDSON: So, Laura, I would
 14 ask, does Florida have FESOP enhanced NSR? In
 15 other words, if you do a minor NSR permit in
 16 Florida, can you then incorporate those
 17 requirements into the FESOP without the 14-day
 18 public review?
 19 CHAIRMAN LODES: I mean, that's one
 20 of the things that I'd have to go through and
 21 dig through, but this allows for the FESOPs to
 22 be just the 14 days.
 23 MR. RICHARDSON: So my understanding
 24 is Oklahoma, what we'll do is have 30-day
 25 public review of a minor NSR permit; Florida

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1 does the same thing. And then in Oklahoma, if
 2 you have an existing FESOP, you then modify
 3 your FESOP without additional public review.
 4 In Florida, you modify your FESOP, with a
 5 14-day public review. In addition, to the
 6 30-day public review, you had for your NSR
 7 permit.
 8 So I guess our point is we think
 9 we're actually better than Florida. Now, the
 10 issue that you mentioned separately is just a
 11 straight modification of the operating permit.
 12 So in some cases, those modifications might
 13 arguably not need public review.
 14 But anything NSR-like, anything that
 15 sets a limit, we think would necessitate that
 16 30-day public review, whether it follows the
 17 NSR path or whether it's a direct modification
 18 of the FESOP.
 19 So, for example, if you take a
 20 throughput limit in your tanks to avoid, say,
 21 federally applicable rule, like quad Oa, and
 22 then because of, you know, changes you may
 23 want to modify that, that modification can be
 24 done directly to the FESOP under our rules.
 25 In Florida, you would have to go through NSR

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1 for some potential problems down the road.
 2 CHAIRMAN LODES: The EPA apparently
 3 just approved their SIP 60 days ago, maybe,
 4 MR. RICHARDSON: Did they approve the
 5 14-day review of their minor NSR program, or
 6 was it just the FESOP?
 7 CHAIRMAN LODES: It's the FESOP
 8 piece. But, you know, they don't have any
 9 disclaiming language in it, and the EPA's
 10 approval saying that your construction permits
 11 are deficient. They've approved it.
 12 MR. RICHARDSON: Maybe we need to
 13 reach out to Florida and EPA Region -- is that
 14 Region 4, to find out why they're allowing
 15 minor NSR permits to go forward with just a
 16 14-day review. That seems like an interesting
 17 question.
 18 MS. FOSTER: So this is Melanie
 19 again. I think what we found as we've been
 20 working on these rules, though, is each state,
 21 obviously, again, with -- especially with a
 22 minor operating permit program, we have a lot
 23 of flexibility for how we structure our
 24 program. Because, again, it's not necessarily
 25 required, and some states don't even have one.

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1 first, 30-day review, then 14-day review when
 2 you incorporate it into the FESOP.
 3 So, again, I think our rule, even
 4 though it appears to be more stringent than
 5 Florida, we believe it's actually more
 6 flexible.
 7 CHAIRMAN LODES: So looking at the
 8 EF -- Florida's website, it says affected
 9 parties, federal agencies and the public may
 10 provide comments on the draft permit. The
 11 comment period ends 30 days after publication
 12 for PSD permits, and 14 days after publication
 13 for all other permits.
 14 MR. RICHARDSON: Is that for minor
 15 NSR as well?
 16 CHAIRMAN LODES: That says all other
 17 permits, and that's Air Construction Permits
 18 in Florida when I pull up their website.
 19 MR. RICHARDSON: So Florida is able
 20 to do their minor NSR permits with only 40-day
 21 public review?
 22 CHAIRMAN LODES: 14-day.
 23 MR. RICHARDSON: 14-day. And that
 24 basically is a violation of Part 51, so it
 25 sounds like Florida is opening themselves up

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1 So the concern I would have with
 2 comparing ourselves to other states is there's
 3 going to be a lot of different options, not
 4 just the Florida one, but other things as
 5 well. And so we were trying to do the least
 6 disruptive change within our rules to be the
 7 most protective and the least disruptive and
 8 the most streamlined with what we currently do
 9 with the process that our facilities are
 10 already used to, and so that's the way we have
 11 written the rules.
 12 The 14 days, yes, I suppose that
 13 could have been something that we changed to,
 14 but it made sense to us that the 30 days was
 15 used in other areas of our program. And,
 16 again, because of the enhanced FESOP process,
 17 we thought it made sense to continue that as
 18 written, and to be very clear with what EPA
 19 expects under Part 51.
 20 CHAIRMAN LODES: Okay. Since this is
 21 minor source, we do have a lot of flexibility,
 22 and that's why I feel like we're getting
 23 backed into making our minor source look like
 24 a major source program, and I just want to
 25 make sure we all fully understand the

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1 long-term implications of that, with one
 2 throwing into jeopardy our individuals.
 3 And I worry about, you know, five
 4 years from now somebody doesn't opt in to
 5 going through FESOP and a DEQ inspector comes
 6 out and says, well, you're a synthetic minor,
 7 but you don't have -- you've never gone
 8 through the FESOP process, so you're out of
 9 compliance. You're operating as Title V, and
 10 we now have to argue that out.
 11 So I worry from not just a NGO but
 12 also some DEQ inspectors with that happening.
 13 So I guess that's why I just want to just be
 14 clear that, you know, we had -- we have
 15 SIP-issued permits today.
 16 DR. DELANO: This is Bob Delano, and
 17 I agree with you. I feel, like we're trying
 18 to ratchet this into the minors going to a
 19 major program like this that we have here.
 20 I have never seen EPA be real
 21 flexible in my whole lifetime. So I think
 22 that we need to get some things ironed out
 23 before -- it's my opinion that we need to get
 24 some things ironed out before we move forward
 25 with adopting these amendments.

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1 for Chapter 4 or 7 and 8 in Chapter 100. And
 2 I'm now on the screen right now. If you're
 3 able to see it, there are some instructions.
 4 I'll just read through a couple of those that
 5 if you do wish to make a comment, you need to
 6 raise your hand on the device or you can press
 7 *9 on your telephone keypad, and then the host
 8 will unmute you when it's your time to speak.
 9 You'll need to state your name, your
 10 affiliation, you may have to spell your name,
 11 and then the host will allow you to make your
 12 comment at that time.
 13 So let's proceed with any comments
 14 from the public.
 15 MS. HAGENS: And just to elaborate on
 16 those instructions, the controls vary from
 17 tablet to computer, so if you're on a
 18 computer, the raise hand will be on the
 19 participants tab down kind of at the bottom.
 20 And if you're on a tablet, it will be at the
 21 top right-hand corner of your screen under
 22 more meeting settings. That's how you'll
 23 raise your hand. And, of course, *9 if you're
 24 calling in on the phone.
 25 MR. ZACHARIAH: You may see ellipses

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1 CHAIRMAN LODES: So we've so far -- I
 2 appreciate that. We've only talked about
 3 Subchapter 7, so we know where we stand on
 4 that one.
 5 Should we talk about Subchapter 8?
 6 Does anybody else have anything else on
 7 Subchapter 7?
 8 MS. BOTCHLET-SMITH: Laura, the
 9 Council would like to think about that a
 10 moment. We could open up for the public to
 11 make some comments.
 12 CHAIRMAN LODES: On Chapter 7 or do
 13 we want to discuss Chapter 8?
 14 MS. BOTCHLET-SMITH: I would say on
 15 anything that's on the table right now from
 16 Chapter 4, 7 or 8?
 17 CHAIRMAN LODES: Does anybody else --
 18 So, Council, do you have comments on Chapter 8
 19 before we go to the public?
 20 MS. BOTCHLET-SMITH: If we have
 21 questions from the public, it may generate
 22 some thoughts by the Council, when we come
 23 back to you.
 24 So we would like to open this up for
 25 questions from the public, and that would be

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1 under participants, but if you click on that,
 2 you'll see raise hand. And there's also alt
 3 Y or option Y for keyboards.
 4 MS. HAGENS: It looks like we have
 5 one hand raised, Brian McQuown is wishing to
 6 make a comment on the record. So, Brian, I
 7 will unmute you.
 8 Please state your name and
 9 affiliation for the record, and you will have
 10 three minutes to speak.
 11 All right, Brian, you should now be
 12 unmuted.
 13 MR. McQUOWN: Brian McQuown, last
 14 name spelled M-c-Q-u-o-w-n with Oklahoma Gas &
 15 Electric, and I just wanted to offer a brief
 16 comment in support of another commenter
 17 regarding Subchapter 8. And it's just simply
 18 that we were aware of the Altamira US
 19 Consulting firm sent a letter and offered in
 20 part related to incorporating the reasonable
 21 possibility language from 40 CFR 52:21 into
 22 Subchapter 8, maybe section, Subsection 36.2,
 23 so we recognize that maybe outside the scope
 24 of today's rulemaking Agenda but just wanted
 25 to note that we were supportive of those

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1 comments. That's all.
 2 MS. HAGENS: Does this conclude your
 3 comment?
 4 MR. McQUOWN: It does conclude, yes.
 5 MS. HAGENS: Thank you. I will now
 6 mute you and lower your hand.
 7 Any other members of the public
 8 wishing to make a comment on the record,
 9 please raise your hand now.
 10 (No oral response.)
 11 MS. HAGENS: Alright, I'm not seeing
 12 any more hands raised. Beverly.
 13 MS. BOTCHLET-SMITH: Alright. Thank
 14 you for your comments. We will throw this
 15 back to the Council for any additional
 16 discussion.
 17 MR. COLLINS: This is Gary Collins.
 18 So one question that I have on the comments,
 19 it looks like we got a lot of comments from
 20 the Petroleum Alliance and as well as Enogex
 21 and, I guess, do they feel like they got the
 22 appropriate response? Are they satisfied with
 23 the response? Because it looks like a lot of
 24 the responses were that the Department was not
 25 in agreement with the comment.

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1 Permits. I appreciate the addition of the 10
 2 tons from the prior meeting, so we do have the
 3 ability to do what I'll call a minor mod, and
 4 that we have added the calculation methodology
 5 that goes with the Tribal NSR.
 6 One thing I want to make sure I'm
 7 clear on, I know that the EPA's complaints on
 8 our program, or what the EPA has said is that
 9 when we've done minor mods to an operating
 10 permit, none of those were federally
 11 enforceable. And so we've gone back and had
 12 some of our clients make modifications to old
 13 construction permits, essentially, I'll say
 14 sweeping in all of those minor operating
 15 permit mods into a construction permit to
 16 ensure the enforceability of it.
 17 It looks to me with the Chapter 8-4,
 18 if I want to make a minor mod to my permit
 19 today, it's always going to be done to the
 20 construction permit. It's not going to be
 21 done to the operating permit, is that correct,
 22 because we still have the minor mod operating
 23 permit procedures in here?
 24 MR. RICHARDSON: So, Laura, I would
 25 maybe start by offering an answer and then I

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1 So I'm assuming that if they did not
 2 agree with the response that they got that
 3 they would be making public comments on the
 4 record today. Is that a fair assumption?
 5 MS. FOSTER: So this is Melanie. My
 6 personal opinion is, yes, I think that's a
 7 fair assumption, but I don't know that we can
 8 state that or not. The response to comments
 9 were provided back to both the original
 10 response to comments to EFO and to Enable
 11 Midstream Partners, were provided back to
 12 them. There is also the additional of the
 13 Altamira comments, and those were only
 14 recently posted, so I can't say whether
 15 they've had a full opportunity to review those
 16 and respond back. But certainly they were
 17 interested and so I would hope that they would
 18 be willing to state on the record if they were
 19 not satisfied with our responses.
 20 MR. COLLINS: Okay. It looks like,
 21 just looking through the attendees, it looks
 22 like they're on the meeting today. Okay.
 23 Thank you.
 24 CHAIRMAN LODES: So I do have a
 25 question on Chapter 8-4 for Construction

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1 may throw to Phillip Fielder to discuss
 2 modifying the construction permits.
 3 With regard to minor mods, most minor
 4 mods actually address so you can't -- you
 5 can't have a minor modification if it's a
 6 modification under Chapter 1, or rather Title
 7 I of the Clean Air Act. So most minor mods do
 8 things like add additional pieces of
 9 equipment, like emergency engines or make
 10 additional unit additions that come in under
 11 the -- under the minor mod thresholds.
 12 Often those equipment or emission
 13 units, rather, are limited in their emissions
 14 by a separate applicable federal requirement.
 15 So if you put an engine in place, it's subject
 16 to NSPS, those limits are federally
 17 enforceable, because they're federally set.
 18 You don't actually need an NSR permit to
 19 create that limit.
 20 So minor mods to the operating permit
 21 can still go forward, you can still add pieces
 22 of equipment, and those limits are federally
 23 enforceable to the extent they were set by
 24 alternative federal requirements.
 25 Now, with regard to minor mods to

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1 construction permits, that's where I would
 2 like to have Phillip step in.
 3 CHAIRMAN LODES: Phillip, I --
 4 MR. FIELDER: Yeah.
 5 CHAIRMAN LODES: I want to clarify
 6 one thing, Tom. Today, because as a
 7 consultant, I've done it under a minor mod to
 8 operating permit, I can go in and do a pretty
 9 substantial change at a major facility, as
 10 long as I was able to show site-wide netting
 11 was below the PSD thresholds, and I didn't
 12 have a modification or an NSPS or NESHAP, and
 13 we have -- I think every refinery in the state
 14 has done some pretty substantial changes just
 15 as Title V operating permit mods and not gone
 16 through the construction permit process
 17 historically.
 18 MR. FIELDER: So, yeah, this is
 19 Phillip again. So based on this change, and
 20 those minor mods under the criteria we're
 21 including there, a lot of those are going to
 22 end up NSR permits, because that was the EPA'S
 23 concern, those significant projects that
 24 because of the way we overlapped our NSR
 25 program, that tied it to the Title V minor

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1 purpose?
 2 Because it passed that first four
 3 criteria, the answer is most likely no.
 4 Now, one of the main elements of that
 5 minor versus significant mod, are you taking a
 6 limit is what Tom was touching on. Are you
 7 taking a limit to avoid? And it throws you
 8 right back to the NSR program if you're
 9 proposing to do that, and so --
 10 I think in summary, a lot of those
 11 projects are now gonna be forced through the
 12 NSR process, even though they do the PSD
 13 review like you're talking about.
 14 Now, I won't say all of them,
 15 because as you know, and many know, that have
 16 to deal in that program, still somewhat
 17 significant projects can occur, especially
 18 when you talk to the refiners and say,
 19 yeah, this is significant.
 20 But the PSD program, based on its
 21 projections, its allowance to remove -- demand
 22 growth in those different steps, would still
 23 allow facilities to do what could be construed
 24 to them as significant projects, but fall
 25 under this actual 10-ton per year increase

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1 versus significant mod definition.
 2 It created this segment of actions
 3 that, in their opinion, circumvented NSR
 4 provisions, so and that is the specific reason
 5 we're including that now, under the NSR
 6 program.
 7 So the issue I think here is that now
 8 that we're doing that, and we're including
 9 this 10-ton per year criteria, what is it that
 10 the facility can do under this new 10-ton per
 11 year criteria, and the -- well, it's actually
 12 all four bullets that we've added there under
 13 that criteria, there's four items there.
 14 If a physical change, change in the
 15 method of operation meets those four criteria
 16 and scoots right through the NSR criteria and
 17 they go to their Title V, and say, okay, well,
 18 I can't do it as an administrative amendment,
 19 so I need to do it as a minor mod, there is
 20 still the scenario where under permitting
 21 policy, there might be a need to put a limit
 22 in the permit.
 23 Well, what does that mean? It might
 24 be permitting policy by DEQ-ODEQ, but is it
 25 really needed for a federally enforceable

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1 possibly.
 2 So, you know, those are very specific
 3 case-by-case evaluations but, hopefully, I
 4 summarized at least my understanding of this
 5 rule change and how it's going to be. You
 6 know, what it's going to mean for everybody,
 7 if it's passed.
 8 MR. LANDERS: Phillip, this is Steve
 9 Landers. You said -- I thought I heard you
 10 say actual emissions of 10-tons per year. It
 11 is potential, right?
 12 MR. FIELDER: So the 10 tons -- I'm
 13 sorry if I said is potential, the -- what I
 14 meant was under the PSD review, because a PSD
 15 facility would need to do both this analysis.
 16 They would need to do their projected actual
 17 under the PSD. And once they've gone through
 18 that review, then the 10-ton per year
 19 potential for what they want to do in their
 20 actual permit would need to be reviewed. So,
 21 yeah, so you're right, it is potential for the
 22 10 ton.
 23 MS. HAGENS: Just so you know, we
 24 have one member of the public with their hand
 25 raised that is wishing to speak on the record.

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1 Would we like to open it up for public comment
2 again?

3 CHAIRMAN LODES: I'd say yes.

4 MS. HAGENS: Alright. So Sean Walker
5 is requesting to speak. Sean, I will unmute
6 you and please identify yourself and your
7 affiliation for the record, and you'll have
8 three minutes to speak. Sean, you should be
9 unmuted now.

10 MR. WALKER: Thank you. My name is
11 Sean Walker. I'm with Enable Midstream
12 Partners. Kind of just responding to Gary's
13 comment or question earlier about some of the
14 responses and comments. And so really I just
15 have one question that's kind of still kind of
16 unresolved, and it does relate back to the
17 14-days comment. But basically there was
18 another comment, Petroleum Alliance made
19 regarding regulatory uncertainty that could be
20 brought up with construction permits not
21 expiring. And the scenario that's -- or that
22 that was resolved by revising Chapter 4,
23 252:4-7-13 (g) (9) by basically saying that
24 draft modifications of existing minor facility
25 operating permits would still need to undergo

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1 lower your and put you back on mute.

2 THE COURT REPORTER: Can I get where
3 Sean, who he works for? I wasn't clear who he
4 represents.

5 MS. HAGENS: Sean, I've unmuted you.

6 MR. WALKER: Enable Midstream
7 Partners.

8 THE COURT REPORTER: Thank you.

9 MS. HAGENS: Thank you, Sean.

10 MR. RICHARDSON: Sean, thank you for
11 your question. This is Tom Richardson again.
12 So it sounds like I must have misspoke
13 earlier. So the throughput limit scenario I
14 was discussing, my anticipation with that,
15 that would necessitate a 30-day public review
16 of the FESOP. So say, for example, you have a
17 facility that has an existing FESOP, has an
18 existing throughput limit on the, you know,
19 hydrocarbon liquids on the condensate. If you
20 decide to increase that limit, that limit can
21 be made directly to the FESOP, but it would
22 not necessitate 30-day public review. And the
23 reason is because you need to change a limit.
24 And you're not adding a piece of equipment, so
25 you wouldn't need to go through a construction

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1 a 30-day review.

2 So based off of what Tom Richardson
3 said earlier in terms of like a scenario where
4 a facility would do a minor source, a minor
5 modification to a minor source operating
6 permit to increase condensate throughput
7 limit, or something along those lines, this
8 would still have to undergo a 30-day review.
9 And Tom, earlier it sounded like, was saying
10 it would not have to undergo any review.

11 So that was kind of the scenario
12 where the Alliance and Enable was wanting a
13 14-day public review because of issues that
14 might lead to some compliance issues in that
15 case.

16 So I just kind of wanted
17 clarification based off of what Tom said.
18 Would a minor modification of an operating
19 permit, a minor source operating permit have
20 to undergo 30-day review as is in this
21 proposed rule or not?

22 MS. HAGENS: Thank you. Does that
23 conclude your question?

24 MR. WALKER: Yes.

25 MS. HAGENS: Alright. I will now

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1 permit. You would just directly modify the
2 FESOP, and that would be a 30-day public
3 review.

