

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

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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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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. Privrat 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 QAC 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.

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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

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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

Page 7

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.

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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

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1 points.

2 First, EPA legal staff concurs with the

3 Department's belief that the current rules

4 incorporated into the SIP provide a foundation

5 for the federal enforceability of all current

6 Subchapter 7 operating permits.

7 Second, there are issues with some

8 aspects of our program that could, should EPA

9 choose to issue a finding of deficiency, imperil

10 that status in the future. That element of risk

11 will continue until the Department addresses all

12 outstanding issues, both with regard to the

13 minor NSR program and the Subchapter 7 operating

14 permit program.

15 Third, EPA staff has clarified that if

16 DEQ submits and EPA approves a FESOP program in

17 Oklahoma's SIP, that approval will be date

18 forward. These points were echoed in a letter

19 EPA issued on November 6. I will discuss that

20 letter shortly. Next slide.

21 After receiving feedback from EPA and

22 after digesting the concerns raised by the

23 Council and other stakeholders, we would like to

24 share our future plans concerning the currently

25 issued Subchapter 7 individual facility

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1 letter offering support of our work updating

2 the rules and clarifying their position on a

3 number of issues. At this time I would like to

4 read the letter into the record.

5 The letter is dated November 6th, 2020,

6 and is addressed to Ms. Kendal Stegmann,

7 Director of the Air Quality Division of the

8 Oklahoma DEQ.

9 Regarding clarifications to the

10 Oklahoma SIP and part 70 Permit Program.

11 Dear Ms. Stegmann. Next slide.

12 The United States Environmental

13 Protection Agency Region 6 is writing to express

14 our continued support of the revisions to the

15 Oklahoma Administrative Code (OAC) at Title 252,

16 Chapter 4, Sections 4-7-13, 4-7-32, and 4-7-33

17 and Chapter 100, Sections 100-1-3, 100-1-4,

18 100-2-3, 100-7-1.1, 100-7-15, 100-7-18, 100-8-2,

19 100-8-4, 100-8-5, 100-8-7.2, 100-8 and Appendix

20 Q, as proposed on September 15, 2020. As stated

21 in our October 15, 2020, comment letter, we

22 believe the proposed revisions could address

23 certain issues and areas of concern in the

24 Oklahoma air permitting program which have been

25 identified through several years of discussions

Page 11

1 operating permits. All current Subchapter 7

2 operating permits will continue in their present

3 status. There is no plan for a batch public

4 notice of these permits.

5 After adoption of the proposed rules,

6 any new construction permit for a minor facility

7 will go through traditional NSR. The subsequent

8 operating permit will be a FESOP. If an owner

9 or operator applies for a modification to an

10 existing facility's permit, the draft of the

11 modified operating permit will undergo public

12 review and will be issued as a FESOP. If an

13 owner or operator wishes to move to a FESOP, the

14 owner or operator will need to submit an

15 application for a permit modification. Next

16 slide.

17 Reasonable Possibility Language. We

18 have received requests to incorporate the

19 reasonable possibility language from 40 CFR

20 52.21(r) into the Subchapter 8, Section 36.2(c)

21 source obligation requirements. Our intention

22 is to bring proposed language to the Council for

23 consideration during the January meeting. Next

24 slide.

25 As I mentioned previously, EPA issued a

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1 between the Oklahoma Department of Environmental

2 Quality (ODEQ) and the EPA Region 6.

3 The staff attended an October 21, 2020,

4 meeting with the Oklahoma Air Quality Advisory

5 Council (AQAC) in support of the proposed

6 revisions. The AQAC did not approve the

7 proposed revisions at this meeting; instead

8 expressing significant concerns and doubts about

9 the necessity of the proposed revisions.

10 This letter provides clarification of

11 the scope of the existing Oklahoma construction

12 permit program in the Oklahoma State

13 Implementation Plan (SIP) and the EPA-approved

14 Oklahoma Part 70 air permitting program and

15 highlights the necessity for the proposed

16 revisions. We have several pending Oklahoma SIP

17 submittals and revisions to the Oklahoma Part 70

18 air permitting program that we have not yet

19 acted upon, choosing to work with the ODEQ in an

20 effort to develop State regulatory solutions

21 designed to meet federal Clean Air Act (CAA)

22 requirements for SIPs and Title V programs.

23 If an acceptable regulatory solution is

24 not adopted by Oklahoma, the EPA will proceed

25 with actions on the pending submittals and

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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.

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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

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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,

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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)

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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 LODES: 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 LODES: 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 LODES: 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 LODES: 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 LODES: Yes.
 25 MS. FIELDS: Motion passed.

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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

Page 24

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

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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.

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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.

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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 LODS: 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 LODS: 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 LODS: 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 LODS: 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 LODS: 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 LODS: 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

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