4 Now, the 14-day public review under
5 the Florida system, I don't have a good enough
6 understanding of the ins and out of that. So
7 I don't know whether the 14-day public review
8 in Florida could accommodate a change in an
9 emission limit. I think there is a good
10 reason to expect any kind of NSR type
11 operation that needs a federally enforceable
12 limit, that that would necessitate a 30-day
13 public review, whether it happens at the NSR
14 stage, under a construction permit, or
15 directly as a modification to the FESOP. I
16 think either way a 30-day review is likely to
17 be necessitated.

18 CHAIRMAN LODES: And so, Tom, and
19 staff, I think this is where -- what Enable is
20 saying is they would like to see a 14-day
21 review for these type situations. I mean, I
22 know one of the big concerns would be what if
23 operations on the oilfield pick back up and
24 they suddenly realize, hey, we may be out of
25 compliance with our permit. We're trying to

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1 file the operating permit mod strictly to
 2 increase our throughput limit, and I now have
 3 to -- instead of getting it -- issued
 4 immediately, which we can do these days; we
 5 can get some of those turned around pretty
 6 quick, you know, or even with just a 14-day
 7 public notice, I'm going to have to wait 30
 8 days, and then maybe that causes an issue that
 9 we weren't otherwise -- or they weren't,
 10 otherwise anticipating. So I think that's
 11 where -- that's why they were requesting a
 12 review of the 14-day in those scenarios.

13 MR. RICHARDSON: So I guess another
 14 one of the -- This is Tom again. Another one
 15 of the Enable comments, and actually I think
 16 it was really more focused on mechanism. So
 17 in many cases facilities under our current
 18 system actually take a different route to get
 19 to the modification of their operating permit.
 20 So they'll submit an authorization to
 21 construct under the general permit and use
 22 that mechanism to make the change that they
 23 need, and then they'll come back and modify
 24 their operating permit.

25 So I think we have a number of tools

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1 programs that we've heard of. But I think we
 2 have provided the option and that is the
 3 general permit and/or the PBR for the oil and
 4 gas industry, so there's good options there.

5 Like I said, we are on the final
 6 stages of the new general permit to address
 7 issues that have been lingering related to
 8 companies that may have felt like they had
 9 some issues with it, and, hopefully, we'll get
 10 those addressed.

11 CHAIRMAN LODS: What about
 12 facilities that are not oil and gas?

13 MR. FIELDER: Right. The majority of
 14 our permitting is oil and gas. But, yeah, I
 15 mean, I'm not denying that that, in some
 16 instances, I mean, you can still have the oil
 17 and gas industry out there that may not still
 18 want to take advantage of that. So I can't --
 19 I'm not saying that wouldn't be an issue for
 20 somebody in the timing, but I don't know what
 21 the proper process is for us. I mean, I
 22 think that -- I'll throw this back to Melanie.
 23 That may be a decision the Council is going to
 24 have to vote on these rules to implement it,
 25 and how important is it to hold these rules up

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1 available, because when things are happening
 2 and hopefully we get back and have a surge in
 3 the oil patch again, and we have a lot of
 4 activity there, we need to have many different
 5 tools available so they can make immediate
 6 changes. And I think the oil and gas general
 7 permit that is -- I think the public-review
 8 period is closed. I think that addresses
 9 some of the concerns. But I do think that
 10 while there are mechanisms available, the
 11 direct modification of the FESOP is probably
 12 not something that's going to be helped by the
 13 14-day period, just because I think the 14-day
 14 FESOP change anticipates an upstream NSR
 15 permit.

16 And maybe Phillip can step in to
 17 cleanup any additional concerns.

18 MR. FIELDER: Yes, this is Phillip.
 19 No, I don't have anything really to add on a
 20 14 versus the 30, and our understanding of the
 21 program elements that EPA has told us, the
 22 Florida things, based on at least our mild
 23 knowledge we have of it seems a little weird.
 24 Based on, not only Florida's but all the
 25 states in Region 6, any -- most minor source

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1 for this 14 versus 30 days. I think that's
 2 going to be -- Sounds like it may be one of
 3 the critical, possible elements of a decision
 4 on the vote.

5 MS. FOSTER: This is Melanie again.
 6 I don't really have anything to add on that
 7 other than just to say that, again, 30 days
 8 we've kind of used because that seems to be
 9 the gold standard for public notice. I think
 10 one could argue 14 days, 21 days, 25 days. I
 11 mean, I think you could argue any number of
 12 different days, and I think we've only keyed
 13 on the 14 because of the most recent, you
 14 know, Florida approval, and I understand
 15 that's reasonable to point to another program.

16 But I would just again reiterate that
 17 each program is structured differently. So as
 18 Tom keeps mentioning, we've had discussions
 19 with other states, and we thought we
 20 understood their program and we thought we
 21 understood what EPA thought their program was
 22 and we found those to not always be actually
 23 in agreement.

24 And so it's really hard, even just
 25 reading a Federal Register, to really know the

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1 nuances of a program and whether it works the
 2 same way as our does.
 3 So whether the 14 days is more
 4 appropriate than 30, I would probably argue
 5 again that for continuity of our program 30
 6 seems reasonable still for us.
 7 MR. RICHARDSON: Also, Melanie, it
 8 kind of makes you wonder if there are states
 9 talking to their Councils, saying, hey, maybe
 10 we don't need public review of our minor NSR
 11 permits, because Oklahoma doesn't have that
 12 requirement right now, and may not be aware
 13 that we're addressing this issue, as we speak.
 14 MR. COLLINS: Yeah, I'm not going
 15 to -- Hold on a second.
 16 CHAIRMAN LODES: And I understand
 17 that. The Florida one, since it was such a
 18 recently issued approval by the EPA, felt like
 19 that had some definite meat to it. Since it's
 20 not one -- it's not 3 years, it's not 5 years
 21 old, it's -- we're talking about something
 22 that, you know, was issued in the last four or
 23 five months. And so that's where I'm looking
 24 at with that option, and just what's going to
 25 allow us to continue to operate our program

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1 MS. BURCHETT: Thank you. This is
 2 Adrienne Burchett, last name is
 3 B-u-r-c-h-e-t-t, with Altamira. I was wanting
 4 to make a public comment on the record, as I
 5 did not see a response to my submitted written
 6 comments from the DEQ published online, and
 7 the information available.
 8 I just wanted to incorporate the --
 9 or request to discuss and make comment on the
 10 reasonable possibility language while we have
 11 Subchapter 8 open and available for public
 12 comment.
 13 We've requested that the DEQ consider
 14 incorporating the reasonable possibility
 15 language from 40 CFR 52.21(r) into Subchapter
 16 8-36.2(c) Source Obligation Requirement. This
 17 will reduce the reporting burden of subject
 18 facilities while maintaining compliance and
 19 consistency with federal regulations.
 20 The consulting costs of this
 21 additional reporting for facilities would
 22 be -- that would be otherwise exempt under the
 23 federal regulations, can range from 750 per
 24 year to 3,000 per year for five years,
 25 depending on the number of projects.

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1 with the flexibility our stakeholders need,
 2 and still be protective like we need to be.
 3 MS. FOSTER: Yeah, and I think that's
 4 a good point, too, Laura, is that also we want
 5 to make sure that we are affording the public,
 6 you know, the time that they need, if they
 7 were to want to look at something, and to be
 8 aware.
 9 Again, most of these are probably
 10 going to be web-based notices now. I don't
 11 know that the public is necessarily going to
 12 be on there every day checking for new
 13 permits, so we need to give them the
 14 opportunity to see and comment, if they wanted
 15 to.
 16 If we're wrapping up this discussion,
 17 we do have another comment. I'll turn it over
 18 to Christina.
 19 MS. HAGENS: Yes, we've got a member
 20 of the public wishing to make a comment, so
 21 Adrienne Burchett has their hand raised. So,
 22 Adrienne, I will unmute you and you will state
 23 your name and affiliation for the record, and
 24 have three minutes to speak. Alright, you
 25 should now be unmuted.

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1 Additionally, the Preconstruction
 2 Notice Requirements cost approximately 2,500
 3 to 7,500, depending on the project type for
 4 consulting fees alone.
 5 These additional consulting costs are
 6 in addition to internal costs by permitted
 7 facilities. These costs are associated with
 8 reporting -- could be reduced or eliminated by
 9 incorporating the federal reasonable
 10 possibility language.
 11 The Source Obligation Requirements
 12 under 40 CFR 52.21(r) (6) (b) (i), reduces the
 13 reporting burden if permittees can document
 14 the emissions increase, using the PAE to BAE
 15 methodology is less than 50% of the PSD
 16 significance levels for each applicable NSR
 17 pollutant. If the increase in emissions is
 18 less than the 50% threshold, the
 19 preconstruction notice and annual reporting
 20 requirements are not required since there is
 21 no reasonable possibility that the PSD
 22 significance levels would be exceeded due to
 23 the project.
 24 Since the ODEQ Air Quality Rules and
 25 OAC 252:100-8 do not include this reasonable

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1 possibility language, permittees is regulated
 2 by the DEQ, are subject to more stringent
 3 reporting provisions, requirements than those
 4 permitted in nearby states.
 5 And then in the comments submitted,
 6 we provided some regulatory language and
 7 citations, suggested changes to the citations,
 8 and I will end my comments.
 9 MS. HAGENS: Thank you. If that
 10 concludes your comment, I will now lower your
 11 hand and put you back on mute.
 12 MS. FOSTER: This is Melanie Foster.
 13 So, Adrienne, I want to apologize first. I
 14 just double-checked our website and it looks
 15 like we did not, even though we said it was
 16 the updated version, we did not get the
 17 updated October 20th version of our Response
 18 to Comments published on the web, but we will
 19 rectify that as soon as we can.
 20 To address your specific last comment
 21 about the reasonable possibility language, the
 22 way we have addressed that is that we
 23 currently in this rulemaking do not have that
 24 section open, so per our noticing requirements
 25 and everything, we could not, through this

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1 thing for you guys and gives you a little
 2 bit of protection.
 3 And so even though it may be a little
 4 bit of additional recordkeeping from what EPA
 5 strictly requires, we think it's a helpful
 6 thing.
 7 But, again, we are not -- it's not
 8 outside the realm of possibility for us to
 9 discuss, but it's not something that we could
 10 technically address during this rulemaking
 11 today.
 12 MS. BOTCHLET-SMITH: Since we've had
 13 a couple of individuals from the public that
 14 commented after we had gone back to the
 15 Council, I think it would be appropriate for
 16 us to open up public comments and give anyone
 17 else the opportunity to speak.
 18 So if we could -- if you are
 19 interested in making a comment as a member of
 20 the public, if you could raise your hand now
 21 before we close those comments and move back
 22 to the Council.
 23 (No response.)
 24 MS. BOTCHLET-SMITH: You know, again,
 25 those instructions are on the screen. You

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1 rulemaking action, do anything to address the
 2 reasonable possibility language.
 3 We know that this has been discussed
 4 before with you guys, with Altamira, and we
 5 certainly think this is something that we
 6 would like to discuss with our stakeholders.
 7 And hearing earlier Brian, from OG&E, speaking
 8 that they're supportive of that as well. That
 9 would be something that we would want to look
 10 at, discussing with additional stakeholders
 11 and move forward with a separate rulemaking
 12 action if our industry felt that that was
 13 something that was necessary.
 14 We did, as I think you know,
 15 mentioned previously that at the time that we
 16 made the rule, the way it exists now, we
 17 had -- there were some issues with EPA's and
 18 court orders and things like that for a reason
 19 why we didn't include that.
 20 And, subsequently, we have not
 21 updated it to reflect EPA's current language
 22 is because we do feel like the language, as it
 23 stands, requires industry to take a few more
 24 recordkeeping steps that is very protective of
 25 industry. And so we feel like that is a good

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1 would need to raise your hand on your device
 2 or hit *9 on your phone keypad.
 3 So do we have any commenters from the
 4 public?
 5 (No response.)
 6 MS. HAGENS: I'm not seeing any hands
 7 raised at this moment.
 8 MS. BOTCHLET-SMITH: We want to be
 9 sure anyone from the public has an opportunity
 10 to ask a question. So, again, any comments?
 11 (No response.)
 12 MS. BOTCHLET-SMITH: Christina did
 13 you see any additional hands?
 14 MS. HAGENS: I do not.
 15 MS. BOTCHLET-SMITH: Okay. Sorry
 16 about that, Laura, but we did want to make
 17 sure that the public had an opportunity to
 18 comment. So we will now move to additional
 19 questions and Council -- additional questions
 20 and discussion from the Council. Thank you.
 21 CHAIRMAN LODES: I appreciate that
 22 Beverly.
 23 So, Council members, do you all have
 24 more discussions on the rule package of
 25 Subchapter 4 and 100, 7 and 8?

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1 MR. KEELE: This is Garry Keele. I
 2 have a nonsubstantive add -- well, it's
 3 substantive but it's not so much we're all
 4 going to argue about.
 5 In 252:4-7-13, Paragraph 6 as
 6 proposed, the first sentence mentions 27A OS
 7 Section 301, 302 and 304, can we put in -- I
 8 think it needs to be 2-14-301 in front of
 9 those to make it sort of consistent with the
 10 rest of the way the rules are read.
 11 CHAIRMAN LODES: Pardon. Garry,
 12 where did you say you are? I'm trying to flip
 13 back.
 14 MR. KEELE: Subchapter 4:7-13,
 15 Paragraph 6 -- proposed Paragraph 6.
 16 CHAIRMAN LODES: Oh, okay.
 17 MS. FOSTER: (g) (6), I believe.
 18 MR. KEELE: Could be, yeah.
 19 CHAIRMAN LODES: Yeah, you are
 20 correct. So what are you saying that should
 21 be in front of that, Garry?
 22 MR. KEELE: I'd do the full citation,
 23 Section 2. I think it's 2-14-301, for
 24 example. Just something I noticed when I was
 25 reading through.

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1 because that gives them a little bit more
 2 feeling of security that their assessment was
 3 correct. But that actually isn't an
 4 obligation. They can install the equipment on
 5 submission of the application.
 6 So our rules going forward, if
 7 they're adopted, will allow that to continue
 8 for projects with less than or equal to 10
 9 tons per year of emission increases of any
 10 regulated air pollutant.
 11 So we will still have that as an
 12 available option but only for those projects
 13 below that emission threshold.
 14 For other projects, they'll have to
 15 go through that minor NSR step before they get
 16 to do the modification to the operating
 17 permit. And we anticipate, with that being
 18 the case, practically all, maybe all will go
 19 through enhanced NSR.
 20 In other words, they won't actually
 21 submit the minor mod at the start of the
 22 project. They'll submit an application for a
 23 minor NSR permit. That permit will go through
 24 enhanced NSR, so all of the review will be
 25 upstream.

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1 CHAIRMAN LODES: Thanks. Do we have
 2 any other questions or concerns from the
 3 Council on these rulemaking packages?
 4 MR. LANDERS: This is Steve Landers.
 5 I have one question, I think, for Tom. Tom,
 6 early in your presentation, I think I heard
 7 you mention the Air Quality Division's past
 8 practice of allowing a facility to proceed
 9 with construction with some risk once the
 10 application has been deemed complete and
 11 technically accurate.
 12 But with these proposals, did I hear
 13 you mention that will not be an option now,
 14 and is that only under the NSR process?
 15 MR. RICHARDSON: This is Tom. So
 16 that process we were discussing was specific
 17 to minor modifications to Title V operating
 18 permits.
 19 So our past practice, in fact,
 20 current practice as of today, if an applicant
 21 submits a complete application, they actually
 22 can immediately install equipment, and operate
 23 that equipment with that attended risk. And
 24 many companies will wait until we get a chance
 25 to do our administrative review, just

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1 And then when they eventually do
 2 modify the operating permit, it will be an
 3 administrative amendment.
 4 Does that clarify?
 5 MR. LANDERS: Yes. Thank you.
 6 MR. FIELDER: And, Tom, this is Phil.
 7 I would like to just touch on that just a bit.
 8 We were focusing on that 10 tons, but there's
 9 actually four criteria under that section, and
 10 so I just want to make sure, again, that there
 11 could -- the four criteria has to be met and
 12 the 10 tons is one of them and so -- but,
 13 yeah, we're not taking away that allowance for
 14 projects that meet that.
 15 MR. RICHARDSON: This is Tom again.
 16 Just for clarification, there's four criteria.
 17 One of those criteria, you know, it can't be
 18 subject to PSD. It can't be a major
 19 modification under Title I. So basically the
 20 criteria cabin those projects down to what I
 21 would consider minor mods.
 22 So if you're a minor mod, and you
 23 have project emission increases less than --
 24 or equal to 10 tons per year, it could go
 25 forward without that NSR step, and the changes

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1 can be made immediately on submission of the
 2 application.
 3 MR. FIELDER: Yeah, this is Phil. I
 4 agree.
 5 CHAIRMAN LODS: What other -- Do we
 6 have more questions, Council?
 7 (No oral response.)
 8 CHAIRMAN LODS: So, Melanie, I do
 9 have one more question. I know with
 10 Subchapter 7 one of EPA's big beefs is they
 11 don't like our permanent exempt program. We
 12 don't have that piece of the Subchapter 7 open
 13 today, and so we're not going to send it down.
 14 Are they going to take a mile when we
 15 give them an inch when we give them this
 16 piece?
 17 MS. FOSTER: So, Laura, this is
 18 Melanie. Our plan, right now, is that we
 19 don't need to make any changes to those
 20 provisions of Subchapter 7. And, you're
 21 right, we have not submitted those, but our
 22 plan is that will be another package.
 23 And as Tom mentioned for this
 24 permitting package, we have the 110(L). I
 25 keep calling it the 110 (L)ish document that

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1 we justify it appropriately. Which again, we
 2 think we can based on the fact that we're in
 3 attainment. And they are willing to -- You
 4 know, they can't say they can approve it, but
 5 they're willing to accept our SIP package and
 6 work with us to get that to an approvable
 7 condition. Hopefully, the expectation is with
 8 no rulemaking required on that piece.
 9 CHAIRMAN LODS: Okay. Do we have
 10 any further comments or questions from the
 11 Council?
 12 DR. DELANO: Yes. This is Bob
 13 Delano. I want to be clear on something. Are
 14 we getting ready to vote on Chapter 4,
 15 Subchapter 7 and 8 collectively as a group,
 16 because I still have problems with ??
 17 I think that EPA could shove a minor
 18 source into a major. I do not think they're
 19 very flexible on these kinds of issues. And
 20 so if we vote okay on this, that gives them
 21 higher ground, and it gives us -- we have less
 22 actions that we can take if we approve this as
 23 written. That's all I have to say.
 24 CHAIRMAN LODS: Thanks. So I do
 25 want the Council to know one thing, depending

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1 he's created. But a full 110(L) would have to
 2 be submitted with it. And that's one of the
 3 things that we will also have to submit with
 4 our Subchapter 7.
 5 Essentially, we are going to tell
 6 them our belief that we've been operating the
 7 program with permit exempt for a number of
 8 years now. That we have maintained our
 9 attainment status for all the NAAQS, and,
 10 therefore, in operating the permit program in
 11 this way, we have not in any way failed to
 12 meet our obligation to protect the Ambient Air
 13 Quality.
 14 And so our plan is to package that up
 15 and send it also as a SIP package. It will
 16 probably be a separate SIP package just to
 17 keep things neat and clean. But it is our
 18 plan to have it all eventually approved.
 19 Because that's an outstanding issue and we
 20 don't want to leave that as a hole in our
 21 program either.
 22 And we have had discussions with
 23 Region 6 about that. They're aware that
 24 that's our plan. They've mostly have just
 25 discussed with us how to -- to make sure that

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1 on what we do today, either way, these
 2 cannot -- if we do approve it today, we won't
 3 be able to present them for approval at the
 4 Environmental Quality Board meeting in
 5 November. They won't -- because of issues
 6 with the public notice, is my understanding,
 7 and Melanie can correct me if I'm wrong.
 8 These will not go before the Environmental
 9 Quality Board until February at best.
 10 We have discussed going ahead and
 11 presenting it to the Environmental Quality
 12 Board in November to see if they have any
 13 questions or concerns, and so they
 14 understand it.
 15 I do have a question on that note,
 16 Melanie. If we were to say approve these
 17 today, and I present them in November to the
 18 EQB, and Steve Mason or one of the other
 19 members has substantive comments to the Rule,
 20 would we have an issue reopening it and being
 21 ready to do a revision in January or approval
 22 in February or is that going to throw the
 23 whole timeline off?
 24 MS. FOSTER: You're correct about our
 25 not being able to take them before the

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1 November Board, because of noticing,
 2 because they changed their location from DEQ
 3 to the Sandridge Building.
 4 I think if they did, if you
 5 presented -- if you passed them and you
 6 presented to them what we had passed, and that
 7 they had substantive comments, I think we
 8 would have the option, and I need Madison to
 9 weigh in here, but I think they wouldn't
 10 officially be remanding them, you know, back
 11 to us, because it wasn't on Notice before
 12 them. But the Council could potentially take
 13 up the issue if we notice before our January
 14 meeting.
 15 CHAIRMAN LODES: Okay.
 16 MS. MILLER: Melanie, are you
 17 saying -- This is Madison Miller. Are you
 18 saying that we would do an NRI and notice of
 19 rulemaking for the January meeting?
 20 MS. FOSTER: Yes.
 21 MS. MILLER: Okay. Yeah, that sounds
 22 right.
 23 CHAIRMAN LODES: I'm just -- I'm just
 24 concerned. We've had a lot of comments here.
 25 I know there's several members of the

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1 concerns are. We present it in November. And
 2 then if they have any changes or anything,
 3 we've got the rules open and ready to go for
 4 the January meeting. We make those revisions.
 5 So, hopefully, when we do a formal
 6 presentation in February, both our Council and
 7 that Board, is in good shape to pass these
 8 rules.
 9 MS. FOSTER: Yes, that is our
 10 thinking. We had not necessarily contemplated
 11 that they would actually have changes, that
 12 they would, you know, require. Because,
 13 again, for anybody that's not aware, our
 14 Council does have -- the Board cannot make
 15 changes like they can to the other Council
 16 rules. Our rules have to be approved by you
 17 all first, and then remanded, as Laura
 18 mentioned from the Board. They can't make a
 19 change at their Board meeting.
 20 So I hadn't contemplated that they
 21 would have anything that they actually wanted
 22 changed so, Laura, we can do a little research
 23 on that and make sure.
 24 But my thinking is that since it
 25 hasn't been officially approved, which is the

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1 Environmental Quality Board who, likely, may
 2 have comments as well, and I want to make sure
 3 we're not putting ourselves in a pickle. If
 4 we were to approve them today, and then
 5 present it; they have issues, and then we're
 6 trying to get it reopened and revised again in
 7 January, I didn't know -- because they can't
 8 officially remand it back to us, so I didn't
 9 know what that did from a legal proceedings.
 10 MS. FOSTER: So I would say my --
 11 probably as big if not bigger concern would be
 12 that we didn't present to them or brief them
 13 in some way, and we move forward to just
 14 presenting at February, which is our last
 15 Board opportunity before the legislative
 16 session, and then they have issues, and then
 17 we have no recourse to get it before the
 18 legislative session.
 19 CHAIRMAN LODES: And that's my
 20 fundamental concern as well, Melanie. So my
 21 thought was -- I guess my question was, are we
 22 better off continuing these to a future
 23 meeting? I present them in November, as we
 24 discussed, which I think is the best idea of
 25 all, because that way we know what their

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1 Board's duty, if you guys have just
 2 recommended it to the Board, that we could
 3 still potentially come back in January and
 4 make additional rulemaking changes, amend the
 5 previous action of the Council, but again, I'm
 6 starting to get off into a legal realm that I
 7 can't actually say for sure.
 8 CHAIRMAN LODES: This what I
 9 contemplated last night was are we going to
 10 get ourselves in a pickle? Because these
 11 rules could go before November and the EQB
 12 could not ask us a question. I've taken other
 13 rules and they've not had a question one.
 14 I've taken rules that I expected to go through
 15 smoothly, like our PBR rule for emergency
 16 generators, and I got a bunch of questions on
 17 that simple rulemaking. So, I mean, yes, it
 18 went through. I just don't want to -- and
 19 that's what I was going to say.
 20 I know you all have recommended we
 21 pass these today. We've got a lot of
 22 questions. There's questions on the 14 days
 23 versus others.
 24 Should we still try to move forward
 25 with passing these today before we've done any

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1 presentation to the EQB, or are we better off
 2 as a Council holding these and continuing it
 3 and then waiting to pass it until after we've
 4 had a pass at the EQB?
 5 MS. FOSTER: I will --
 6 MR. KEELE: This is Garry Keele.
 7 Melanie, go ahead.
 8 MS. FOSTER: No, no. Garry, you go
 9 ahead.
 10 MR. KEELE: I was going to say -- I
 11 mean, given sort of the nuance for the air
 12 group and the remand situation, it seems to me
 13 if we really believe, and it sounds reasonable
 14 to me that there are people on the Board that
 15 will have comments on this sort of
 16 wide-sweeping rule that we're talking about
 17 here, it seems more efficient to me to pass
 18 today. Let Laura present, get comments, and
 19 then do it all at one time so they don't -- so
 20 we don't get caught up in a remand situation,
 21 if that could slow us down.
 22 MR. LANDERS: When you say passed, do
 23 you mean not approve?
 24 MR. KEELE: That's what I would think
 25 today would be basically to just move it to

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1 vote to continue the meeting until January.
 2 MS. MILLER: Right. It looks like
 3 first a vote to continue the meeting or
 4 actually to adjourn the meeting to a later
 5 date. And then there would be a vote to
 6 postpone the vote on Chapter 4 and Chapter 100
 7 until that later date that is decided.
 8 MS. FOSTER: Hey, Madison, this is
 9 Melanie. Let me interject one other thing.
 10 If we want to continue this meeting, we can
 11 continue it with only the action -- the Agenda
 12 items that are on this meeting Agenda
 13 currently, which is the Chapter 4 and the
 14 Chapter 100, and we can set a date of your
 15 choosing today. And, Madison, please, correct
 16 me. We don't have to wait until January. So
 17 you could present in November, and we could
 18 continue this meeting until after that EQB
 19 meeting, and then not have to wait until our
 20 January meeting to leave everything until the
 21 last minute as well.
 22 That's correct, Madison?
 23 MS. MILLER: Yes. That -- Yeah,
 24 that's all correct. But one thing is the
 25 amendment to the Open Meetings Act expires on

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1 the next meeting, whatever that's called.
 2 MR. LANDERS: I agree. Laura, didn't
 3 you say move it to the November meeting?
 4 CHAIRMAN LODES: It would be to
 5 continue it to our January meeting, and let me
 6 present it at the November meeting.
 7 DR. DELANO: Yes.
 8 MR. LANDERS: I like that idea.
 9 MS. BOTCHLET-SMITH: Laura, before
 10 you ask for an action, you might clarify with
 11 Tom as to whether they're wanting to vote on
 12 these two rules separately, as in Chapter 4 in
 13 one action, and Chapter 100 in another just so
 14 we don't have to have any confusion there.
 15 MS. MILLER: And this is Madison
 16 Miller. I think if we are continuing the
 17 meeting, we don't want to vote on the rules
 18 today. We are continuing that vote until a
 19 later date, so we wouldn't actually vote on
 20 them yet.
 21 MR. CAVES: Yeah, this is Matt Caves.
 22 That's what I would believe is -- I mean, it's
 23 on the Agenda as possible action, we just take
 24 no action today.
 25 MS. STEGMANN: You would basically

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1 November 15th. So if we want to do a virtual
 2 meeting, as far as I know right now, we don't
 3 have any assurance that that virtual meeting
 4 option will be available to us. If we
 5 continue the meeting to a date that's after
 6 November 15th.
 7 MS. FOSTER: So just to be clear the
 8 Council -- I'm sorry. The EQB meeting is
 9 November 10th, the day before the Veterans's
 10 Day holiday. November 15th date, that the
 11 virtual meeting ends is Sunday the 15th. So
 12 there would be the possibility - I'm not
 13 saying this is viable for any of you - but
 14 there would be the possibility to continue the
 15 meeting to the 12th or 13th, after the EQB
 16 meeting, after the presentation, if we thought
 17 that was reasonable. And, again, it would
 18 still be held in this virtual environment in
 19 accordance with all open meetings
 20 requirements.
 21 CHAIRMAN LODES: So to make sure
 22 everybody's clear, this is my understanding.
 23 We can either (A), just vote to carry these
 24 rules forward to a future meeting, which the
 25 implication would be January, because that's

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1 what we would usually have done in the past.
 2 Or we can vote to continue this meeting for
 3 just these rules and do it in November.
 4 Are those the two options I'm looking
 5 at here?
 6 MS. FOSTER: If you're asking me
 7 Laura, I would say yes. Madison?
 8 CHAIRMAN LODES: I'm asking you too.
 9 MS. MILLER: Yes. Yeah. That makes
 10 sense to me.
 11 CHAIRMAN LODES: Okay. Gentlemen, we
 12 have the option as a Council to vote to either
 13 (A) pass these rules as they've been presented
 14 today with the revisions, (B) continue them to
 15 a subsequent -- carry them forward to a
 16 subsequent meeting, which would be, say,
 17 January, or continue this meeting and set a
 18 date of, as you said, what, November 11th or
 19 12th?
 20 MS. FOSTER: 12th or 13th. The 11th
 21 being a holiday, which would be a Thursday,
 22 November 12th or Friday, November 13th.
 23 MR. COLLINS: Hey, Laura, this is
 24 Gary Collins. So I just don't know -- I
 25 appreciate the potential conflict with the

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1 think that's acceptable.
 2 MR. LANDERS: I agree. If the Board
 3 has substantive comments or questions, I'd
 4 really like to hear those before January.
 5 MS. FOSTER: And this is --
 6 DR. DELANO: Yeah, I would too.
 7 MS. FOSTER: Apologies. This is
 8 Melanie. I just wanted to let you know that
 9 our deadline also for putting out a Notice of
 10 Rulemaking Intent, a proper Notice of
 11 Rulemaking Intent for the January Council
 12 meeting, is November 25th.
 13 So by November 25th we have to know
 14 whether we are putting these rules on our
 15 January Council meeting, to have proper
 16 Notice. Unless, of course, we did a
 17 continuance or whatever. But under normal
 18 Notice of Rulemaking Intent process, November
 19 25th is our deadline to get that to OAR.
 20 CHAIRMAN LODES: And that's what I
 21 was concerned with was that we were -- with
 22 the EQB meeting and the rest, we were pushing
 23 some deadlines and that's why I wanted to be
 24 clear on that. So, gentlemen, what are your
 25 thoughts?

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1 Open Meetings Act. I just don't know that the
 2 12th or 13th, looking at my calendar, really
 3 gives us enough time. If you truly get some
 4 feedback or some comments from the Board on
 5 the 10th, that's really going to be rushing to
 6 try to gather some type of, you know,
 7 evaluation of that, and then vote on the rule
 8 change. That's just my opinion.
 9 CHAIRMAN LODES: I mean, that's
 10 giving maybe 48 hours to have something up and
 11 ready to go based off the meeting, like you
 12 said.
 13 MS. MILLER: It does give us time to
 14 come back together and hear what the Board's
 15 thoughts were on what we're doing, and then it
 16 gives us time to notice a new rulemaking
 17 order, potentially, I guess, continue the
 18 existing rulemaking again to January.
 19 MR. COLLINS: And I'm fine with that,
 20 if that's the approach. That it's not
 21 intended to necessarily vote as a Council, but
 22 to hear, you know, the feedback from the Board
 23 meeting in November. And then, you know,
 24 continue with the vote at the next, you know,
 25 either scheduled or unscheduled meeting, I

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1 MR. COLLINS: Sounds like -- yeah.
 2 It sounds like you need a motion. I guess I'm
 3 struggling a bit. Maybe Madison can help us
 4 with what -- how this motion should be stated.
 5 MS. MILLER: Yes, I, of course, can.
 6 So motion to basically continue will say, I
 7 move that when this meeting adjourns, it
 8 adjourn to meet at X time on X date.
 9 And I think -- Okay. It's before
 10 November 15th, so you could say via Zoom with
 11 call-in information to be posted by DEQ at
 12 least 24 hours in advance.
 13 MR. COLLINS: So do we think the 12th
 14 or the 13th is acceptable? The 13th might
 15 give us a few more days from the 10th.
 16 MR. LANDERS: This is Steve Landers,
 17 I'm unavailable on 13th.
 18 CHAIRMAN LODES: Then we have the
 19 12th.
 20 DR. DELANO: I --
 21 MR. ELLIOTT: So this is Greg. I
 22 just want to make sure and clarify. If I
 23 understood if we did vote on these today, and
 24 they passed, it still is not going to go
 25 before the Air Quality Board in November,

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1 because there was insufficient rulemake -- I
 2 mean, Notice being able to be given. So
 3 really it can't be remanded to us, because
 4 it's not officially going to be on their
 5 docket because of the Noticing.
 6 So I guess what I'm asking is a vote,
 7 either voting certain parts of these up or
 8 down doesn't really matter, because they're
 9 not going to be acted on by the Board, right,
 10 in November?
 11 MS. FOSTER: That is correct, the
 12 Board cannot act on them in November.
 13 MR. ELLIOTT: So typically what we
 14 would do is we would -- if you would take a
 15 vote and if it passes, then it goes before
 16 them, but this time it won't but it's still
 17 going to be presented. So what is the harm in
 18 voting to pass or not pass these as they've
 19 been submitted today?
 20 MS. FOSTER: This is Melanie. From
 21 my perspective, and again, I'll let others
 22 speak to their potential issues, and then
 23 Madison may want to speak legally.
 24 But I do not see a concern, because I
 25 think we can still -- because they have not

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1 some kind of forum, until January. Or we
 2 continue the meeting until just after the
 3 November meeting of the EQB.
 4 MS. MILLER: You could always call a
 5 special meeting, you know, in between now and
 6 the January meeting, that wouldn't be a
 7 rulemaking meeting. But, again, you still
 8 wouldn't be able to vote on anything.
 9 CHAIRMAN LODES: We need a motion of
 10 some kind. We can go Motion to Continue this.
 11 MR. COLLINS: Who is not available on
 12 the 12th? I thought I heard somebody say they
 13 were not available that day either.
 14 (No oral response.)
 15 MR. COLLINS: Okay. Laura, I guess,
 16 I -- you know, and I'm willing to make a
 17 motion here. But I guess where I'm at with
 18 this is that we postpone action, taking action
 19 today, and continue the meeting via Zoom on
 20 November 12th and listen to the responses from
 21 what you hear from the Board and any follow-up
 22 that we have from DEQ.
 23 CHAIRMAN LODES: That's my
 24 inclination, but I need you all to make that
 25 recommendation or just say what you want to

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1 been officially approved by the Board, I think
 2 we can still make changes to them at the
 3 Council's discretion before they're given to
 4 the Board. So if there were a fatal flaw at
 5 the Board level, after Laura's presentation, I
 6 think you would still be within your
 7 authority, as long as we properly noticed, for
 8 a future meeting for us to bring them back
 9 before you with that flaw fixed.
 10 MR. ELLIOTT: Okay, that's what I
 11 thought. Thank you, Melanie.
 12 MS. MILLER: I would add to that a
 13 little bit. Yeah, Melanie, that's correct.
 14 It would foreclose any action until January.
 15 So, legally, I think that would be the only
 16 concern is that if you guys vote no today,
 17 then it shuts this down until January, but we
 18 would still be able to present to the EQB and
 19 get comment back from them.
 20 CHAIRMAN LODES: Yeah, if we vote --
 21 if we vote if we do it -- or, I guess, if we
 22 vote yes or no, we aren't going to have a
 23 another group meeting, as far as the Council
 24 is concerned, until January, so you all won't
 25 be able to hear what the EQB group says, in

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1 do.
 2 MS. MILLER: If anybody wants me to
 3 reread the motion real quick, I can do that.
 4 It is, I move that when this meeting
 5 adjourns, it adjourns to meet at 9:00 am on
 6 November 12th, 2020, via Zoom with call-in
 7 information to be posted at least 24 hours in
 8 advance.
 9 MR. COLLINS: There's no way I'll
 10 remember all that.
 11 MR. LANDERS: We'll make a motion
 12 to --
 13 CHAIRMAN LODES: Gary, it was
 14 e-mailed to you the other day.
 15 MR. COLLINS: Not this part.
 16 MS. STEGMANN: Just say so moved.
 17 MR. COLLINS: Yeah, so moved. I move
 18 that when we adjourn this meeting, that we
 19 adjourn to November 12th, that meeting will be
 20 noticed in advance. I'm sorry. Go ahead and
 21 say that again, Madison.
 22 MS. MILLER: Here's what we're going
 23 to do. I'm going to say it, and then Gary
 24 when you make the Motion, you say I move to do
 25 what Madison just said.

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1 The Motion is I move that when this
 2 meeting adjourns it adjourns to meet at 9:00
 3 am on November 12th, 2020, via Zoom, with
 4 call-in information to be posted by DEQ at
 5 least 24 hours in advance.
 6 MR. COLLINS: I move to what Madison
 7 has just stated.
 8 DR. DELANO: I second that.
 9 CHAIRMAN LODES: I have a motion and
 10 a second. Quiana, will you please call roll?
 11 MS. FIELDS: Mr. Caves?
 12 MR. CAVES: Yes.
 13 MS. FIELDS: Mr. Collins?
 14 MR. COLLINS: Yes.
 15 MS. FIELDS: Dr. Delano?
 16 DR. DELANO: Yes.
 17 MS. FIELDS: Mr. Elliott?
 18 MR. ELLIOTT: Yes.
 19 MS. FIELDS: Mr. Keele?
 20 MR. KEELE: Yes.
 21 MS. FIELDS: Mr. Landers?
 22 MR. LANDERS: Yes.
 23 MS. FIELDS: Mr. Privrat?
 24 MR. PRIVRAT: Yes.
 25 MS. FIELDS: Mr. Taylor?

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1 it.
 2 CHAIRMAN LODES: Madison, was that
 3 adequate since you didn't say Subchapter 7 and
 4 B?
 5 MS. MILLER: Yeah, I think that's
 6 fine.
 7 CHAIRMAN LODES: Okay then. Quiana,
 8 I have a Motion and a second. Will you please
 9 call roll?
 10 MS. FIELDS: Mr. Caves?
 11 MR. CAVES: Yes.
 12 MS. FIELDS: Mr. Collins?
 13 MR. COLLINS: Yes.
 14 MS. FIELDS: Dr. Delano?
 15 DR. DELANO: Yes.
 16 MS. FIELDS: Mr. Elliott?
 17 MR. ELLIOTT: Yes.
 18 MS. FIELDS: Mr. Keele?
 19 MR. KEELE: Yes.
 20 MS. FIELDS: Mr. Landers?
 21 MR. LANDERS: Yes.
 22 MS. FIELDS: Mr. Privrat?
 23 MR. PRIVRAT: Yes.
 24 MS. FIELDS: Mr. Taylor?
 25 MR. TAYLOR: Yes.

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1 MR. TAYLOR: Yes.
 2 MS. FIELDS: Ms. Lodes?
 3 CHAIRMAN LODES: Yes.
 4 MS. FIELDS: Motion passed.
 5 CHAIRMAN LODES: I would like to
 6 notice motion is passed when this meeting
 7 adjourns today. It will adjourn to meet on
 8 November 12th at 9:00 am.
 9 MS. BOTCHLET-SMITH: That concludes
 10 the hearing portion of today's meeting.
 11 MS. MILLER: Wait a second. We have
 12 one more -- We've got one more, we've got to
 13 do. Sorry.
 14 Now, we need to move to postpone
 15 Chapter 4 and Chapter 100 until November 12th.
 16 CHAIRMAN LODES: Correct. So, Gary,
 17 I sent you back the e-mail with the
 18 recommendations.
 19 MR. COLLINS: I'm looking at it right
 20 now. Hold on.
 21 CHAIRMAN LODES: Okay.
 22 MR. COLLINS: So I move that we
 23 postpone the vote for Chapters 4 and 100 until
 24 the November 12th meeting.
 25 MR. ELLIOTT: This is Greg. I second

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1 MS. FIELDS: Ms. Lodes?
 2 CHAIRMAN LODES: Yes.
 3 MS. FIELDS: Motion passed.
 4 MS. SMITH: Okay.
 5 MS. MILLER: Yes, it does. I should
 6 probably check with Madison first but, I
 7 believe, now that concludes the end of the
 8 hearing for today's meeting.
 9 (PROCEEDINGS ADJOURNED AT 12:50 PM.)
 10
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<p>1 COURT REPORTER'S CERTIFICATE Page 178 2 3 STATE OF OKLAHOMA: 4 COUNTY OF TULSA: 5 6 I, ELISE GRAYSON CRUCHON, CSR, for Tulsa County, 7 Oklahoma, CERTIFY: 8 1. The foregoing Zoom teleconference proceeding 9 was taken before me at the time and place stated in 10 the foregoing styled cause with the appearances as 11 noted; 12 2. Being a Court Reporter, I then reported the 13 teleconference proceeding in Stenotype to the best 14 of my skill and ability, and the foregoing pages 15 contain a full, true and correct transcript of my 16 said Stenotype notes then and there taken; 17 3. I am not in the employ of and am not related 18 to any of the parties or their counsel, and I have 19 no interest in the matter involved. 20 WITNESS MY SIGNATURE, this, the 22nd day of 21 October, 2020. 22 <i>Elise Cruchon</i> 23 E lise G rayson C ruchon 24 ELISE GRAYSON CRUCHON, CSR #1566 25</p>	

Meeting ID

Topic

Air Quality Advisory Council
93572491974 Meeting - October 21, 2020

Start Time

End Time

10/21/2020 8:32

10/21/2020 12:53

Name (Original Name)

User Email

14694906893

15803418204

15803418204

19185191920

19185870000

Adina Wiley# EPA Region 6

Adrienne.Burchett

Akly's iPhone

Alea Smith - Tetra Tech

Angie Burckhalter

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Programs (April Hathcoat)

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Austin Hawkins

Bethanne Edwards

Beverly Botchlet-Smith (DEQ)

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Gail George

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Greg	
Greg Elliott	
Heather Lerch	
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**DRAFT MINUTES
AIR QUALITY ADVISORY COUNCIL
November 12, 2020
Department of Environmental Quality
Oklahoma City, Oklahoma**

Official AQAC Approved
at June 16, 2021 meeting

Notice of Public Meeting – The Air Quality Advisory Council (AQAC) convened for its Regular (Virtual) Meeting at 9:00 a.m. on November 12, 2020. During the October 21, 2020, rulemaking hearing, the Council voted to continue said rulemaking hearing on certain proposed rules in Chapter 4 and Chapter 100 to today’s date, November 12, 2020. Notice of the meeting was forwarded to the Office of Secretary of State on October 21, 2020. The agenda was posted at the DEQ twenty-four hours prior to the meeting. Also, Ms. Beverly Botchlet-Smith acted as Protocol Officer and convened the hearings by the AQAC in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51 and Title 27A, Oklahoma Statutes, Sections 2-2-201 and 2-5-101 through 2-5-117. She entered the agenda and the Oklahoma Register Notice into the record and announced that if you wish to make a statement when it’s time for public comments, please use the raise-hand function and the host will identify you. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

MEMBERS PRESENT

Gary Collins
Robert Delano
Gregory Elliott
Garry Keele
Jeffrey Taylor
Laura Lodes

MEMBERS ABSENT

Matt Caves
Steve Landers
John Privrat

DEQ STAFF PRESENT

Kendal Stegmann
Beverly Botchlet-Smith
Cheryl Bradley
Madison Miller
Brooks Kirlin
Melanie Foster
Tom Richardson
Nancy Pearce
Quiana Fields

Chapter 4. Rules and Procedure

Subchapter 7. Environmental Permit Process [AMENDED]

Mr. Tom Richardson, Professional Engineer of the AQD, stated the Department is proposing to amend the air quality portions of Chapter 4, Subchapter 7 to better align the Department’s issuance process and public participation procedures for Part 70 source construction and operating permits with the New Source Review permit requirements and Title V operating permit requirements. Hearing no questions or comments by the Council or by the public, Mr. Elliott made a motion to postpone voting on Chapter 4, changes proposed by the DEQ, until after the presentation of Chapter 100 is concluded. Mr. Taylor made the second.

See transcript pages 6 - 21

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

Chapter 100. Air Pollution Control

Subchapter 1. Definitions [AMENDED]

Subchapter 7. Permits for Minor Facilities [AMENDED]

Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources [AMENDED]

Mr. Richardson stated that the Department is proposing to amend definitions and permitting requirements in Subchapters 1, 7 and 8 to better align the Department’s permit requirements and issuance process for construction and operating permits with the NSR permit requirements and Title V operation permit requirements and make other minor updates. Following a discussion by the Council and the public, Ms. Lodes called for a motion on Chapter 4. Mr. Elliott moved to approve Chapter 4 changes as proposed on November 12 and Mr. Keele made the second.

See transcript pages 22 - 64

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

Mr. Collins moved to approve Chapter 100 changes as proposed on November 12 and Mr. Elliot made the second.

See transcript page 65

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

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

See transcript page 65

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

New Business – None

Adjournment – Ms. Lodes called for a motion to adjourn. Mr. Taylor moved to approve and Dr. Delano made the second. The next scheduled regular meeting is on Wednesday, January 20, 2021 in Oklahoma City. Meeting adjourned at 10:18 a.m.

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

Transcript is an official part of these Minutes.

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

CONTINUED MEETING/HEARING AGENDA

AIR QUALITY ADVISORY COUNCIL

NOVEMBER 12, 2020 - 9:00 A.M.

VIRTUAL MEETING

REPORTED BY: TAMMIE SHIPMAN, CSR

Page 2

1 COUNCIL MEMBERS PRESENT:
2 MS. LAURA LODES, CHAIRMAN
3 MR. GARY COLLINS, VICE CHAIRMAN
4 DR. ROBERT DELANO
5 MR. GREGORY ELLIOTT
6 MR. JEFFREY TAYLOR
7 MR. GARRY KEELE
8
9 Also Present:
10 Ms. Quiana Fields, Secretary of Board and Council
11 Ms. Kendal Stegmann, Division Director
12 Ms. Beverly Botchlet-Smith, AD for AQD
13 Mr. Tom Richardson, Engineer for AQD's R&P
14 Mr. Phillip Fielder, Chief Engineer for AQD
15 Mr. Malcolm Zachariah
16 Ms. Christina Hagens
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Page 3

1 (Meeting called to order at 9:00 a.m.)
2 CHAIRMAN LODES: I'd like to call
3 today's meeting of the Air Quality Advisory
4 Council to order.
5 The first item, Quiana, will you please
6 call roll?
7 MS. FIELDS: Mr. Caves is absent.
8 Mr. Collins?
9 MR. COLLINS: Here.
10 MS. FIELDS: Dr. Delano?
11 DR. DELANO: Here.
12 MS. FIELDS: Mr. Elliott?
13 MR. ELLIOTT: Here.
14 MS. FIELDS: Mr. Keele?
15 MR. KEELE: Here.
16 MS. FIELDS: Mr. Landers is absent.
17 Mr. Privat is absent.
18 Mr. Taylor?
19 MR. TAYLOR: Here.
20 MS. FIELDS: Ms. Lodes?
21 CHAIRMAN LODES: Present.
22 MS. FIELDS: We have a quorum.
23 CHAIRMAN LODES: We will now enter the
24 public rule making portion of this.
25 Beverly.

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1 MS. BOTCHLET-SMITH: Good morning. I'm
2 Beverly Botchlet-Smith. I'm the Assistant
3 Director of the Air Quality Division and, as
4 such, I'll serve as the protocol officer for
5 today's hearings. The hearings will be convened
6 by the Air Quality Council in compliance with
7 the Oklahoma Administrative Procedures Act and
8 Title 40 of the Code of Federal Regulations,
9 Part 51, as well as the authority of Title 27A
10 of the Oklahoma Statutes, Section 2-2-201, and
11 Sections 2-5-101 through 2-5-117.
12 During the October 21st, 2020, rule
13 making hearing, the Council voted to continue
14 said rule making hearing on certain proposed
15 rules in Chapter 4 and Chapter 100 to today's
16 date, November 12th, 2020. Only agenda items
17 that were continued may be brought before the
18 Council during today's hearing.
19 Notice of the October 21st, 2020,
20 virtual hearings was advertised in the Oklahoma
21 Register for the purpose of receiving comments
22 pertaining to the proposed OAC 252, Chapter 4,
23 Chapter 100 and Chapter 110 rules, as listed on
24 the agenda, and will be entered into each record
25 along with the Oklahoma Register filing.

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1 Notice of the meeting for the
2 October 21st, 2020, meeting was filed with the
3 Secretary of State on August 25th of 2020. The
4 agenda and links access the continued virtual
5 meeting were posted on the website at least 24
6 hours prior to this meeting, pursuant to Title
7 25 of the Oklahoma Statutes section.
8 If you wish to make a statement today,
9 when it is time for public comment, please use
10 the "raise hand" function that is found either
11 at the bottom of your screen or under the
12 "participants," depending on your device. If
13 you're attending this meeting by calling in,
14 then you will raise your hand by pressing *9 on
15 your keypad.
16 When it is your turn to speak, the host
17 will identify you by announcing your displayed
18 name or the last four digits of your phone
19 number, and then your line will be unmuted. You
20 must first identify yourself by stating your
21 name and your affiliation, and then you'll have
22 three minutes to make your comment on the
23 record. When your time expires, you'll be
24 notified and your line will be muted as we move
25 on to the next person requesting to speak.

<p style="text-align: right; margin-bottom: 0;">Page 6</p> <p>1 At this time, we'll proceed with our 2 agenda, what is marked Agenda Item 3A. This is 3 Chapter 4, Rules and Practice of Procedure, and 4 Subchapter 7, Environmental Permit Practice, 5 Part 1 and Part 4. 6 The presentation for this will be given 7 by Mr. Tom Richardson of our staff. He is one 8 of our professional engineers. 9 Tom. 10 MR. RICHARDSON: Thank you, Beverly. 11 Good morning, Madam Chair, members of 12 the Council, ladies and gentlemen. I am Tom 13 Richardson, an engineer in the Air Quality 14 Division's rules and planning section. My 15 purpose today is to continue the discussion of 16 our plans to amend our state permitting rules, 17 the purpose of which is to better bring them 18 into alignment with federal rules and statutes. 19 In addition, I will review proposed changes to 20 the rule language, including updates offered 21 since the last Council meeting on October 21st. 22 Next slide. 23 Because today's meeting is a 24 continuation of the council meeting on 25 October 21st, I have retained the presentation</p>	<p style="text-align: right; margin-bottom: 0;">Page 7</p> <p>1 slides that I shared in October. If needed, we 2 can refer back to those slides during the 3 discussion. At this point, please skip forward 4 to slide 31 for the continuation of the 5 presentation. 6 We are now on slide 31. At this point 7 I would like to continue the presentation by 8 addressing some of the issues that came up for 9 discussion in October. Next slide. 10 Before addressing additional topics, I 11 would like to take a brief detour into the 12 contents of Oklahoma's State Implementation 13 Plan, or SIP, to take note of some of the 14 elements that are or not included in the SIP. 15 Next slide. 16 The next four slides show snapshots 17 from the table in Subpart LL of 40 CFR Part 52. 18 The first column in the table shows the state 19 citation. Notable on this slide, the 1.4.x 20 citation refers to Oklahoma State Health 21 Department rules that were submitted in the 22 1980s and early 1990s. None of these rules are 23 currently on the books in the old format. 24 Current air quality rules have migrated to Title 25 252 of the Oklahoma Administrative Code or OAC.</p>
<p style="text-align: right; margin-bottom: 0;">Page 8</p> <p>1 However, the old rules continue to undergird the 2 air quality permitting program. Next slide. 3 Slide 34 shows some of the sections 4 from Chapter 4, while identifying elements that 5 are not incorporated into the SIP. One notable 6 element not included in the SIP, Chapter 4, 7 Subchapter 7, Section 13(g) (4) is our current, 8 enhanced NSR process for Title V permits. 9 Section 32(a), (b), and (c) (1) allow 10 Tier I processing without public review for 11 minor facility permits, minor mods to Title V 12 permits, and other authorizations including 13 those for certain major source general permits. 14 These elements are not in the SIP. 15 Section 33(c) (4) refers to alternative 16 emission reduction authorizations which may be 17 subject to state SIP requirements. Next slide. 18 Appendix C to Chapter 4 provides a 19 table listing requirements for notices of 20 filing, administrative completeness review, and 21 other steps in the permitting process. The Tier 22 I column has not been incorporated into the SIP. 23 Next slide. 24 The second sentence in Chapter 100, 25 Subchapter 7, Section 2(a) points to the</p>	<p style="text-align: right; margin-bottom: 0;">Page 9</p> <p>1 procedure specified in Chapter 4. That sentence 2 is not in the SIP. Next slide. 3 We reached out to one of the managers 4 in the Air Division of the Florida Department of 5 Environmental Protection or DEP to ask about 6 their minor NSR public comment period and their 7 FESOP program. The Florida minor NSR program 8 does have a 14-day public review period, but 9 that component was withdrawn from the SIP 10 submission and now constitutes a SIP gap. 11 Florida's FESOP program was developed 12 primarily for facilities constructed prior to 13 the requirement for minor NSR permits. While 14 that program has been adopted into the Florida 15 SIP and there is a 14-day public review period 16 for Florida FESOPs, the manager said that their 17 FESOP program is, essentially, a dead program at 18 this time. For these reasons, we do not feel 19 that Florida's program works well as a template 20 for ours. Next slide. 21 After receiving feedback from the 22 Council and stakeholders on our plans concerning 23 current Subchapter 7 operating permits, we 24 reached out to EPA Region 6 for additional 25 feedback. This slide highlights three key</p>

<p style="text-align: right;">Page 10</p> <p>1 points.</p> <p>2 First, EPA legal staff concurs with the</p> <p>3 Department's belief that the current rules</p> <p>4 incorporated into the SIP provide a foundation</p> <p>5 for the federal enforceability of all current</p> <p>6 Subchapter 7 operating permits.</p> <p>7 Second, there are issues with some</p> <p>8 aspects of our program that could, should EPA</p> <p>9 choose to issue a finding of deficiency, imperil</p> <p>10 that status in the future. That element of risk</p> <p>11 will continue until the Department addresses all</p> <p>12 outstanding issues, both with regard to the</p> <p>13 minor NSR program and the Subchapter 7 operating</p> <p>14 permit program.</p> <p>15 Third, EPA staff has clarified that if</p> <p>16 DEQ submits and EPA approves a FESOP program in</p> <p>17 Oklahoma's SIP, that approval will be date</p> <p>18 forward. These points were echoed in a letter</p> <p>19 EPA issued on November 6. I will discuss that</p> <p>20 letter shortly. Next slide.</p> <p>21 After receiving feedback from EPA and</p> <p>22 after digesting the concerns raised by the</p> <p>23 Council and other stakeholders, we would like to</p> <p>24 share our future plans concerning the currently</p> <p>25 issued Subchapter 7 individual facility</p>	<p style="text-align: right;">Page 11</p> <p>1 operating permits. All current Subchapter 7</p> <p>2 operating permits will continue in their present</p> <p>3 status. There is no plan for a batch public</p> <p>4 notice of these permits.</p> <p>5 After adoption of the proposed rules,</p> <p>6 any new construction permit for a minor facility</p> <p>7 will go through traditional NSR. The subsequent</p> <p>8 operating permit will be a FESOP. If an owner</p> <p>9 or operator applies for a modification to an</p> <p>10 existing facility's permit, the draft of the</p> <p>11 modified operating permit will undergo public</p> <p>12 review and will be issued as a FESOP. If an</p> <p>13 owner or operator wishes to move to a FESOP, the</p> <p>14 owner or operator will need to submit an</p> <p>15 application for a permit modification. Next</p> <p>16 slide.</p> <p>17 Reasonable Possibility Language. We</p> <p>18 have received requests to incorporate the</p> <p>19 reasonable possibility language from 40 CFR</p> <p>20 52.21(r) into the Subchapter 8, Section 36.2(c)</p> <p>21 source obligation requirements. Our intention</p> <p>22 is to bring proposed language to the Council for</p> <p>23 consideration during the January meeting. Next</p> <p>24 slide.</p> <p>25 As I mentioned previously, EPA issued a</p>
<p style="text-align: right;">Page 12</p> <p>1 letter offering support of our work updating</p> <p>2 the rules and clarifying their position on a</p> <p>3 number of issues. At this time I would like to</p> <p>4 read the letter into the record.</p> <p>5 The letter is dated November 6th, 2020,</p> <p>6 and is addressed to Ms. Kendal Stegmann,</p> <p>7 Director of the Air Quality Division of the</p> <p>8 Oklahoma DEQ.</p> <p>9 Regarding clarifications to the</p> <p>10 Oklahoma SIP and part 70 Permit Program.</p> <p>11 Dear Ms. Stegmann. Next slide.</p> <p>12 The United States Environmental</p> <p>13 Protection Agency Region 6 is writing to express</p> <p>14 our continued support of the revisions to the</p> <p>15 Oklahoma Administrative Code (OAC) at Title 252,</p> <p>16 Chapter 4, Sections 4-7-13, 4-7-32, and 4-7-33</p> <p>17 and Chapter 100, Sections 100-1-3, 100-1-4,</p> <p>18 100-2-3, 100-7-1.1, 100-7-15, 100-7-18, 100-8-2,</p> <p>19 100-8-4, 100-8-5, 100-8-7.2, 100-8 and Appendix</p> <p>20 Q, as proposed on September 15, 2020. As stated</p> <p>21 in our October 15, 2020, comment letter, we</p> <p>22 believe the proposed revisions could address</p> <p>23 certain issues and areas of concern in the</p> <p>24 Oklahoma air permitting program which have been</p> <p>25 identified through several years of discussions</p>	<p style="text-align: right;">Page 13</p> <p>1 between the Oklahoma Department of Environmental</p> <p>2 Quality (ODEQ) and the EPA Region 6.</p> <p>3 The staff attended an October 21, 2020,</p> <p>4 meeting with the Oklahoma Air Quality Advisory</p> <p>5 Council (AQAC) in support of the proposed</p> <p>6 revisions. The AQAC did not approve the</p> <p>7 proposed revisions at this meeting; instead</p> <p>8 expressing significant concerns and doubts about</p> <p>9 the necessity of the proposed revisions.</p> <p>10 This letter provides clarification of</p> <p>11 the scope of the existing Oklahoma construction</p> <p>12 permit program in the Oklahoma State</p> <p>13 Implementation Plan (SIP) and the EPA-approved</p> <p>14 Oklahoma Part 70 air permitting program and</p> <p>15 highlights the necessity for the proposed</p> <p>16 revisions. We have several pending Oklahoma SIP</p> <p>17 submittals and revisions to the Oklahoma Part 70</p> <p>18 air permitting program that we have not yet</p> <p>19 acted upon, choosing to work with the ODEQ in an</p> <p>20 effort to develop State regulatory solutions</p> <p>21 designed to meet federal Clean Air Act (CAA)</p> <p>22 requirements for SIPs and Title V programs.</p> <p>23 If an acceptable regulatory solution is</p> <p>24 not adopted by Oklahoma, the EPA will proceed</p> <p>25 with actions on the pending submittals and</p>

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1 revisions consistent with our CAA obligations.
2 Enclosed are several clarifications regarding
3 the Oklahoma SIP and the Oklahoma Part 70 air
4 permitting program, as well as the impact of the
5 proposed regulatory revisions. Next slide.
6 We hope the enclosed clarifications
7 will be useful to the ODEQ in its effort to
8 support the changes necessary to address our
9 mutual concerns in the rulemaking process.
10 Should you have questions, please reach out to
11 me directly at 214-665-7593, or please feel free
12 to contact Ms. Cynthia Kaleri at 214-665-6772.
13 Sincerely, David F. Garcia, P.E.,
14 Director of the Air and Radiation Division.
15 Please note the enclosure mentioned in
16 this letter. I will not be reading it into the
17 record; it is available for review in the
18 meeting packet and on the web. Next slide.
19 Our Path Forward. We posted an updated
20 version of the proposed rule changes on the web
21 on November 9. As I go through the proposed
22 changes to the rule text, I plan to show the
23 date on which a particular change was first
24 presented and whether the rule was updated
25 recently.

Page 16

1 and new changes will be labeled as such.
2 The changes shown on this slide include
3 an additional reference to the enabling statute
4 and new language first presented today, intended
5 to clarify that only Tier II and III
6 applications require public notices in the
7 newspaper. Next slide.
8 The changes shown on this slide state
9 that enhanced NSR may only be used to modify an
10 existing Title V permit. With these changes in
11 place, the initial Title V permit will require
12 Tier II public review. Next slide.
13 EPA requires us to pick one consistent
14 noticing method for public review. New
15 paragraph 6 states that our official method will
16 be publication on the web. Oklahoma Statute
17 also requires public noticing of various
18 permitting actions and requires public notices
19 to be published in the newspaper. Paragraph 6
20 will have no effect on those requirements.
21 New paragraph 7 states that all new
22 requirements for Tier I public review will be
23 noticed exclusively on the web. These
24 permitting actions are not required by Oklahoma
25 Statute to be published in the newspaper. The

Page 15

1 But before I start going over the
2 details, as I have done previously, I would like
3 to acknowledge the work Brooks Kirlin has done
4 as the primary author of the changes to the
5 rules we are presenting.
6 Thank you, Brooks.
7 And I would also like to thank Adina
8 Wiley and her colleagues from EPA Region 6 for
9 their input and collaboration.
10 I would also like to note, in advance,
11 that staff will recommend that Council adopt the
12 proposed rule changes shared today. With that,
13 we would like to turn to the specific rule
14 language, starting with Chapter 4. Next slide.
15 If you are not able to view the
16 presentation, please turn in your packets to the
17 proposed amendments to the rule text in Chapter
18 4, Subchapter 7. Next slide.
19 Please note that, in this presentation,
20 much of the rule language not being changed has
21 been omitted. The complete text of each section
22 is included in the rule text documents included
23 in the packet and on the web. In addition, the
24 slides have been marked to show the date
25 particular rule changes were first presented,

Page 17

1 highlighted changes were made to properly cite
2 the statute. Next slide.
3 Paragraph 8 allows minor source
4 facilities to use the FESOP enhanced NSR process
5 to incorporate requirements from a minor NSR
6 permit, which went through public and EPA
7 review, into an existing FESOP through a
8 Subchapter 7 operating permit modification
9 without additional public or EPA review. If a
10 minor source facility does not already have a
11 FESOP, it will need to go through traditional
12 NSR for the first issuance of a FESOP.
13 Paragraph 9 states that DEQ will post
14 draft Tier I individual minor source operating
15 permits on the web for public review. The
16 highlighted text clarifies that, if the facility
17 already has a FESOP and the construction permit
18 follows the FESOP enhanced NSR process, the
19 modified FESOP need not go through another round
20 of public review.
21 Paragraph 10 states that additional
22 notices may be published on the web at the
23 Director's discretion. Next slide.
24 The deletions in Section 32, Air
25 quality applications - Tier I, paragraph (b)

Page 18

1 codify the requirement that initial Title V
 2 permits must undergo Tier II public review.
 3 Enhanced NSR will no longer be available for the
 4 initial Title V operating permit. Next slide.
 5 The modified language in subparagraph
 6 (A) notes that some Subchapter 8 minor NSR
 7 permits issued after adoption of these rules
 8 will undergo Tier I public review on the web.
 9 Additional changes allow these minor NSR permits
 10 to use enhanced NSR. Next slide.
 11 The added text shown in subsection (a),
 12 paragraph (2), formally incorporates the
 13 requirement for a permit incorporating limits to
 14 move the facility from a Title V permit to a
 15 synthetic minor permit to go through Tier II
 16 public review. The changes to subsection (b)
 17 codify the change in policy requiring an initial
 18 Title V permit to undergo Tier II public review.
 19 Next slide.
 20 That concludes my presentation on our
 21 proposed changes to Chapter 4.
 22 I would like to restate the staff's
 23 recommendations:
 24 AQD staff recommends the Council pass
 25 Chapter 4. However, given the

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1 CHAIRMAN LODS: I don't have any
 2 questions at this time. Does the Council have
 3 any questions?
 4 MR. COLLINS: I do not.
 5 DR. DELANO: I don't either.
 6 MS. BOTCHLET-SMITH: So Laura, I guess
 7 the next step here is either a motion to pass or
 8 a motion to postpone until you hear the
 9 remainder of his presentation.
 10 CHAIRMAN LODS: Council, what would
 11 you all like to do? Should we go ahead and pass
 12 Subchapter 4 as is or do we want to hear how it
 13 interrelates with Subchapter 100 -- or sorry,
 14 Chapter 4, and see how it relates with Chapter
 15 100?
 16 MR. KEELE: This is Garry. I'd like to
 17 hear how it relates.
 18 CHAIRMAN LODS: Okay. And I believe
 19 -- go ahead.
 20 MR. ELLIOTT: This is Greg Elliott. I
 21 would like to make a motion to postpone voting
 22 on approval of Subchapter 4 until after the
 23 presentation on Subchapter 100.
 24 MS. BOTCHLET-SMITH: Do you want to
 25 correct your motion? Because it's Chapter 4.

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1 interrelatedness of Chapter 4 with the
 2 Chapter 100 proposed changes that
 3 follow, it may behoove the Council to
 4 vote to postpone to discussion by the
 5 Council and comment from the public
 6 until after I have completed my
 7 Chapter 100 presentation.
 8 Thank you. I will now ask Beverly
 9 Botchlet-Smith, our protocol officer for today's
 10 meeting, to discuss the next steps in the
 11 process. Thank you, Beverly.
 12 MS. BOTCHLET-SMITH: Thanks, Tom. To
 13 ensure the public is able to listen to the
 14 Council's deliberation on this rule, all
 15 questions from the Council will be made audibly
 16 and chat features in Zoom will not be used. AQD
 17 is recommending the discussion by the Council
 18 and the public be postponed, along with a
 19 potential vote of Chapter 4, until after Tom
 20 concludes his full permit rulemaking
 21 presentation.
 22 Do we have questions by the Council or
 23 discussion? Do you want to make a motion to do
 24 this? And please remember to unmute yourself.
 25 Laura?

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1 MR. ELLIOTT: Chapter.
 2 MS. BOTCHLET-SMITH: We all misspeak on
 3 that.
 4 MR. ELLIOTT: Sorry. I would like to
 5 make a motion to postpone voting on Chapter 4,
 6 changes proposed by the DEQ, until after the
 7 presentation of Chapter 100 is concluded.
 8 MR. TAYLOR: I'll second that.
 9 MR. KEELE: The is Garry Keele. I'll
 10 second, yea.
 11 CHAIRMAN LODS: Quiana, I have a
 12 motion and a second. Will you please call roll?
 13 MS. FIELDS: Mr. Collins?
 14 MR. COLLINS: Yes.
 15 MS. FIELDS: Dr. Delano?
 16 DR. DELANO: Yes.
 17 MS. FIELDS: Mr. Elliott?
 18 MR. ELLIOTT: Yes.
 19 MS. FIELDS: Mr. Keele?
 20 MR. KEELE: Yes.
 21 MS. FIELDS: Mr. Taylor?
 22 MR. TAYLOR: Yes.
 23 MS. FIELDS: Ms. Lodes?
 24 CHAIRMAN LODS: Yes.
 25 MS. FIELDS: Motion passed.

<p style="text-align: right;">Page 22</p> <p>1 MS. BOTCHLET-SMITH: Okay. At this 2 time, we'll proceed with what's marked as Agenda 3 Item 3(b) on the hearing agenda. This is 4 Chapter 100, Air Pollution Control, Subchapter 5 1, Definitions; Subchapter 7, Permits for Minor 6 Facilities; and Subchapter 8, Permits for Part 7 70 sources and major New Source Review, NSR 8 sources. 9 And, once again, Mr. Tom Richardson 10 will give the staff presentation. 11 Tom. 12 MR. RICHARDSON: Thank you, Beverly. 13 We are now on slide 58. If you are not 14 able to follow the presentation, please turn in 15 your packets to the proposed amendments to the 16 rule text in Chapter 100, Subchapters 1, 7 and 17 8. Next slide. 18 This slide shows the definitions for 19 New Source Review or NSR and NSR permit that 20 will be added to Subchapter 1. And NSR is added 21 to the list of acronyms. The version initially 22 posted showed the definition of Title V permit 23 to be underlined. That was an error. That 24 definition was added in the rule changes that 25 became effective September 15, 2020. We are not</p>	<p style="text-align: right;">Page 23</p> <p>1 proposing any changes to this definition. Next 2 slide. 3 The next set of slides present changes 4 that we are proposing to Subchapter 7. The tons 5 per year or TPY acronym should be upper case. 6 This slide shows this correction. Next slide. 7 On this slide, new definitions for 8 FESOP and FESOP enhanced NSR permit process are 9 added to Section 1.1. All Subchapter 7 minor 10 source operating permits issued after these 11 rules become operative will be considered to be 12 FESOPs. 13 FESOP enhanced NSR, in Subchapter 7, is 14 similar to enhanced NSR in Subchapter 8, in that 15 it allows changes from an NSR permit, which has 16 undergone public review and EPA review, to be 17 incorporated into an existing FESOP without 18 undergoing another round of public and EPA 19 review. The difference is that in FESOP 20 enhanced NSR there is no 45-day EPA review 21 period. EPA is given an opportunity to review 22 the NSR permit along with the public. The 23 highlighted text clarifies that it is the draft 24 version of the permit that is subject to review. 25 Next slide.</p>
<p style="text-align: right;">Page 24</p> <p>1 Again, the acronym TPY should be upper 2 case. Next slide. 3 This slide shows two additional 4 definitions added to Subchapter 7: Replacement 5 unit and traditional NSR process. Next slide. 6 This slide shows changes to the 7 requirements for a construction permit under 8 Subchapter 7. The first change clarifies that 9 it is modification of a unit resulting in a 10 permitted emissions increase greater than five 11 tons per year that triggers the requirement to 12 get a Subchapter 7 construction permit. 13 The second change exempts replacements 14 units from the requirement for a construction 15 permit, as long as the replacement unit does not 16 require a change in an emission limit. In spite 17 of this exemption, the permittee will be 18 required to notify the Department within 15 days 19 of startup of the replacement unit or as 20 specified in the permit. A typo was corrected, 21 thanks to Stakeholder feedback. Next slide. 22 Subsection (e) was altered to conform 23 with duty to comply language added later for 24 operating permits. Next slide. 25 Subsection (f) language includes</p>	<p style="text-align: right;">Page 25</p> <p>1 stating that the NSR permits do not technically 2 expire. They are superseded by later permits. 3 However, the authority to construct under an NSR 4 permit will expire under certain circumstances, 5 primarily over long delays in the initiation of 6 construction. In addition, problematic null and 7 void language has been removed. 8 Subsection (h) was added to clarify 9 when the authorization to construct expires. 10 The correction noted was a formatting change. A 11 hard return was removed after the word modify, 12 because there was no formatted paragraph to 13 follow, just continued text. Next slide. 14 Section 18, Subsection (a), paragraph 15 (2) states that the requirement to apply for an 16 operating permit or a modified operating permit 17 is triggered 100 days after startup of any 18 emission unit authorized by a construction 19 permit. The highlighted text shows a correction 20 of a typo. A space was added between "a" and 21 "100." 22 Subsection (d) adds mention of the 23 three types of operating permit available to 24 better mirror the language related to types of 25 construction permits.</p>

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1 Subsection (f), paragraph (3) states
 2 that facilities that already have FESOPs may use
 3 the FESOP enhanced NSR process for additional
 4 modifications to the facility. Next slide.
 5 The duty to comply language for
 6 operating permits was added based on input from
 7 EPA Region 6. Next slide.
 8 The next set of slides show proposed
 9 changes to Subchapter 8. This slide shows the
 10 new definitions which will be added to
 11 Subchapter 8: Enhanced NSR process, traditional
 12 NSR process.
 13 As we have noted a number of times now,
 14 the enhanced NSR process is the process we have
 15 been using in Oklahoma for years. However, we
 16 now require a facility to already have a Title V
 17 operating permit to be eligible for the enhanced
 18 NSR process.
 19 The traditional NSR process will also
 20 be provided as an option. Under traditional
 21 NSR, EPA and the public share a 30-day review
 22 window for an NSR permit. Under traditional
 23 NSR, when those requirements are incorporated
 24 into the Title V operating permit, there is both
 25 a 30-day public and a 45-day EPA review period,

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1 increases will be determined. We are basing our
 2 approach on EPA's calculation method in the
 3 Tribal NSR Rule. We intend to offer guidance to
 4 clarify how we will apply that approach. Next
 5 slide.
 6 The deletions on slide 71 and 72 were
 7 made based on stakeholder request. The deleted
 8 rule text set up the original schedule for the
 9 submission of the initial Title V applications
 10 for facilities that were operating and became
 11 subject to Title V permitting requirements when
 12 the program was established. Next slide.
 13 Slide 72 shows additional deletions,
 14 but also text that will be retained to establish
 15 the ongoing requirement for any facility that
 16 slipped through unnoticed to abide by this
 17 requirement, or for a facility that becomes
 18 newly subject and will need to obtain a Title V
 19 operating permit. Next slide.
 20 New Subsection (c) states that the
 21 enhanced NSR process is available for facilities
 22 with existing Title V permits. Next slide.
 23 In Section 5, Subsection (d), paragraph
 24 (3), language will be added requiring the
 25 applicant to choose between traditional NSR and

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1 except for minor modifications, which have no
 2 public review requirement when the operating
 3 permit is modified. The traditional NSR process
 4 speeds up issuance of the NSR permit, compared
 5 to the enhanced NSR process, but there is
 6 another round of public review, except for minor
 7 mods, and EPA review when the requirements are
 8 incorporated into the Title V permit. Next
 9 slide.
 10 The additional text in subsection (a)
 11 makes significant changes to the requirements
 12 for minor NSR permits under Subchapter 8. The
 13 "or change in the method of operation" language
 14 brings our requirement for a construction permit
 15 more formally in line with EPA's requirements
 16 for New Source Review or NSR.
 17 The new language in subparagraph (B),
 18 unit (iv) states that a construction permit will
 19 be required for a minor modification to allow a
 20 physical change or a change in the method of
 21 operation that results in a potential emissions
 22 increase of more than 10 tons per year of any
 23 regulated air pollutant. The reference to the
 24 calculation approach in 40 CFR Section 49.153(b)
 25 is meant to clarify how project emission

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1 enhanced NSR when applying for a major source
 2 construction permit, if the facility already has
 3 a Title V operating permit. However, a facility
 4 may change that initial request up to the date
 5 that the notice is published. Next slide.
 6 The changes to subsection (a),
 7 paragraph (1), subparagraph (e), clarify that an
 8 administrative amendment may be used to
 9 incorporate applicable requirements from a Tier
 10 II construction permit into an existing, though
 11 not an initial, Title V permit. Next slide.
 12 Changes shown to Section 8, subsection
 13 (f), clarify the types of permits that undergo
 14 public review, have comments addressed, and then
 15 are submitted to EPA for the 45-day review
 16 period. Paragraphs (1) and (2) refer to the
 17 initial and modified Title V operating permits
 18 under traditional NSR. Paragraph (3) refers to
 19 construction permits undergoing enhanced NSR,
 20 where EPA performs a review of both the NSR
 21 issues and the procedural and compliance
 22 requirements under the Title V operating permit
 23 program at the same time. The formatting update
 24 changed paragraphs (A), (B) and (C) to
 25 paragraphs (1), (2) and (3).

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1 Subsection (g) provides the additional
 2 clarification of the requirement that the DEQ
 3 notify EPA and any affected state if the DEQ
 4 refuses to accept recommendations submitted
 5 during the review period.
 6 Subsection (h) clarifies that, if the
 7 45-day EPA review period expires and EPA has not
 8 submitted comments, or if EPA provides notice to
 9 the DEQ that EPA has no objection to either a
 10 Title V permit or a permit undergoing enhanced
 11 NSR, the DEQ will issue the permit unless an
 12 administrative hearing has been requested
 13 following DEQ Tier III procedures. Next slide.
 14 Subsection (i), paragraph (1) clarifies
 15 that DEQ may not issue a Title V permit to which
 16 EPA has objected during the 45-day EPA review
 17 period. The rules governing such an objection
 18 are specific to Title V operating permits.
 19 Because enhanced NSR provides EPA with an
 20 opportunity to review both the NSR permit and
 21 the procedural and compliance requirements under
 22 the Title V operating permit program, EPA may
 23 issue an objection with regard to the Title V
 24 permit modification which would otherwise be
 25 issued as an administrative amendment.

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1 during today's meeting. Thank you.
 2 Once again, I will ask Beverly
 3 Botchlet-Smith to discuss the next steps in the
 4 process.
 5 MS. BOTCHLET-SMITH: Thank you, Tom.
 6 Again, just for the record, I would
 7 like to mention, to ensure the public is able to
 8 listen to the Council's deliberation on this
 9 rule, all questions from the Council will be
 10 made audibly. Chat features in Zoom are not
 11 being used.
 12 So we will start, at this point, with
 13 any questions or discussions from the Council on
 14 either Chapter 4 or Subchapter 100. And I would
 15 ask to, please --
 16 I don't think you picked that up. I
 17 hit mute. Please remember to unmute yourself
 18 when you speak.
 19 CHAIRMAN LODES: Do we have any
 20 questions or comments from the Council?
 21 MR. KEELE: So this is Garry Keele. So
 22 if I understand it right, instead of looking
 23 backwards now, we're only looking forwards, is
 24 that correct, on these rule changes?
 25 MR. RICHARDSON: Yes. So there was

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1 Paragraph (5) requires the DEQ to
 2 consult with the EPA to try to resolve issues
 3 associated with any objection. The new language
 4 allows the DEQ to, at the Director's discretion,
 5 issue an NSR permit under the traditional NSR
 6 process in spite of an objection EPA has made
 7 during the 45-day review of the permit under the
 8 enhanced NSR process. The DEQ would still need
 9 to work with EPA to resolve the dispute prior to
 10 the issuance of the Title V operating permit
 11 modification. Next slide.
 12 The language added to subsection (j)
 13 clarifies that the petition process is
 14 associated with the issuance of the Title V
 15 operating permit. There are other
 16 administrative remedies available to parties who
 17 object to an NSR permit, but the petition
 18 process is exclusively associated with 40 CFR
 19 Part 70, the Title V operating permit process.
 20 Next slide.
 21 That concludes my presentation on our
 22 proposed changes to Chapter 100, Subchapters 1,
 23 7 and 8. Please note that the staff is
 24 recommending that the Council adopt the proposed
 25 rule changes to both Chapter 4 and Chapter 100

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1 quite a bit of discussion, especially with
 2 regard to Subchapter 7 operating permits that
 3 are currently in place, and we had initially
 4 discussed the option of batch public noticing
 5 all of those, to convert those to FESOPs.
 6 Based on the feedback that Council and
 7 the various stakeholders provided, we decided
 8 that that isn't the best way to go. And so
 9 instead what we're planning on doing is from
 10 date forward all new permits will follow that
 11 FESOP process, our existing subchapter 7
 12 operating permits will continue in that state.
 13 So these rules will be forward looking. The
 14 existing permits will rely on the existing
 15 justification and the aspects of the permitting
 16 rules that are currently in the SIP to create
 17 the federal enforceability of those
 18 requirements. So any new permitting action and
 19 new construction permit will go through the
 20 traditional NSR process, and that will require
 21 public review.
 22 And then the operating permit will
 23 undergo public review, and then that will result
 24 in the creation of a FESOP. After that, any
 25 additional construction may go through FESOP

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1 enhanced NSR. And then all existing permits
 2 will continue as they are, unless there's a
 3 modification of the permit, either through the
 4 construction process or a direct modification to
 5 the operating permit.
 6 MR. KEELE: Okay. So that looks like
 7 we'll just address any existing permits as they
 8 come up for any changes that they may want to
 9 make at their facilities.
 10 MR. RICHARDSON: Yes, that's exactly
 11 right.
 12 MR. KEELE: Okay. So with that
 13 being -- all that being said, what is the
 14 agency's view of the existing facilities?
 15 Obviously, it would come to some sort of
 16 decision to just go forward. Is there a view
 17 that those permits are kind of hanging out in
 18 the wind, not being particularly protected? Or
 19 are they considered to be okay under previous
 20 versions of the SIP approvals?
 21 MR. RICHARDSON: The latter. We
 22 believe that they are federally enforceable;
 23 that they are undergirded by the existing state
 24 rules and the components that are incorporated
 25 into the SIP. And we have received feedback

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1 permits issued pursuant to the EPA approved SIP
 2 are federally enforceable.
 3 So you might take a look at that and
 4 see how that -- what comfort level, obviously,
 5 that gives to everyone. So we're appreciative
 6 of EPA putting that thought and belief into
 7 their support letter.
 8 And I'll also mention that we didn't
 9 change anything in the rules that were presented
 10 to you about this process. Because, as we said,
 11 the rules themselves don't speak to this
 12 process, the rules themselves only put the FESOP
 13 in place, in the future. And so addressing the
 14 existing individual operating permits under
 15 Subchapter 7 is just a process that we have to
 16 do kind of outside of the rules, to shore it up
 17 with what the rules are going to say.
 18 MR. KEELE: Yeah. Thank you, Melanie.
 19 I appreciate that. I have read it. It does
 20 look -- I appreciate the clarifications that
 21 were put into the letter from EPA, but it's also
 22 useful to hear you guys explain what you think
 23 about it. So I appreciate that. That's it for
 24 me.
 25 CHAIRMAN LODES: Do existing minor

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1 from EPA that those permits are considered to be
 2 federally enforceable. So we believe that they
 3 are -- that they're undergirded by both statute
 4 and state rules in the SIP.
 5 The only possible concern we have in
 6 the future, is that should EPA move in some way
 7 to imperil that status, we would then need to
 8 address those issues. But unless something is
 9 done affirmatively, unless a step is taken that
 10 would -- that would work to undermine that
 11 status, those permits will continue to be
 12 protective of the environment and protective of
 13 the facilities that have those permits.
 14 MR. KEELE: Thank you.
 15 MR. FOSTER: Garry, this is Melanie
 16 Foster. I would just also add, Tom did not read
 17 all of the EPA enclosure into the record, as he
 18 stated. And one of the particular things that
 19 they addressed in their enclosure is status of
 20 existing Subchapter 7 operating permits. And in
 21 it they mentioned that they acknowledge that
 22 many aspects, you know, of the State operating
 23 permit program, under subchapter 7, have been
 24 approved into the Oklahoma SIP, and that they
 25 generally believe that terms and conditions and

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1 sources -- I know we're not going to do a batch,
 2 but if they want to go ahead and put their
 3 permit through a public notice process now so
 4 that they have a FESOP down the road, that is
 5 something that we can do?
 6 MR. RICHARDSON: Yes. So, Laura, you
 7 know initially we planned on just doing them in
 8 large groups. Our current thinking is that the
 9 permit will stay in its present state, unless
 10 the applicant submits a complete application for
 11 modification. So that will be a process that
 12 would have to be initiated by the
 13 owner/operator. We will not initiate that
 14 process ourselves.
 15 CHAIRMAN LODES: Okay.
 16 MS. BOTCHLET-SMITH: Any other
 17 questions from the Council?
 18 DR. DELANO: Well, I, for one, like
 19 what you've done. I think that's an
 20 improvement, and I think that way you don't
 21 catch anybody by surprise. I commend you.
 22 MS. STEGMANN: Thank you.
 23 MS. BOTCHLET-SMITH: We'd like to give
 24 the public an opportunity to comment on both
 25 Chapter 4 and Subchapter 100. So at this point,

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1 if the public does have any questions, we want
 2 to remind you to do so, you should use the
 3 "raise hand" function on your device or press *9
 4 on your telephone keypad.
 5 And as a reminder, the host will unmute
 6 your line when it's your turn to speak. You may
 7 also need to unmute yourself using the
 8 microphone icon or *6 on your keypad. I'd also
 9 ask for you to remember to state your name and,
 10 please, also state your affiliation before
 11 beginning your comment. And you may be asked to
 12 actually spell your name for the record.
 13 The host can now proceed with calling
 14 on anyone from the public wishing to comment.
 15 Christina or Malcolm?
 16 MS. HAGENS: Yes. Currently we do not
 17 have any hands raised, so we will give people a
 18 few seconds to navigate to that in case they're
 19 not familiar with the controls.
 20 So as Beverly stated, the "raise hand"
 21 feature can be found either at the bottom of the
 22 participant's tab once you open that up, or it
 23 can be found under "more meeting" settings at
 24 the top right-hand corner of your screen,
 25 depending on your device.

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1 conclude your comment?
 2 MS. BURCHETT: Yes.
 3 MS. HAGENS: All right. Thanks.
 4 CHAIRMAN LODS: Tom.
 5 MR. RICHARDSON: Sorry. I was trying
 6 to remember whether we -- whether it's a respond
 7 to public comment is the same as the process as
 8 responding to Council.
 9 So the question is, would there be fees
 10 associated with the NSR process going forward
 11 for a facility?
 12 So all changes to facilities would use
 13 our existing fee structure. So if a facility
 14 comes in with new construction, that application
 15 would be very similar, the fees would be the
 16 same and it would be processed. The only
 17 difference is that the construction permit would
 18 go through this 30-day public review on the web.
 19 For an existing Subchapter 7 operating
 20 permit, where you're modifying the operating
 21 permit itself, where you're not going through
 22 the NSR process as the first step, an example
 23 would be -- I think Sean Walker brought up the
 24 idea of a through-put increase. If you wanted
 25 just to increase the through-put for an existing

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1 I'm still not seeing any hands raised.
 2 We'll give it a few more seconds.
 3 MR. ZACHARIAH: There are also keyboard
 4 shortcuts of Alt Y or option Y, depending on
 5 your device --
 6 MS. HAGENS: I see one hand raised from
 7 Adrienne Burchett.
 8 So, Adrienne, I will ask to unmute you,
 9 and you will state your name and affiliation for
 10 the record, and then we will turn the timer on
 11 for three minutes. You should now be unmuted.
 12 MS. BURCHETT: Yes, this is Adrienne
 13 Burchett, A-D-R-I-E-N-N-E, B-U-R-C-H-E-T-T. I
 14 have one question regarding -- I'm with
 15 Altamira. I apologize -- regarding Laura's
 16 comment, and kind of -- and the response for
 17 Minor Sources subject to Subchapter 7.
 18 In the event that they wanted to
 19 initiate a modification that -- with an NSR
 20 review period, would the same fees apply if a --
 21 if, I guess, a physical change wasn't made, but
 22 they wanted to go ahead and initiate the public
 23 and EPA review process, the NSR review process?
 24 Thank you.
 25 MS. HAGENS: Thank you. Does this

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1 facility without making any physical changes,
 2 that could be done through a modification of the
 3 operating permit. But unless a facility already
 4 has a FESOP, that modification would have to go
 5 through the 30-day public review. But, again,
 6 the permit modification fee would be exactly the
 7 same as they are now.
 8 So you would submit an application for
 9 an operating permit modification that, that the
 10 draft of that modification would go through the
 11 30-day public review. And then after that is
 12 completed, the permit that's issued would be a
 13 FESOP. And then -- then after that, that
 14 facility, if they had new construction, that new
 15 construction could go through the FESOP enhanced
 16 NSR, which is a construction permit process.
 17 But, again, the fees would be exactly the same
 18 as they are now. So we're not changing the fee
 19 structure.
 20 MS. FOSTER: Tom, this is Melanie
 21 Foster. Just in case I missed a nuance in
 22 Adrienne's question, but I -- it's my
 23 understanding -- and, Adrienne, you can feel
 24 free to raise your hand if we haven't answered
 25 your question fully -- but if the minor source

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1 facility is just wanting to move it to the FESOP
2 arena, so they're not doing any traditional
3 modification of their operating permit, or any
4 construction, they're not doing anything except
5 they want to convert to the FESOP, yes, that
6 would still be a modification, which would
7 require the normal fee that we charge now for a
8 modification of the operating permit.
9 CHAIRMAN LODES: So that would be the,
10 I think, \$750 fee?
11 MS. FOSTER: Phillip, does that sound
12 right, the dollar figure? Or Lee?
13 MR. FIELDER: Yeah. This is Phillip
14 Fielder, permitting.
15 Yeah, I believe she's right, I believe
16 that is the 750. And I believe that was the
17 question that was asked, is that straight
18 conversion. So, yeah, we're not proposing any
19 new fee in our fee structure.
20 CHAIRMAN LODES: Instead of us just
21 batch doing everybody's, it would be one you can
22 apply for and then pay the fee, and then y'all,
23 essentially, will just put it on your website to
24 do the public notice.
25 MR. FIELDER: Correct.

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1 question, going back over the EPA letter. I
2 knew there was something I read the other day.
3 There's a paragraph in here, and it
4 says, "However, as previously discussed, the EPA
5 may decide to initiate rulemaking under Clean
6 Air Act Section 110(k)(5), to find the existing
7 Subchapter 7 operating permit SIP provision
8 substantially inadequate to comply with the
9 Clean Air Act requirements for SIPs and require
10 Oklahoma to revise the SIP to correct the
11 deficiency or withdraw the state operating
12 permit."
13 Is that only if we don't pass this or
14 is that, in general, if people don't go and move
15 into the FESOP?
16 MR. RICHARDSON: Laura, my
17 understanding is, if we don't proceed with our
18 rulemaking and we leave our current system in
19 place, that EPA would be obligated to do a
20 finding of deficiency. So my understanding is
21 that does not -- they're not talking about what
22 the existing permits are, that part of the
23 program, because they'll be acting on our newly
24 adopted rules when we submit them to be part of
25 the SIP.

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1 CHAIRMAN LODES: Yeah, so that's a --
2 for an operating permitting application fee,
3 that's -- yeah, the either -- a modification or
4 an individual is both \$750.
5 MR. FIELDER: Yeah. Right.
6 CHAIRMAN LODES: So --
7 MS. BOTCHLET-SMITH: I'm sorry. While
8 we're still in public comment -- did you have
9 something else you want to add to that, Laura?
10 I didn't mean to cut you off.
11 CHAIRMAN LODES: No.
12 MS. BOTCHLET-SMITH: Since we are still
13 in public comment, we do want to give everyone
14 the opportunity to speak.
15 Christina, are you seeing anyone else
16 that has indicated they want to speak during
17 this time? And if not, we'll close public
18 comment and move back to the Council.
19 MS. HAGEN: I am not seeing any more
20 hands raised at this time.
21 MS. BOTCHLET-SMITH: Okay. Then,
22 Laura, I -- if you and the other Council members
23 would like to engage in further discussion, this
24 is your opportunity for that.
25 CHAIRMAN LODES: Okay. I do have one

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1 Now, any other action would be a
2 completely separate issue, but that -- that
3 particular discussion is focusing on our
4 failure, if we were to fail, to pass the rules,
5 what they feel they would be obligated to do
6 going forward.
7 MS. STEGMANN: Yes. I agree with what
8 Tom said, yeah.
9 CHAIRMAN LODES: And then in next piece
10 it says, "If the ODEQ wishes to pursue the
11 creation of a FESOP program as envisioned by the
12 EPA, then the existing Subchapter 7 operating
13 permits that Oklahoma may wish to use for SIP
14 purposes, or that a source is using to qualify
15 as a minor source, to net out of NSR
16 requirements, or to create external emission
17 offsets could be authorized under the SIP
18 approved FESOP program."
19 So that's the only thing where it
20 almost sounds like, if you've got a synthetic
21 minor source, if I'm reading that right, then we
22 may be -- are we forced into the FESOP now and
23 needing to file those mods?
24 MR. RICHARDSON: Laura, I would say,
25 no. And there's another -- I think in the

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1 enclosure, there's another paragraph that
 2 addresses the current permits. And they state
 3 that the components -- the rules that are in the
 4 SIP create the federal enforceability of those
 5 permits. And that federal enforceability, the
 6 limits that are taken need to be federally
 7 enforceable to make them synthetic minor
 8 permits, to keep a facility out of Title V.
 9 So that will not be imperiled by our
 10 creation of a FESOP program. And the issues
 11 with regard to 110, that has to do with the
 12 nature of our ability to defend the NAAQS. So
 13 we do have some other issues we need to do, to
 14 address overall 110 issues.
 15 For example, we've talked about the
 16 110-L demonstration that we'll be submitting,
 17 that we have the outline and summary on the web.
 18 And then I think Melanie has talked about, we
 19 will also have to submit a 110-L to discuss the
 20 permit exempt category and why we don't believe
 21 that imperils the NAAQS, and we feel like we've
 22 got 15-plus years of defending the NAAQS with
 23 that in place, that will help support -- lend
 24 support to that demonstration.
 25 So we believe that the current program

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1 go through -- issue a notice of deficiency, go
 2 through federal rulemaking, and we feel like
 3 that would give us opportunities to push back
 4 and address that issue. So we believe if we go
 5 forward with our rules, we'll be in a good state
 6 in protecting owner/operators system.
 7 CHAIRMAN LODES: Okay. Do we have any
 8 other questions or comments from the Council?
 9 MR. ELLIOTT: Yeah. Laura, this is
 10 Greg.
 11 I kind of just want to reiterate, so
 12 we're going through all of these SIP revisions
 13 because the EPA is saying our previous one and
 14 our previous permits weren't done according to
 15 what they say we should have done. But now
 16 they're saying, if we pass this, they're all
 17 good and there was no issue with this.
 18 And I -- personally, I like the idea of
 19 the batch, putting those out to cover the
 20 facilities. Because back in the '90s -- and
 21 Kendal may remember this -- we thought
 22 everything was good with the permit we had with
 23 ODEQ, and the EPA came in and over-filed and it
 24 ended up costing us a million dollars.
 25 So I like the idea of batch public, to

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1 is defensive of the NAAQS and we will not have
 2 problems defending that. But, there is still a
 3 risk going forward that there might be some
 4 action taken, but we do not believe that this
 5 will be something that will imperil the
 6 existence of those existing permits.
 7 CHAIRMAN LODES: Okay. It's just the
 8 way you read that last paragraph of the EPA
 9 letter, it -- they've given themselves,
 10 basically, a lot of wiggle room, in my mind, to
 11 flip-flop on us and come back and say, well, no,
 12 all these existing permits are imperiled still.
 13 I guess that's still my biggest concern
 14 with this whole thing, is that we give here, and
 15 then they're going to say, the others -- well,
 16 no, you've got to do something with all the rest
 17 of them.
 18 MR. RICHARDSON: I think one of the
 19 things that gives us comfort, is that's a
 20 difficult and lengthy process. It's kind of
 21 like, whoever is taking the initiative has the
 22 burden. So it's like an activation energy
 23 thing.
 24 So if EPA decided that they wanted to
 25 address our existing permits, they would have to

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1 get everybody brought up, and that way we've got
 2 a hundred percent security on that. So I just
 3 want to throw that comment out there. I really
 4 liked the idea of the DEQ doing the batch public
 5 comment, if someone chooses to.
 6 MR. RICHARDSON: And I guess if --
 7 Greg, thank you for that comment.
 8 I would say -- and I think this goes
 9 back to what Melanie said earlier -- the
 10 rulemaking we're putting out there doesn't speak
 11 to the existing permits and how those will be
 12 addressed. So we have many, many options on the
 13 table, but we want to be responsive to
 14 stakeholder comments, including Council
 15 comments.
 16 But if -- if something were to take
 17 place that did imperil those existing permits,
 18 all options are on the table. So if we needed
 19 to, you know, we could take whatever action
 20 necessary to protect our owner/operators, and
 21 I -- I think that's one of the benefits of the
 22 way we've addressed this particular rulemaking.
 23 MR. ELLIOTT: Thank you, Tom.
 24 CHAIRMAN LODES: Okay. There's nothing
 25 in the rule, one way or the other, about how

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1 we're going to address all the existing sources,
 2 correct?
 3 MR. RICHARDSON: Yes. That's --
 4 MS. STEGMANN: That is -- sorry, Tom.
 5 Go ahead.
 6 MR. RICHARDSON: No, you're fine. I
 7 think we were about to say the exact same thing.
 8 Yes, you're exactly right, Laura.
 9 CHAIRMAN LODES: The same --
 10 MS. FOSTER: Go ahead, Kendal. This is
 11 Melanie.
 12 MS. STEGMANN: What I was going to say
 13 was, by not going through -- I know a lot of
 14 people are very comfortable with their existing
 15 permit and may not want to go through the batch
 16 process. That's why we're not going to put --
 17 at this time, go through that batch process and
 18 force everybody to do a public notice. That's
 19 why we're putting it on the facilities. It's
 20 their option, if they want to get that FESOP
 21 protection. We're making that an option for the
 22 company and not make everybody go through it.
 23 MR. ELLIOTT: But the companies will
 24 have to pay for it versus the other way, it was
 25 going to be like a free service.

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1 MR. ELLIOTT: Okay. Yes, I was just
 2 throwing those comments out. That's very good.
 3 So, you know, maybe a letter or
 4 something to people that have existing, you
 5 know, permits, say, Here is your one time free
 6 offer. Do it now or, if you want to do it
 7 later, you pay. I don't know.
 8 MS. STEGMANN: I would like to mention
 9 that we have a little over a thousand of these
 10 type of permits that would have to be batched.
 11 And the resources on our part, I think, would be
 12 relatively high, and that's why we're kind of
 13 favoring more of the facility, you know,
 14 approach, rather than the batch approach.
 15 MR. ELLIOTT: Completely understand.
 16 CHAIRMAN LODES: So one more question I
 17 have on this, which I think kind of precludes --
 18 so if we pass it today, and if it passes the
 19 Environmental Quality Board in February, this
 20 batch process or public notice process, it
 21 really can't even start until September, once
 22 the rules are in effect, correct?
 23 MS. FOSTER: Laura, this is Melanie.
 24 It would even potentially start after that. If
 25 we really want to be extremely protective, it

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1 MS. STEGMANN: Yes, that's correct.
 2 Yeah.
 3 CHAIRMAN LODES: So it's kind of an all
 4 or nothing here, we either let each person do it
 5 individually and pay 750, or the industry agrees
 6 to just go through it and do it as a big batch
 7 and it's free?
 8 MS. FOSTER: Well, this is Melanie
 9 again. I think Kendal had offered, at our last
 10 Council meeting, and I think it still stands,
 11 you know, that we can have further discussion
 12 about this, with the Council and with
 13 stakeholders, if we wanted to. We just felt,
 14 from the last meeting, that we had gotten enough
 15 feedback that this was probably the path that
 16 most people were interested in.
 17 But that -- again, it doesn't preclude
 18 us -- as Tom mentioned, we have all options on
 19 the table. The rules we pass, hopefully today,
 20 don't lock us into anything as far as what to do
 21 with the existing permits. And if the Council
 22 still sees questions and concerns with this all
 23 or nothing approach, we still have the ability
 24 to have further discussions and craft even a
 25 more tailored plan, if we so choose.

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1 would start, for a batch process or anything
 2 like that, for a specific request, it would
 3 start after EPA's approval. That would give the
 4 most, you know, protection.
 5 CHAIRMAN LODES: But EPA's been known
 6 to take 15 years for approval. So maybe you and
 7 I, Melanie, may have actually retired before
 8 they get around to that.
 9 MS. STEGMANN: I will say, for EPA,
 10 they have -- that seems to be a main initiative
 11 right now, is to reduce their SIP gap. So I
 12 think they would take this pretty quickly.
 13 MS. FOSTER: Yes, that's -- I apologize
 14 if my other comment was flippant. No, EPA is
 15 very -- is very interested in getting this done.
 16 They have been, again, working with us
 17 hand-in-hand through this process. As soon as
 18 they have our SIP package, you know, down at
 19 Region 6 -- which, again, we wouldn't submit at
 20 the earliest, if we did it concurrent with when
 21 the rules went effective of September 15th,
 22 2021, at that point, we would be -- they would
 23 start acting on their proposed approval and then
 24 final approval.
 25 So the earliest we'd probably be

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1 looking at would be the end of 2021, on a super
2 aggressive schedule. But they do plan to act on
3 it very quickly.

4 MS. STEGMANN: Yeah. Because, I mean,
5 we have been working with them, hand-in-hand in
6 this process. And so none of this is going to
7 be a surprise for them, so they should be very
8 comfortable for what we submit.

9 CHAIRMAN LODES: Okay. So if
10 facilities make changes between now and
11 September, it's going to be the traditional
12 process, they will not be issued a FESOP, won't
13 have the option to get issued a FESOP until
14 after September, correct?

15 MR. RICHARDSON: Yes. So this will be
16 date forward when the rules become operative
17 here in Oklahoma. So the entire FESOP process,
18 all of that will not occur unless the rules are
19 passed. And then there's the additional process
20 of the EQB, and then it goes through -- you
21 know, it gets the Governor's approval. Then on
22 September 15th of 2021, date forward, that would
23 be the initiation of that process.

24 CHAIRMAN LODES: So it's not like
25 people can come in, in February, or whatever,

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1 that were built before they had an NSR program,
2 so not really maybe a good analogy.

3 But there are similar programs in every
4 state, but it seems like every state has a
5 slightly different twist on it. So for
6 example --

7 MR. KEELE: Right.

8 MR. RICHARDSON: -- ours has this FESOP
9 enhanced NSR process, so there's only one need
10 for public review at the NSR stage if you
11 already have a FESOP. That, to our knowledge,
12 will be the first time that that's been put into
13 place.

14 But we've been in close collaboration
15 with EPA, making sure that they're on board with
16 all of these changes and they've given us the
17 green light, that this looks approvable. So we
18 feel quite confident that what we're proposing
19 will be approvable by EPA.

20 MR. KEELE: Yeah, fair enough. What I
21 was looking for is if it was already sort of
22 universally or any sort of noticing publication
23 requirements are already universally sort of
24 accepted in other states. You know, we're
25 getting ready to have -- well, there's likely

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1 and start applying for this?

2 MR. RICHARDSON: Not at that time.

3 CHAIRMAN LODES: Okay.

4 MR. KEELE: This is Gary Keele. Going
5 back to EPA approval, I believe in the previous
6 meeting it was explained that what EPA -- or
7 what we're doing here and what EPA is what has
8 approved in other region states, is that
9 correct, or something similar to this in our
10 region? Am --

11 MR. RICHARDSON: So I think --

12 MR. KEELE: Go ahead.

13 MR. RICHARDSON: Sorry. I didn't mean
14 to talk over you.

15 MR. KEELE: You're fine. Go ahead.

16 MR. RICHARDSON: So we did talk to EPA,
17 and there is, if I recall correctly, no other
18 similar program in Region 6. So our EPA
19 contacts -- contacts, actually, went out to
20 other areas. There's a county in California,
21 like an air quality management district in
22 California that has a FESOP program.

23 There's the Florida program that's been
24 discussed; although, again, we reached out to
25 them and it seems like that was for facilities

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1 going to be a change in administration, and the
2 EPA can do different things whenever
3 administrations change. So I'm looking, you
4 know, sort of the back, end around way of
5 asking, any chance that that would get slowed
6 down with the change of administration? If
7 everybody else has already had something like
8 this approved into their SIP, then I would think
9 no.

10 MS. FOSTER: So, Garry, this is
11 Melanie. I think what you're speaking to is the
12 public noticing of the minor NSR. And, yes,
13 that's universal. That is a foundation of the
14 minor NSR program that we're trying to fix.

15 FESOP is kind of a strange little
16 animal, you know, that we're trying to use,
17 because we think it's helpful in our situation.
18 And we think, you know, we can easily meet the
19 burdens of it and have a federally enforceable
20 operating permit program. But, yes, all the
21 other Region 6 states have, as Kendal has
22 mentioned several times -- have the requirement
23 to do minor NSR public notice, and so we're just
24 catching up with everyone else on that.

25 MR. RICHARDSON: I would also add --

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1 MR. KEELE: Yeah, that --
 2 MR. RICHARDSON: Go ahead.
 3 MR. KEELE: I was just going to say,
 4 that's really what I was asking. So appreciate
 5 the clarification.
 6 MR. KEELE: Go ahead, Tom.
 7 MR. RICHARDSON: I was just going to
 8 add, I think regardless if you have a new
 9 administration coming in, there are some holes
 10 in our current armor, so to speak. And I think,
 11 no matter how quickly they approve it into the
 12 SIP, we will have fixed the holes in our armor,
 13 and I think that will make us more protective of
 14 our owner/operators. So I think regardless of
 15 the new administration, I think this puts us in
 16 a better posture going forward.
 17 MR. KEELE: Yeah. And this doesn't
 18 seem like it would be anything that a change in
 19 administration would -- they would still want
 20 this anyway, I would think.
 21 MS. STEGMANN: Yes, I would think so as
 22 well.
 23 CHAIRMAN LODES: So I do have a
 24 question on my Subchapter 8 permits. I file for
 25 a Tier I minor mod next week for a -- like I

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1 action? As you know, we try to balance our
 2 workload and try to put actions that most impact
 3 facilities to the top of our list, and
 4 construction permits are always the number one
 5 criteria.
 6 For those actions, that would now be
 7 considered NSR minor mods for a major source.
 8 Those would float to the top of our list. And
 9 the difference in those case -- under this
 10 criteria, is that this is now an NSR permit for
 11 minor -- currently for minor -- you know,
 12 physical changes that qualify as minor mods.
 13 We can issue a letter for facilities
 14 that are just waiting on that coverage for minor
 15 mods that the agency agrees, and there is not
 16 that need, unless the facility tells us, to
 17 actually issue that minor mod, because they have
 18 that coverage to move forward. And that's a
 19 case-by-case situation. That we try to work
 20 with the facilities to say, hey, are you okay
 21 with this? Do you want this issued? You know,
 22 what is your comfort level with us agreeing up
 23 front with the Tier letter?
 24 Now, making that tier determination,
 25 when we say it sits on a desk, I mean, that's an

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1 would any other permit, like I've been doing for
 2 years, for one of my Title V facilities. It
 3 meets today's requirements of it. Now, we know
 4 Tier I mods tend to sit on desks for lengthy
 5 periods of time. Is industry going to get
 6 pushback come next September when somebody
 7 actually picks up the minor mod to look at it?
 8 Are they then going to want to change the
 9 process, because, hey, we've got an increase
 10 over 10 tons because my -- I maybe netted out a
 11 PSD if I had a 28-ton increase in NOx?
 12 MR. RICHARDSON: So, Laura, I think
 13 we're considering things date forward. So a
 14 complete application that's been determined to
 15 be administratively complete, we will process
 16 that under the rules that were in place when
 17 that application was submitted.
 18 But before I say that as an absolute, I
 19 might like to ask Phillip Fielder to step in,
 20 because usually I go to Phillip with those
 21 questions.
 22 MR. FIELDER: Yeah, this is Phillip.
 23 Yeah, Laura, so if -- if, after the
 24 rules are implemented, I believe what your
 25 question was, and you trigger a minor mod NSR

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1 interpretation of, you know, what a -- what a
 2 particular permit writer's going through to
 3 evaluate. And, you know, we're not perfect.
 4 Like everybody else understands, situations
 5 arise.
 6 But that would be the process, is that
 7 those NSR permits, those new NSR permits, based
 8 on how we balance our workload, would move to
 9 the forefront of our -- of our priority list.
 10 CHAIRMAN LODES: So I guess -- I guess
 11 my thought is -- Phillip is, I submit a minor
 12 mod today to install a new paint line at a
 13 foundry, it's going to have a 27-ton increase in
 14 VOC. The facility's PSD major. Today this
 15 minor mod would meet all the requirements of a
 16 minor mod to the operating permit; they can
 17 install the paint line. I submit the app today;
 18 they can install the paint line tomorrow. It
 19 may not be issued, because that would sit at the
 20 bottom of the pile until next December, at best.
 21 So come next December we have new rules
 22 in effect. I guess, I want to know -- I want on
 23 the record some clarification that those
 24 facilities aren't now going to be told, no, this
 25 should have been a construction permit

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1 modification, and you had to wait on it to be
 2 issued, because the rules changed midstream on
 3 them.
 4 MR. PHILLIP: Okay. So your question
 5 is the overlap timing of an application that may
 6 be in place. And I think we would -- we
 7 haven't -- my input here would be that, since
 8 that application was received prior to the
 9 implementation of those new rules, that it
 10 would -- it would not be impacted by that change
 11 in -- in existing -- or change in rule status
 12 criteria.
 13 I may need input from others here, but
 14 that would be my initial input. And I think
 15 that would -- should be something that we're
 16 going to look at. And I think, to make it clear
 17 for everybody, that we will probably make a push
 18 to issue those and make a determination to limit
 19 those overlap-type situations.
 20 Regardless of if we -- if we say, here,
 21 oh, don't worry about that, I think it's best
 22 for everybody to eliminate that situation as
 23 much as we can and get those issued prior to
 24 that -- you know, that transfer date, in other
 25 words. So that would be my input on that.

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1 CHAIRMAN LODES: I have a motion. Do I
 2 have a second?
 3 MR. KEELE: Second. This is Garry
 4 Keele.
 5 CHAIRMAN LODES: I have a motion and a
 6 second.
 7 Quiana, please call roll.
 8 MS. FIELDS: Mr. Collins?
 9 MR. COLLINS: Yes.
 10 MS. FIELDS: Dr. Delano?
 11 DR. DELANO: Yes.
 12 MS. FIELDS: Mr. Elliott?
 13 MR. ELLIOTT: Yes.
 14 MS. FIELDS: Mr. Keele?
 15 MR. KEELE: Yes.
 16 MS. FIELDS: Mr. Taylor?
 17 MR. TAYLOR: Yes.
 18 MS. FIELDS: Ms. Lodes?
 19 CHAIRMAN LODES: Yes.
 20 MS. FIELDS: Motion passed.
 21 MR. COLLINS: Laura, this is Gary. I
 22 will move that we approve Chapter 100 changes as
 23 proposed today.
 24 CHAIRMAN LODES: I have a motion. Do I
 25 have a second?

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1 CHAIRMAN LODES: Okay. Any other
 2 questions or concerns from the Council?
 3 MR. COLLINS: No.
 4 CHAIRMAN LODES: Okay. Hearing no
 5 other questions, the agency has asked that we
 6 pass the changes to Chapter 4 and Chapter 100.
 7 Now, I will ask a question here,
 8 Melanie. And I didn't see -- there's Madison.
 9 Do we need to pass these individually or should
 10 we pass these as a single packet?
 11 MS. FOSTER: Individually.
 12 CHAIRMAN LODES: Okay.
 13 MS. FOSTER: And as proposed today,
 14 Laura, because we did have slight changes from
 15 previous.
 16 CHAIRMAN LODES: Correct. So this
 17 means, gentlemen, that we would have, first, a
 18 motion and an action on Chapter 4, and then --
 19 as proposed today, and then a motion on Chapter
 20 100.
 21 What -- I need a motion, and what are
 22 everybody's thoughts?
 23 MR. ELLIOTT: I make a motion that
 24 we -- that we approve Chapter 4, changes as
 25 proposed today.

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1 MR. ELLIOTT: This is Greg. I will
 2 second that.
 3 CHAIRMAN LODES: Were you able to catch
 4 the second?
 5 MS. FIELDS: I did.
 6 CHAIRMAN LODES: Okay. I have a motion
 7 and a second.
 8 Quiana, will you please call roll?
 9 MS. FIELDS: Mr. Collins?
 10 MR. COLLINS: Yes.
 11 MS. FIELDS: Dr. Delano?
 12 DR. DELANO: Yes.
 13 MS. FIELDS: Mr. Elliott?
 14 MR. ELLIOTT: Yes.
 15 MS. FIELDS: Mr. Keele?
 16 MR. KEELE: Yes.
 17 MS. FIELDS: Mr. Taylor?
 18 MR. TAYLOR: Yes.
 19 MS. FIELDS: Ms. Lodes?
 20 CHAIRMAN LODES: Yes.
 21 MS. FIELDS: Motion passed.
 22 MS. BOTCHLET-SMITH: That concludes the
 23 hearing portion of today's meeting.
 24 (Meeting concluded.)
 25

C E R T I F I C A T E

STATE OF OKLAHOMA)

)

COUNTY OF TULSA)

I, Tammie Shipman, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the foregoing proceedings are a true and correct transcript of the record of the machine shorthand notes taken by me and transcribed into written form under my supervision, direction and control.

I further certify that I'm neither related to nor attorney for any interested party in the named action, nor otherwise interested in the outcome of said action.

WITNESS MY HAND, this 20th day of November, 2020.

Tammie Shipman

Tammie Shipman

Shorthand Reporter

CSR #1564

November 12, 2020 Air Quality Advisory Council - Attendance Record - Zoom Participants

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SCOTT A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

KEVIN STITT
Governor

MEMORANDUM

DATE: May 27, 2021

TO: Members of the Air Quality Advisory Council

FROM: Kendal Stegmann, Director *KS*
Air Quality Division

SUBJECT: Proposed Rule Cleanup in OAC 252:100-7-15, -8-36.1, -37-16, and -39-45

The Department of Environmental Quality (DEQ) is proposing to make revisions in Subchapters 7, 8, 37, and 39 as part of the Department's review of Chapter 100 in response to Governor Stitt's Executive Order 2020-03. Four items that could be quickly addressed were selected for revision at the June AQAC meeting. They are:

1. OAC 252:100-7-15: DEQ is proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP).
2. OAC 252:100-8-36.1: DEQ is proposing to correct the rule and statute references in OAC 252:100-8-36.1 to the proper legal form.
3. OAC 252:100-37-16: DEQ is proposing to add an exemption to OAC 252:100-37-16(c) to formalize DEQ's interpretation that loading operations from condensate tanks at natural gas compressor stations are not considered loading facilities for the purposes of this section.
4. OAC 252:100-39-45: DEQ is proposing to correct the approval process for facilities that incinerate petroleum solvent dry cleaning filters and to remove the outdated compliance schedule.

The underlying reason for the rulemaking is to remove outdated rule language and/or provide regulatory clarity. Copies of the proposed rules are enclosed along with a copy of the Rule Impact Statement.

Notice of the proposed rule changes was published in the *Oklahoma Register* on May 3, 2021. The notice requested written comments from the public and other interested parties. No comments have been received as of May 27, 2021. At the June meeting, staff will ask the Council to recommend the proposed rule changes, with the exception of the changes to OAC 252:100-7-15,

as a single rulemaking package to the Environmental Quality Board for adoption as permanent rules. DEQ anticipates the need to make further revisions to Subchapter 7 that have not yet been proposed at the October AQAC meeting. Holding over the currently proposed Subchapter 7 revisions to a subsequent meeting will ensure that all the changes from last year's permitting rulemaking have become effective and are properly included in the rule package prior to the adoption of any new changes. Thus, the currently proposed revisions, along with any new proposed language, will be brought back to the Council in October.

Enclosures: Proposed Amendments to OAC 252:100-7-15, -8-36.1, -37-16, and -39-45
Rule Impact Statement

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

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 3. CONSTRUCTION PERMITS

252:100-7-15. Construction permit

(a) **Construction permit required.** A construction permit is required to commence construction or installation of a new facility or the modification of an existing facility as specified in OAC 252:100-7-15(a)(1) and (2).

(1) **New Facility.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit.

(2) **Modification of an existing facility.**

(A) A construction permit is required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category.

(B) A construction permit is required for an existing facility covered by an individual permit:

(i) ~~to add a piece of equipment or a process~~ an "affected facility," "affected source," or "new source" as those terms are defined in 40 CFR § 60.2, 40 CFR § 63.2, and 40 CFR § 61.02, respectively, that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) or

(ii) to add or physically modify a piece of equipment or a process that results in an increase in a permitted emissions increase of any one regulated air pollutant by more than 5 TPY.

(C) The requirement to obtain a construction permit under OAC 252:100-7-15(a)(2)(B)(i) does not apply to replacement of a piece of equipment, provided the replacement unit does not require a change in any emission limit in the existing permit, and the owner or operator notifies the DEQ in writing within fifteen (15) days of the startup of the replacement unit, and/or as otherwise specified by the permit.

(b) **Permit categories.** Three types of construction permits are available: permit by rule, general permit, and individual permit. A permit by rule may be adopted or a general permit may be issued for an industry if there are a sufficient number of facilities that have the same or substantially similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements.

(1) **Permit by rule.** An owner or operator of a minor facility may apply for registration under a permit by rule if the following criteria are met:

(A) The facility has actual emissions of 40 TPY or less of each regulated air pollutant, except HAPs.

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has established a permit by rule for the industry in Part 9 of this Subchapter.

(D) The owner or operator of the facility certifies that it will comply with the applicable permit by rule.

- (E) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.
- (2) **General permit.** Minor facilities may qualify for authorization under a general permit if the following criteria are met:
 - (A) The facility has actual emissions less than 100 TPY of each regulated air pollutant, except for HAPs.
 - (B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.
 - (C) The DEQ has issued a general permit for the industry.
- (3) **Individual permit.** The owners or operators of minor facilities requiring permits under this Subchapter which do not qualify for permit by rule or a general permit shall obtain individual permits. An owner or operator may apply for an individual permit even if the facility qualifies for a permit by rule or a general permit.
- (c) **Content of construction permit application.** Construction permit applications shall contain at least the data and information listed in OAC 252:100-7-15(c)(1) and (2).
 - (1) **Individual permit.** An applicant for an individual construction permit shall provide data and information required by this Chapter on an application form available from the DEQ. Such data and information should include but not be limited to:
 - (A) site information,
 - (B) process description,
 - (C) emission data,
 - (D) BACT when required,
 - (E) sampling point data and
 - (F) modeling data when required.
 - (2) **General permit.** An applicant for authorization under a general permit shall provide data and information required by that permit on a form available from the DEQ. For general permits that provide for application through the filing of a notice of intent (NOI), authorization under the general permit is effective upon receipt of the NOI.
- (d) **Permit contents.** The construction permit:
 - (1) Shall require the permittee to comply with all applicable air pollution rules.
 - (2) Shall prohibit the exceedance of ambient air quality standards contained in OAC 252:100-3.
 - (3) May establish permit conditions and limitations as necessary to assure compliance with all rules.
- (e) **Failure to comply with a construction permit.** A violation of the limitations or conditions contained in the construction permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules. No operating permit will be issued until the violation has been resolved to the satisfaction of the DEQ.
- (f) **Cancellation of authority to construct or modify.** A duly issued permit to construct or modify will terminate and become null and void (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.
- (g) **Extension of authorization to construct or modify.**
 - (1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

(A) one extension of 18 months or less or

(B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES

PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS

252:100-8-36.1. Public participation

See OAC 252:4 and O.S. §§ ~~27A-2-5-112 and 27A-2-14-101 to §~~, 27A O.S. § 2-5-112, and 27A O.S. §§ 2-14-101 through 2-14-304.

SUBCHAPTER 37. CONTROL OF EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCs)

PART 3. CONTROL OF VOCs IN STORAGE AND LOADING OPERATIONS

252:100-37-16. Loading of VOCs

(a) **Loading facilities with throughput greater than 40,000 gallons/day.** Each VOC loading facility with a throughput greater than 40,000 gal/d (151,416 l/d) from its aggregate loading pipes shall be equipped with a vapor-collection and disposal system unless all tank trucks or trailers are bottom loaded with hatches closed.

(1) **Vapor-collection and disposal system.**

(A) **Vapor-collection portion of the system.**

(i) When loading VOCs through the hatches of a tank truck or trailer, using a loading arm equipped with a vapor collecting adaptor, a pneumatic, hydraulic, or mechanical means shall be provided to ensure a vapor-tight seal between the adaptor and the hatch.

(ii) When loading is effected through means other than hatches, all loading and vapor lines shall be equipped with fittings that make vapor-tight connections and which must be closed when disconnected or which close automatically when disconnected.

(B) **Vapor-disposal portion of the system.** The vapor-disposal portion of the system shall consist of:

(i) a vapor-liquid absorber system with a minimum recovery efficiency of 90 percent by weight of all the VOC vapors and gases entering such disposal system; or,

(ii) a variable-vapor space tank, compressor, and fuel-gas system of sufficient capacity to receive all VOC vapors and gases displaced from the tank trucks and trailers being loaded.

- (2) **Prevention of VOC drainage.** A means shall be provided in either loading system specified in subsection (a) to prevent VOC drainage from the loading device when it is removed from any tank truck or trailer, or to accomplish complete drainage before removal.
- (b) **Loading facilities with throughput equal to or less than 40,000 gallons per day.**
- (1) Each loading pipe at a VOC loading facility with an aggregate throughput of 40,000 gal/d (151,416 l/d) or less shall be equipped with a system for submerged filling of tank trucks or trailers which is installed and operated to maintain a 97 percent submergence factor.
- (2) Paragraph 252:100-37-16(b)(1) applies to any facility that loads VOCs into any tank truck or trailer with a capacity greater than 200 gal (757 l) which is designed for transporting VOCs.
- (c) **Exemptions.**
- (1) Loading facilities subject to the requirements of 40 CFR 60 Subpart XX or 40 CFR 63 Subpart R are exempt from the requirements of 252:100-37-16(a) and (b).
- (2) Loading operations associated with condensate tanks at natural gas compressor stations are exempt from the requirements of 252:100-37-16(a) and (b).

SUBCHAPTER 39. EMISSION OF VOLATILE ORGANIC COMPOUNDS (VOCs) IN NONATTAINMENT AREAS AND FORMER NONATTAINMENT AREAS

PART 7. SPECIFIC OPERATIONS

252:100-39-45. Petroleum (solvent) dry cleaning

- (a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise.
- (1) **"Cartridge filters"** means perforated canisters containing filtration paper and/or activated carbon that are used in a pressurized system to remove solid particles and fugitive dyes from soil-laden petroleum solvent.
- (2) **"Containers and conveyors of petroleum solvent"** means piping, ductwork, pumps, storage tanks, and other ancillary equipment that are associated with the installation and operation of washers, dryers, filters, stills, and settling tanks.
- (3) **"Dry cleaning"** means a process of the cleaning of textiles and fabric products in which articles are washed in a non-aqueous solution (petroleum solvent) and then dried by exposure to a heated air stream.
- (4) **"Housekeeping"** means those measures and precautions necessary to minimize the release of petroleum solvent to the atmosphere.
- (5) **"Operations parameters"** means the activities required to insure that the equipment is operated in a manner to preclude the loss of petroleum solvents to the atmosphere.
- (6) **"Perceptible leaks"** means any petroleum solvent vapor or liquid leaks that are conspicuous from visual observation, such as pools or droplets of liquid, or buckets or barrels of petroleum solvent or petroleum solvent-laden waste standing open to the atmosphere.
- (7) **"Petroleum solvent"** means organic material produced by petroleum distillation comprising a hydrocarbon range of 8 to 12 carbon atoms per organic molecule that exists as a liquid under standard conditions.
- (b) **Applicability.** This Section applies to petroleum solvent washers, dryers, filters, settling tanks, vacuum stills, and other containers and conveyors of petroleum solvent that are used in petroleum solvent dry cleaning facilities in Tulsa County only.

(c) **Operating requirements.**

(1) The owner or operator of a petroleum solvent dry cleaning facility shall not operate any dry cleaning equipment using petroleum solvents unless:

(A) there are no perceptible liquid or vapor leaks from any portion of the equipment;

(B) all washer lint traps, button traps, access doors and other parts of the equipment where petroleum solvent may be exposed to the atmosphere are kept closed at all times except when required for proper operation or maintenance;

(C) the still residue is stored in sealed containers and the used filtering material is placed into a sealed container suitable for use with petroleum solvents, immediately after removal from the filter and disposed of in the prescribed manner; or,

(D) cartridge filters containing paper or carbon or a combination thereof, which are used in the dry cleaning process are drained in the filter housing for at least 24 hours prior to removal.

(2) The owner or operator of a petroleum solvent dry cleaning facility shall not operate any drying tumblers and cabinets that use petroleum solvents unless tumblers and cabinets are operated in a manner to control petroleum solvent vapor leaks by reducing the number of sources where petroleum solvent is exposed to the atmosphere. Under no circumstances should there be any open containers (can, buckets, barrels) of petroleum solvent or petroleum solvent-containing material. Equipment containing solvent (washers, dryers, extractors, and filters) should remain closed at all times other than during maintenance or load transfer. Lint filter and button trap covers should remain closed except when petroleum solvent-laden lint and debris are removed. Gaskets and seals should be inspected and replaced when found worn or defective. Petroleum solvent-laden clothes should never be allowed to remain exposed to the atmosphere for longer periods than are necessary for load transfers. Finally, vents on petroleum solvent-containing waste and new petroleum solvent storage tanks should be constructed and maintained in a manner that limits petroleum solvent vapor emissions to the maximum possible extent.

(3) The owner or operator shall repair all petroleum solvent vapor and liquid leaks within 3 working days after identifying the sources of the leaks. If necessary repair parts are not on hand, the owner or operator shall order these parts within 3 working days, and repair the leaks no later than 3 working days following the arrival of the necessary parts.

(d) **Disposal of filters.** Filters from the petroleum dry cleaning facility shall be disposed of by:

(1) incineration at a facility ~~approved by the fire marshal's office~~ permitted by the appropriate regulatory entity for such disposal;

(2) by recycling through an approved vendor of this service; or,

(3) by any other method approved by the Division Director.

(e) ~~**Compliance schedule.** Compliance with 252:100-39-45(e)(1) through 252:100-39-45(e)(3), shall be accomplished by affected facilities on or before October 1, 1986.~~ [RESERVED]

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

Before the Air Quality Advisory Council on June 16, 2021
Before the Environmental Quality Board on September 14, 2021

RULE IMPACT STATEMENT

Subchapter 7. Permits for Minor Facilities

Part 3. Construction Permits

252:100-7-15 [AMENDED]

Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources

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

252:100-8-36.1 [AMENDED]

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

Part 3. Control of VOCs in Storage and Loading Operations

252:100-37-16 [AMENDED]

Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas

Part 7. Specific Operations

252:100-39-45 [AMENDED]

DESCRIPTION: The Department of Environmental Quality (Department or DEQ) is proposing to make revisions in Subchapters 7, 8, 37, and 39 as part of the Department's review of Chapter 100 in response to Governor Stitt's Executive Order 2020-03. The Department is proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department is proposing to correct the rule and statute references in OAC 252:100-8-36.1 to the proper legal form. The Department is proposing to add an exemption to OAC 252:100-37-16(c) to formalize the Department's interpretation that loading operations from condensate tanks at natural gas compressor stations are not considered loading facilities for the purposes of this section. In OAC 252:100-39-45, the Department is proposing to correct the approval process for facilities that incinerate petroleum solvent dry cleaning filters and to remove the outdated compliance schedule. The gist of this rule proposal and the underlying reason for the rulemaking is to remove outdated rule language and/or provide regulatory clarity.

CLASSES OF PERSONS AFFECTED: Classes of persons affected are the owners and operators of facilities that are subject to the requirements in OAC 252:100-7, -8, -37, and -39.

CLASSES OF PERSONS WHO WILL BEAR COSTS: The owners and operators of facilities that are subject to the requirements in OAC 252:100-7, -8, -37, and -39 will bear the costs.

INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES: The Department has received no information on cost impacts from private or public entities pertaining to the proposed rule.

CLASSES OF PERSONS BENEFITTED: The proposed changes will benefit the owners and operators of the facilities subject to these regulations by removing outdated language and/or providing regulatory clarity.

PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS: The Department anticipates no significant economic impact as a result of the proposed changes.

PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The Department anticipates no economic impact on political subdivisions as a result of the proposed changes.

POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS: The Department expects negligible adverse effect on small business as a result of the proposed changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: No fee changes are included in the proposed amendment.

PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE: The Department anticipates there will be minimal costs associated with the implementation and enforcement of these proposed amendments.

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

SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE: Federal grants and fees will continue to be used as the sources of revenue to implement and enforce the proposed rules.

PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED: The proposed revisions should have little effect on net revenues for the Department and/or other agencies.

COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE: Cooperation of political subdivisions will not be required to implement or enforce the proposed rules.

EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS: The proposed amendments are intended to minimize compliance costs by removing outdated requirements and adding regulatory clarity.

DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE: The Department is not aware of any less costly or nonregulatory or less intrusive methods of achieving the purpose of the proposed rules.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The proposed revision will have minimal effect on public health, safety, and the environment.

IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK: The proposed changes are clarifying in nature and are not designed to reduce significant risks to the public health, safety, and the environment.

DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED: If the proposed changes are not implemented, the Department does not anticipate any detrimental effect on the public health, safety, and the environment.

PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE): There will be minimal impact on business entities since the proposed changes are removing outdated requirements and/or adding regulatory clarity.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: April 26, 2021
MODIFIED ON:



SCOTT A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

KEVIN STITT
Governor

MEMORANDUM

DATE: May 27, 2021

TO: Members of the Air Quality Advisory Council

FROM: Kendal Stegmann, Director *KS*
Air Quality Division

SUBJECT: Proposed Revisions in OAC 252:100-8-36.2

DEQ is proposing to amend the source obligation provisions for facilities subject to prevention of significant deterioration (PSD) in OAC 252:100-8-36.2 to more closely align Oklahoma's rules with the U.S. Environmental Protection Agency (EPA) rules in 40 C.F.R. § 51.166(r). This proposed rulemaking is in response to requests from industry during last year's permit rule revisions to add the "reasonable possibility" provisions. This section of Subchapter 8 was not open when the comment was submitted so revisions could not be made at that time. However, DEQ made a commitment to the Council and the public to look at revising the rule at a future meeting. The proposed revisions make Oklahoma's PSD source obligation provisions more similar to EPA's provisions, thereby reducing the recordkeeping burden on Oklahoma's permitted PSD facilities. A copy of the proposed rule is enclosed along with a copy of the Rule Impact Statement.

Notice of the proposed rule change was published in the *Oklahoma Register* on May 3, 2021. The notice requested written comments from the public and other interested parties. No comments have been received as of May 27, 2021. At the June meeting, staff will ask the Council to recommend the proposed rule change to the Environmental Quality Board for adoption as a permanent rule.

Enclosures: Proposed Amendments to OAC 252:100-8-36.2
Rule Impact Statement

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

**SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE
REVIEW (NSR) SOURCES**

**PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD)
REQUIREMENTS FOR ATTAINMENT AREAS**

252:100-8-36.2. Source obligation

(a) **Obtaining and complying with preconstruction permits.** Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this Part or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this Part who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

(b) **Consequences of relaxation of permit requirements.** When a source or modification becomes major solely by virtue of a relaxation in any enforceable permit limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the requirements of OAC 252:100-8, Parts 1, 3, 5, and 7 and 252:100-8-34 through 252:100-8-37 shall apply to that source or modification as though construction had not yet commenced on it.

(c) **Requirements when using projected actual emissions.** The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) of any regulated NSR pollutant, and the owner or operator elects to use the method specified in (B)(i) through (iii) of the definition of "projected actual emissions" in OAC 252:100-8-31 for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the existing emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under (B)(iii) of the definition of "projected actual emissions" in OAC 252:100-8-31 and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) **Additional recordkeeping requirements for projects not requiring a PSD or Nonattainment NSR permit, but with a "reasonable possibility" of resulting in a significant emissions increase.** If the project is determined to have a "reasonable possibility" of resulting in a significant emission increase, the owner or operator shall comply with the applicable requirements of subparagraphs (B) through (E) below.

(A) A "reasonable possibility" occurs when:

(i) The owner or operator calculates the project to result in a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase,"

as defined in OAC 252:100-8-31 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(ii) The owner or operator, in accordance with the procedures described in (B)(iii) of the definition of "projected actual emissions" under OAC 252:100-8-31, excludes a portion of one or more existing unit's emissions from the calculation of "projected actual emissions," and, if the owner or operator had not excluded those emissions, the projected actual emissions increase would be at least 50 percent of the amount that is a "significant emissions increase," as defined in OAC 252:100-8-31 (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant.

(B) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator shall provide a copy of the information set out in OAC 252:100-8-36.2(c)(1) to the Director. Nothing in OAC 252:100-8-36.2(c)(2)(B) shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.

~~(3)~~(C) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in OAC 252:100-8-36.2(c)(1)(B); and calculate and maintain a record of the annual emissions, in TPY on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

~~(4)~~(D) If the unit is an existing EUSGU, the owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under OAC 252:100-8-36.2~~(e)~~~~(3)~~(c)(2)(C) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

~~(5)~~(E) If the unit is an existing unit other than an EUSGU, the owner or operator shall submit a report to the Director if the annual emissions, in TPY, from the project identified in OAC 252:100-8-36.2(c)(1), exceed the baseline actual emissions (as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C)) by an amount that is significant for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C). Such report shall be submitted to the Director within 60 days after the end of such year. The report shall contain the following:

~~(A)~~(i) The name, address and telephone number of the major stationary source;

~~(B)~~(ii) The annual emissions as calculated pursuant to OAC 252:100-8-36.2~~(e)~~~~(3)~~(c)(2)(C); and

~~(C)~~(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(3) [RESERVED]

(4) [RESERVED]

(5) [RESERVED]

(6) The owner or operator of the source shall make the information required to be documented and maintained pursuant to OAC 252:100-8-36.2(c) available for review upon request for inspection by the Director or the general public.

(7) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification based on any credible evidence, including but not limited to emissions data produced after the project is completed. In any such case, the owner or operator may be subject to enforcement for failure to obtain a PSD permit prior to beginning actual construction.

(8) If an owner or operator materially fails to comply with the provisions of OAC 252:100-8-36.2(c), then the calendar year emissions are presumed to equal the source's potential to emit.

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

Before the Air Quality Advisory Council on June 16, 2021
Before the Environmental Quality Board on September 14, 2021

RULE IMPACT STATEMENT

Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources
Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
252:100-8-36.2 [AMENDED]

DESCRIPTION: The Department of Environmental Quality (Department or DEQ) is proposing to amend and update Section 36.2 of OAC 252:100, Subchapter 8, to reduce the recordkeeping burden on the owners and operators of major stationary sources that use the "projected actual emissions" approach – defined in OAC 252:100-8-31 – to calculate project emission increases (or decreases), as long as the project does not have a "reasonable possibility" of exceeding PSD significance thresholds. The proposed changes reduce the burden on industry, but retain the requirement to maintain records demonstrating that a particular project is eligible for this reduction. The proposed changes would move the Department's rules closer to the requirements specified by the U.S. Environmental Protection Agency (EPA) in 40 C.F.R. § 51.166(r), while retaining the minimum pre-change records needed to demonstrate eligibility. The gist of the proposed rule and the underlying reason for these revisions is to reduce the recordkeeping burden on industry for projects demonstrated to result in emission increases that would be below 50% of the defined significance thresholds for PSD.

CLASSES OF PERSONS AFFECTED: Classes of persons affected are the owners and operators of facilities that are subject to the permitting requirements in OAC 252:100-8, Part 7 (PSD major sources).

CLASSES OF PERSONS WHO WILL BEAR COSTS: The owners and operators of facilities that are subject to the permitting requirements in OAC 252:100-8, Part 7, will bear the costs or likely experience a reduction in compliance costs.

INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES: The Department has received information that the proposed rule would likely result in a reduction in compliance costs. An estimated cost of compliance was provided by a consultant who works with clients whose operations are subject to the current recordkeeping requirements.

CLASSES OF PERSONS BENEFITTED: The proposed changes will benefit the owners and operators of the facilities subject to these regulations.

PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS: The Department anticipates a reduction in recordkeeping costs for the subject facilities, but no other significant economic impact as a result of the proposed changes.

PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: The Department anticipates no economic impact on political subdivisions as a result of the proposed changes.

POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS: Because the rule applies only to major stationary sources, the Department expects negligible or no adverse effect on small business as a result of the proposed changes.

LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE: No fee changes are included in the proposed amendment.

PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE: The Department anticipates there will be minimal costs associated with the implementation and enforcement of these proposed amendments.

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

SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE: Federal grants and fees will continue to be used as the sources of revenue to implement and enforce the proposed rule.

PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED: The proposed revision should have little effect on net revenues for the Department and/or other agencies.

COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE: Cooperation of political subdivisions will not be required to implement or enforce the proposed rule.

EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS: The Department has worked with EPA and stakeholders to make these requested changes in a manner that would reduce the cost to the regulated community, while achieving the purpose of the proposed rule.

DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE: The proposed changes will establish state program requirements that are fully in compliance with federal requirements, while reducing the burden on industry stakeholders. The compliance costs for affected sources under the state rule should be similar to those under the federal program.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The proposed revision will have minimal effect on public health, safety, and the environment.

IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK: The proposed revision is not designed to reduce significant risks to public health, safety, and the environment.

DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED: If the rule is not implemented, there will be no detrimental effect on public health, safety, and the environment.

PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE): This rule change should result in a reduction in compliance costs for business entities with facilities subject to PSD permitting requirements.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: April 26, 2021
MODIFIED ON: