

**CONTINUED MEETING/HEARING AGENDA**  
**AIR QUALITY ADVISORY COUNCIL**  
**November 12, 2020, 9:00 a.m.**  
**Virtual Meeting**

**Videoconference and Teleconference Information**

Meeting link (will open at 8:30am):

<https://us02web.zoom.us/j/86598185495?pwd=VzBOMGVMeVo2ZE5zVDlQRnhYaHhmQT09>

Meeting ID: **865 9818 5495**

Passcode: **751760**

Phone +1 346 248 7799 US (Houston)

For additional information visit:

<https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTA=>

Or call 405-702-4177

\* If the meeting host becomes disconnected during the meeting, DEQ will attempt for 15 minutes to re-start the meeting. Such an event would require all participants (Council members and members of the public) to log back into the meeting. If successful, the meeting would be restarted once a quorum is re-established. If unsuccessful, the meeting will be continued and reconvened using the same meeting link, ID, and passcode on Friday, November 13, 2020, at 9:00 am. Only matters appearing on this agenda would be discussed at any such reconvened meeting. More information for any such meeting would be posted on the DEQ/AQAC webpage.

1. **Call to Order** – Laura Lodes, Chair
2. **Roll Call** – Quiana Fields
3. **Public Rulemaking Hearing** – Agenda items 3.A. and 3.B. are carried over from the Council's October 21, 2020 meeting.
  - A. **Chapter 4. Rules of Practice and Procedure**  
**Subchapter 7. Environmental Permit Process [AMENDED]**

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.

1. Presentation –Tom Richardson, P.E., Rules & Planning (R&P) 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 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]**

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 operating permit requirements and make other minor updates.

1. Presentation – Tom Richardson, P.E., R&P 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

- 4. Division Director's Report** – Kendal Stegmann, Division Director
- 5. New Business** - Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.
- 6. Adjournment** – The next regular meeting is scheduled for Wednesday, January 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 4. RULES OF PRACTICE AND PROCEDURE**

**SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS**

**PART 1 - THE PROCESS**

**252:4-7-13. Notices**

- (a) **Statutory requirements for notice.** The Uniform Environmental Permitting Act requires an applicant to give notice in accordance with 27A O.S. § 2-14-301.
- (b) **Notice to landowner.** Applicants shall certify by affidavit that they own the real property, have a current lease or easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.
- (c) **Notice content.** The applicant shall provide DEQ with a draft notice for approval prior to publication. All published legal notice(s) shall contain the:
  - (1) Name and address of the applicant;
  - (2) Name, address and legal description of the site, facility and/or activity;
  - (3) Purpose of notice;
  - (4) Type of permit or permit action being sought;
  - (5) Description of activities to be regulated;
  - (6) Locations where the application may be reviewed;
  - (7) Names, addresses and telephone numbers of contact persons for the DEQ and for the applicant;
  - (8) Description of public participation opportunities and time period for comment and requests; and
  - (9) Any other information required by DEQ rules.
- (d) **Proof of publication.** Within twenty (20) days after the date of publication, an applicant shall provide the DEQ with a written affidavit of publication for each notice published. In case of a mistake in a published notice, the DEQ shall require a legal notice of correction or republication of the entire notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.
- (e) **Exception to notice requirement.** Applicants for solid waste transfer station permits may be exempt from public meeting requirements under 27A O.S. § 2-10-307.
- (f) **Additional notice.**
  - (1) Applicants for a NPDES, RCRA or UIC permit are subject to additional notice provisions of federal requirements adopted by reference as DEQ rules.
  - (2) Applicants for a proposed wastewater discharge permit that may affect the water quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-6-203(A)(7)]
  - (3) Applicants for a landfill permit shall provide notice by certified mail, return receipt requested, to owners of mineral interests and to adjacent landowners whose property may be substantially affected by installation of a landfill site. See *DuLaney v. OSDH*, 868 P.2d 676 (Okl. 1993).
- (g) **Additional notice content requirements for Clean Air Act Permits.** In addition to the notice provisions of 27A O.S. §§ 2-14-301, ~~and 2-14-302, and 2-14-304(C)~~, and other provisions of this section, the following requirements apply.

- (1) For Tier II and Tier III air quality applications, applicants~~Applicants~~ shall give notice by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the DEQ, including those who request in writing to be on the list; and by other means if determined by the Executive Director to be necessary to assure adequate notice to the affected public.
- (2) All published notice(s) for permit modification shall identify the emissions change involved in the modification.
- (3) An applicant for a Part 70 permit that may affect the air quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]
- (4) An A modification of an existing Part 70 source operating permit may be issued to an applicant for a new Part 70 operating permit without further public review if the operating permit modification accommodates a change for which no construction permit is required under 100-8-4(a)(1), or is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B)-252:4-7-32(b)(2)(A) or (B). In the latter case, and the public notice for the construction permit contains~~shall contain~~ the following language.
- (A) This permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 252:100-8-8 and 40 CFR § 70.8.
- (B) If the operating permit as modified has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2), the operating permit modification will be issued without further public notice and comment; and,
- (C) The public will not receive another opportunity to provide comments when the modified operating permit is issued.
- (5) For permits under OAC 252:100-8, Part 7:
- (A) all published notice(s) shall identify the degree of increment consumption that is expected from the source or modification.
- (B) the mailing list developed by DEQ under paragraph (g)(1) shall include the mailing address and/or email address for those who request in writing to be on the list, as well as the EPA Administrator, and other officials and agencies having cognizance over the location where the proposed construction would occur as follows:
- (i) the chief executives of the city and county where the source would be located;
- (ii) any comprehensive regional land use planning agency; and
- (iii) any State, Federal Land Manager, or Tribal Government whose lands may be affected by emissions from the source or modification.
- (6) In addition to any obligation for an applicant to publish notices under 27A O.S. Sections 2-14-301, 2-14-302, and 2-14-304, DEQ shall prepare and provide corresponding notices on the agency's web site for Tier II and III applications. Such notices shall, at a minimum, provide the same information as is provided in the corresponding published notices, which information may be posted in tabular form. For purposes of permits under OAC 252:100-8, Part 7 (PSD), these postings shall constitute the "consistent noticing method" referred to in 40 CFR Section 51.166(q)(2)(iii).
- (7) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft individual construction permits and draft individual construction permit modifications for Tier I applications. Such notices shall, at a minimum, provide

information consistent with the requirements of 40 CFR Section 51.161, and may be posted in tabular form with appropriate links to additional information sources.

(8) If a minor facility is eligible to use the FESOP Enhanced NSR process under OAC 252:100-7, the public notice for a construction permit for modification of a permitted minor facility prepared and posted under paragraph (7) shall contain a statement to the following effect: The facility's subsequent operating permit modification will be issued without further public notice and comment, unless the operating permit conditions as modified significantly differ from the construction permit's operating conditions.

(9) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft minor facility individual operating permits for Tier I applications and for draft modifications of existing minor facility operating permits for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of OAC 252:4-7-13(c), and may be posted in tabular form with appropriate links to additional information sources. However, for a minor facility that is eligible to use the FESOP Enhanced NSR process under OAC 252:100-7, a modification of an existing minor facility operating permit may be issued without further public review if the operating permit modification is based on a construction permit that was made available for review and comment under 252:4-7-13(g)(7) and (8).

(10) Posting of such notices for other authorizations as listed in OAC 252:4-7-32(c) shall be at the Director's discretion. In addition, posting of such notices for other Tier I applications, including Tier I applications under OAC 252:4-7-32(a)(2)(C) or OAC 252:4-7-32(b)(2)(C) for extension of expiration date of a construction permit, shall be at the Director's discretion.

### PART 3 - AIR QUALITY DIVISION TIERS AND TIME LINES

#### 252:4-7-32. Air quality applications - Tier I

(a) **Minor facility permits.** The following air quality authorizations for minor facilities require Tier I applications.

- (1) **New permits.** New construction, operating and relocation permits.
- (2) **Modifications of permits.**
  - (A) Modification of a construction permit for a minor facility that will remain minor after the modification.
  - (B) Modification of an operating permit that will not change the facility's classification from minor to major.
  - (C) Extension of expiration date of a construction permit.

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier I applications.

- (1) **New permits.**
  - (A)—New construction permit for an existing Part 70 source for any change considered minor under 252:100-8-7.2(b)(1).
  - (B) **New operating permit that:**
    - (i) is based on a construction permit that was processed under Tier II or III, and 252:100-8-8, and
    - (ii) has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2).

(2) **Modifications of permits.**

(A) Modification of any operating permit condition that:~~(i)~~ is based on the operating conditions of a construction permit that was processed under Tier I, II or III, and 252:100-8-8, and

~~(ii)~~(i) does not differ from those construction permit conditions in any way considered significant under 252:100-8-7.2(b)(2) or,

(ii) accommodates a change for which no construction permit is required under 100-8-4(a)(1).

(B) A construction or operating permit modification that is minor under 252:100-8-7.2(b)(1).

(C) Extension of expiration date of a Part 70 source's construction permit with no or minor modifications.

(c) **Other authorizations.** The following air quality authorizations require Tier I applications.

(1) New, modified and renewed individual authorizations under general operating permits for which a schedule of compliance is not required by 252:100-8-5(e)(8)(B)(i).

(2) Burn approvals.

(3) Administrative amendments of all air quality permits and other authorizations.

**252:4-7-33. Air quality applications - Tier II**

(a) **Minor facility permit actions.**

(1) Any minor facility seeking a permit for a modification that when completed would turn it into a Part 70 source is required to apply under subsection (b) of this section.

(2) Any Part 70 source seeking a permit that would limit its potential to emit such that when issued it would qualify as a minor facility requires a Tier II application.

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier II applications.

(1) **New permits.**

(A) New construction permit for a new Part 70 source not classified under Tier III.

(B) New construction permit for an existing Part 70 source for any change considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

(C) New operating permit for a Part 70 source~~that did not have an underlying construction permit processed under Tier II or III, and 252:100-8-8.~~

~~(D) [Reserved]—New operating permit with one or more conditions that differ from the underlying Tier II or III construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).~~

(E) New acid rain permit that is independent of a Part 70 permit application.

(F) New temporary source permit under 252:100-8-6.2.

(2) **Modifications of permits.**

(A) Significant modification, as described in 252:100-8-7.2(b)(2), of an operating permit that is not based on an underlying construction permit processed under Tier II or III, and 252:100-8-8.

(B) Modification of an operating permit when the conditions proposed for modification differ from the underlying construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).

(C) A construction permit modification considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

- (3) **Renewals.** Renewals of operating permits.
- (c) **Other authorizations.** The following air quality authorizations require Tier II applications.
  - (1) New, modified and renewed general operating permits.
  - (2) Individual authorizations under any general operating permit for which a schedule of compliance is required by 252:100-8-5(c)(8)(B)(i).
  - (3) Plant-wide emission plan approval under 252:100-37-25(b) or 252:100-39-46(j).
  - (4) Alternative emissions reduction authorizations. (Also subject to state implementation plan revision procedures in 252:100-11.)

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

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **252:100-1-3. Definitions**

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

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

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

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

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

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

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

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

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

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

**"Building, structure, facility, or installation"** means:

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

(B) notwithstanding the provisions of subparagraph (A), for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface

site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this definition, has the same meaning as in 40 CFR 63.761.

**"Carbon dioxide equivalent emissions"** or **"CO<sub>2</sub>e"** means an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions, for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a CO<sub>2</sub>e.

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

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

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

**"Commencement of operation"** or **"commencing operation"** means the owner or operator of the stationary source has begun, or caused to begin, emitting a regulated air pollutant from any activity for which the stationary source is designed and/or permitted.

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

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

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

**"Direct fired"** means that the hot gasses produced by the flame or heat source come into direct contact with the material being processed or heated.

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

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

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

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

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

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

(A) Are under common control.

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

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

**"Fossil fuel"** means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

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

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

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

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

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

**"Greenhouse gas"** or **"GHG"** means the air pollutant defined in 40 CFR § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).

**"Gross particulate matter"** or **"GPM"** means particulate matter with an aerodynamic diameter greater than 10 micrometers.

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

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

**"Indirect fired"** means that the hot gasses produced by the flame or heat source do not come into direct contact with the material, excluding air, being processed or heated.

**"Installation"** means an identifiable piece of process equipment.

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

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

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

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

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

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

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

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

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

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

(ii) an increase in hours of operation;

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

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

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

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

**"New source review"** or **"NSR"** means a process of evaluation performed by the DEQ to determine the applicable requirements that must be incorporated into a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source. DEQ's NSR program, at a minimum, must meet the requirements of 40 CFR Part 51, Subpart I.

**"Nonmethane organic compounds"** or **"NMOC"** means nonmethane organic compounds, as defined in 40 CFR 60.754.

**"NSR permit"** means a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source.

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

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

**"Organic compound"** means any chemical compound containing the element carbon.

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

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

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

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

**"PM<sub>10</sub> emissions"** means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less as measured by applicable reference methods, or an equivalent or alternative method.

**"PM<sub>10</sub>"** means particulate matter with an aerodynamic diameter of 10 micrometers or less.

**"PM<sub>2.5</sub>"** means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

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

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

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

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

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

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

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

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

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

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

- (A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;
- (B) The social, environmental, and economic impact of such controls; and
- (C) Alternative means of providing for attainment and maintenance of such standard.

**"Reconstruction"** means

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

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

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

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

**"Regulated air pollutant"** means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

**"Responsible official"** means one of the following:

- (A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
  - (i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
  - (ii) The delegation of authority to such representatives is approved in advance by the DEQ;

- (B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;
- (C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
- (D) For affected sources:
  - (i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
  - (ii) The designated representative for any other purposes under this Chapter.

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

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

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

- (A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,
- (B) is not an air pollution abatement operation.

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

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

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

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

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

**"Title V permit"** means (unless the context suggests otherwise) an operating permit for a Part 70 source.

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

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

**"Volatile organic compound"** or **"VOC"** means any organic compound that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, tert-butyl

acetate and compounds listed in 40 CFR 51.100(s)(1) are presumed to have negligible photochemical reactivity and are not considered to be VOC.

#### **252:100-1-4. Units, abbreviations, and acronyms**

##### **(a) Abbreviations and symbols of units of measure.**

- (1) Btu - British thermal unit
- (2) cm/sec - centimeter per second
- (3) CO<sub>2</sub>e - carbon dioxide equivalent
- (4) dscf - dry cubic feet at standard conditions
- (5) dscm - dry cubic meter at standard conditions
- (6) ft/min - feet per minute
- (7) gal - gallon
- (8) gal/d - gallons per day
- (9) gal/yr - gallons per year
- (10) gr/dscf - grains per dry standard cubic foot
- (11) hr - hour
- (12) Hg - mercury
- (13) hp - horsepower
- (14) H<sub>2</sub>O - water
- (15) H<sub>2</sub>S - hydrogen sulfide
- (16) H<sub>2</sub>SO<sub>4</sub> - sulfuric acid
- (17) kg - kilogram
- (18) kg/metric ton - kilograms per metric ton
- (19) kPa - kilopascals
- (20) l - liter
- (21) l/yr - liters per year
- (22) LT/D - long tons per day
- (23) lb/wk - pounds per week
- (24) lb - pound
- (25) lbs/hr - pounds per hour
- (26) m<sup>3</sup> - cubic meter
- (27) mg/dscm - milligrams per dry standard cubic meter
- (28) MMBTU/hr - million british thermal units per hour
- (29) Mg - megagram - 10<sup>6</sup> gram
- (30) Mg/yr - megagrams per year
- (31) mg/l - milligrams per liter
- (32) m/min - meter per minute
- (33) ng/dscm - nanograms per dry standard cubic meter
- (34) ng/J - nanograms per Joule
- (35) oz/in<sup>2</sup> - ounce per square inch
- (36) ppm - parts per million
- (37) psia - pounds per square inch absolute
- (38) psig - pounds per square inch gage
- (39) ppmv - parts per million by volume
- (40) SO<sub>2</sub> - sulfur dioxide
- (41) TPY - tons per year

- (42)  $\mu\text{g}/\text{m}^3$  - micrograms per cubic meter
- (b) Acronyms.
- (1) A.I.S.I. - American Iron and Steel Institute
  - (2) A.S.M.E. - American Society of Mechanical Engineers
  - (3) A.S.T.M. - American Society for Testing and Materials
  - (4) BACT - Best Available Control Technology
  - (5) CEM - Continuous Emission Monitor
  - (6) CFR - Code of Federal Regulations
  - (7) COM - Continuous Opacity Monitor
  - (8) DEQ - Department of Environmental Quality
  - (9) EPA - Environmental Protection Agency
  - (10) GHG - Greenhouse Gas
  - (11) HAP - Hazardous Air Pollutants
  - (12) HMIWI - Hospital/Medical/Infectious Waste Incinerator
  - (13) MACT - Maximum Achievable Control Technology
  - (14) MSW - Municipal Solid Waste
  - (15) MWC - Municipal Waste Combustors
  - (16) NAAQS - National Ambient Air Quality Standards
  - (17) NESHAP - National Emissions Standards for Hazardous Air Pollutants
  - (18) NSPS - New Source Performance Standards
  - (19) NSR - New Source Review
  - (20) ~~(19)~~ OAC - Oklahoma Administrative Code
  - (21) ~~(20)~~ PBR - Permit by Rule
  - (22) ~~(21)~~ PM - Particulate Matter
  - (23) ~~(22)~~ PSD - Prevention of Significant Deterioration
  - (24) ~~(23)~~ SIC - Standard Industrial Classification
  - (25) ~~(24)~~ SIP - State Implementation Plan
  - (26) ~~(25)~~ TSP - Total Suspended Particulates
  - (27) ~~(26)~~ VOC - Volatile Organic Compound
  - (28) ~~(27)~~ 27A O.S. - Title 27A Oklahoma Statutes

## SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

### PART 1. GENERAL PROVISIONS

#### 252:100-7-1.1. Definitions

The following words and terms when used in this Subchapter shall have the following meaning unless the context clearly indicates otherwise:

**"Actual emissions"** means the total amount of any regulated air pollutant actually emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

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

**"Commence"** means, as applied to the construction or modification of a minor facility to which neither a NSPS or NESHAP applies, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

**"De minimis facility"** means a facility that meets the requirements contained in paragraphs (A) and (B) of this definition.

(A) All the air pollutant emitting activities at the facility are on the de minimis list contained in Appendix H or the facility meets all of the following de minimis criteria:

- (i) The facility has actual emissions of 5 tpy TPY or less of each regulated air pollutant, except that fraction of particulate matter that exhibits an aerodynamic particulate diameter of more than 10 micrometers ( $\mu\text{m}$ ).
- (ii) The facility is not a "major source" as defined in OAC 252:100-8-2.
- (iii) The facility is not a "major stationary source" as defined in OAC 252:100-8-31 for facilities in attainment areas.
- (iv) The facility is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas.
- (v) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.
- (vi) The facility has not opted to obtain or retain an Air Quality Division permit.

(B) The facility is not subject to the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63).

**"Emergency engine"** means a stationary engine used to resume essential operations or ensure safety during sudden and unexpected occurrences including but not limited to loss of electrical power, fire, and/or flood.

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

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

**Federally Enforceable State Operating Permit** or **"FESOP"** means an operating permit issued under Subchapter 7 of this Chapter, including operating permits issued under the provisions of 252:4-7-33(a)(2). As such, for the purposes of this subchapter, "FESOP" and "operating permit" are synonymous.

**"FESOP Enhanced NSR process"** means a process under which the evaluation of requirements applicable under NSR is integrated with a determination of procedural and compliance requirements under the DEQ's FESOP program. This process is only available for facilities already operating under a FESOP permit. Under a FESOP enhanced NSR process, the 30-day public and EPA review period of a draft NSR permit is integrated with the review of the draft FESOP modification, and results in the issuance of a minor source construction permit whose applicable FESOP implications have also been reviewed. Later the requirements of the construction permit may be incorporated into a modified FESOP using the minor source operating permit modification process, without further public or EPA review, as authorized in OAC 252:4-7-13(g)(9) and OAC 252:100-7-18(f).

**"Gasoline dispensing facility"** means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or

highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment, as these terms are used in 40 CFR Part 63 Subpart CCCCC.

**"Hazardous Air Pollutant"** or **"HAP"** means any hazardous air pollutant regulated under Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412, and subject to NESHAP.

**"Minor facility"** means a facility which is not a Part 70 source.

**"National Emission Standards for Hazardous Air Pollutants"** or **"NESHAP"** means those standards as published by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412.

**"New portable source"** means a portable source that has never operated within the State of Oklahoma. This includes sources that are initially constructed and existing facilities that are relocating into Oklahoma from another state.

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

**"Permit exempt facility"** means a facility that:

- (A) has actual emissions in every calendar year that are 40 tpy-TPY or less of each regulated air pollutant;
- (B) is not a de minimis facility as defined in OAC 252:100-7-1.1;
- (C) is not a "major source" as defined in OAC 252:100-8-2 for Part 70 sources;
- (D) is not a "major stationary source" as defined in OAC 252:100-8-31 for PSD facilities in attainment areas;
- (E) is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas;
- (F) is not operated in conjunction with another facility or source that is subject to air quality permitting;
- (G) is not subject to an emission standard, equipment standard, or work practice standard in the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63); and
- (H) is not subject to the requirements of OAC 252:100-39-47.

**"Portable source"** means a source with design and intended use to allow disassembly or relocation.

**"Relocate"** means to move a source from one geographical location to another. The term does not include minimal moves within the facility boundaries.

**"Regulated air pollutant"** means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

- (A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. Section 60.15(b)(1), the emissions unit is a reconstructed unit within the meaning of paragraph (1) in the definition of "Reconstruction" in 40 C.F.R. Section 63.2, or the emissions unit completely takes the place of an existing emissions unit.
- (B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- (C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Traditional NSR process" means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the FESOP program. This process is required for facilities that have not yet received a FESOP, but it may also be used (as an alternative to the FESOP Enhanced NSR process) for facilities that have already received a FESOP. The traditional NSR process provides a 30-day public and EPA review period on the draft construction (NSR) permit, as described in OAC 252:100-7-17 and OAC 252:4-7. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified FESOP that also includes a 30-day public and EPA review period, as described in OAC 252:100-7-18 and OAC 252:4-7.

## 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 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 permitted emissions increase in actual emissions 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) **Duty Failure to comply with a—the construction permit.** The permittee shall comply with all limitations and conditions of the 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~~ ~~The authority-to construct or modify granted by a duly issued construction permit~~ ~~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.

(h) **Expiration of authorization to construct or modify.** ~~The authorization to construct or modify under the construction permit shall expire upon completion of the construction or modification, or as otherwise provided in (e), (f), or (g). However, the requirements established under (d) shall continue in effect until and unless the facility or affected unit ceases operations, was never constructed in the first place, or the requirement is superseded under a subsequently-issued construction permit or a FESOP that has undergone public review.~~

## PART 4. OPERATING PERMITS

### 252:100-7-18. Operating permit

(a) **Permit required.** An operating permit is required for a minor facility as specified in OAC 252:100-7-18(a)(1) and (2).

(1) **New facility.** No person shall cause or authorize the operation of a new minor facility for more than a 180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit.

(2) **Modification of an existing facility.** No person shall cause or authorize the operation of a minor facility modified pursuant to OAC 252:100-7-15(a)(2) for more than ~~a 180-day~~ period after commencement of operation without applying for a DEQ-issued air quality operating permit ~~or for modification of the facility's existing operating permit.~~

(b) **Administrative permit amendment.** An administrative permit amendment to an operating permit does not require a prior construction permit. Except for correction of typographical errors, application for an administrative permit amendment shall be made to the DEQ in writing within

30 days of the date the change occurred. Application for correction of typographical errors can be made at anytime. An administrative permit amendment can be made to:

- (1) correct typographical errors;
- (2) identify a change in name, address, or phone number of any person identified in the permit, or provide a similar minor administrative change at the facility;
- (3) require more frequent monitoring or reporting by the permittee; and/or
- (4) allow other permit amendments that are not physical or operational changes and that do not result in an increase in emissions.

(c) **Denial or revocation of a permit to operate.** No owner or operator shall cause or authorize the operation of a minor facility if the DEQ denies or revokes a permit to operate.

(d) **Permit Categories.** Three types of operating permits are available: permit by rule, general permit, and individual permit. See OAC 252:100-7-15(b) for a complete The description of the permit categories in OAC 252:100-7-15(b) also applies to operating permits.

(e) **Permit application requirements.** An operating permit application shall meet the following requirements.

(1) **New or modified facility.** An operating permit application must contain the following information.

(A) **Application content.** Application shall be made on a form provided by the DEQ. An application shall contain:

- (i) The proposed operation start-up date, or phased dates when applicable.
- (ii) Revisions to the installation/construction, if any, that differed from the construction design and plan given in the permit application material, data and specifications.

(B) **Emission tests.** Before a permit to operate a new or modified minor facility is granted, the applicant, if required by the DEQ, shall conduct emission tests in accordance with methods approved by the DEQ with the tests being made at the expense of the applicant. The DEQ shall be given advance notice of the tests, may monitor performance tests conducted by the applicant, and may also conduct emissions tests. The results of any required test must be provided to the DEQ along with supporting information as required.

(2) **Contents of an application for an administrative permit amendment.** The application may be made on the DEQ application form or it may be in letter form. The application shall:

- (A) describe the change to be made to the permit,
- (B) include the date the change occurred,
- (C) identify the facility and source involved, and
- (D) be signed by the applicant.

(f) **Operating permit conditions.**

(1) Emission limitations and other permit conditions established and made a part of the construction permit are incorporated into and become enforceable limitations requirements of the subsequently issued operating permit.

(2) Permit limitations in adjustment of, or in addition to, the facility's construction permit limitations may be made a condition of the facility's operating permit issuance.

(3) For a minor facility modified under a construction permit issued pursuant to OAC 252:100-7-15(a)(2), the operating permit may be modified using the FESOP enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(7)-(9) to incorporate the operating permit conditions described in paragraphs (1) and (2).

(g) **Duty to comply with the operating permit.** The permittee shall comply with all limitations and conditions of the operating permit. A violation of the limitations or conditions contained in

the operating 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.

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

### **PART 5. PERMITS FOR PART 70 SOURCES**

#### **252:100-8-2. Definitions**

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

**"Administratively complete"** means an application that provides:

- (A) All information required under OAC 252:100-8-5(c), (d), or (e);
- (B) A landowner affidavit as required by OAC 252:4-7-13(b);
- (C) The appropriate application fees as required by OAC 252:100-8-1.7; and
- (D) Certification by the responsible official as required by OAC 252:100-8-5(f).

**"Affected source"** means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

**"Affected states"** means:

- (A) all states:
  - (i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and
  - (ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or
- (B) all states that are within 50 miles of the permitted source.

**"Affected unit"** means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

**"Applicable requirement"** means all of the following as they apply to emissions units in a Part 70 source subject to this Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- (A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);
- (D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;

- (E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
- (I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
- (J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
- (K) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

**"Begin actual construction"** means for purposes of this Part, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

**"Designated representative"** means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

**"Draft permit"** means the version of a permit for which the DEQ offers public participation under 27A O.S. §§ 2-14-101 through 2-14-401 and OAC 252:4-7 or affected State review under OAC 252:100-8-8.

**"Emergency"** means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

**"Emissions allowable under the permit"** means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

**"Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

**"Enhanced NSR process"** means a process under which the evaluation of requirements applicable under NSR is integrated with a full determination of procedural and compliance requirements under the Part 70 source (Title V) operating permit program. This process is an

alternative to traditional NSR process, and is only available for facilities already operating under a Title V permit. Under the enhanced NSR process, the 30-day public review period for a draft NSR permit is integrated with the 45-day EPA review of the Title V permit and would allow for the issuance of a major source construction permit whose applicable Title V implications have also been reviewed. Therefore, the applicable requirements of the construction permit may later be incorporated as a modification to the Title V operating permit using the administrative amendment process of OAC 252:100-8-7.2(a) – without further public or EPA review, as authorized in OAC 252:4-7-13(g)(4).

**"Final permit"** means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

**"Fugitive emissions"** means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**"General permit"** means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

**"Insignificant activities"** means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) and (B) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

(A) 5 tons per year (TPY) of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAPs, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

**"MACT"** means maximum achievable control technology.

**"Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987. For onshore activities belonging to Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this definition, has the same meaning as in 40 CFR 63.761.

(A) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 TPY or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 TPY or more of any

- combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
- (ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.
- (B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 TPY or more of any air pollutant (except gross particulate matter) subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:
- (i) Coal cleaning plants (with thermal dryers);
  - (ii) Kraft pulp mills;
  - (iii) Portland cement plants;
  - (iv) Primary zinc smelters;
  - (v) Iron and steel mills;
  - (vi) Primary aluminum ore reduction plants;
  - (vii) Primary copper smelters;
  - (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
  - (ix) Hydrofluoric, sulfuric, or nitric acid plants;
  - (x) Petroleum refineries;
  - (xi) Lime plants;
  - (xii) Phosphate rock processing plants;
  - (xiii) Coke oven batteries;
  - (xiv) Sulfur recovery plants;
  - (xv) Carbon black plants (furnace process);
  - (xvi) Primary lead smelters;
  - (xvii) Fuel conversion plants;
  - (xviii) Sintering plants;
  - (xix) Secondary metal production plants;
  - (xx) Chemical process plants (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
  - (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
  - (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
  - (xxiii) Taconite ore processing plants;
  - (xxiv) Glass fiber processing plants;
  - (xxv) Charcoal production plants;
  - (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

- (xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under section 111 or 112 of the Act.
- (C) A major stationary source as defined in part D of Title I of the Act, including:
  - (i) For ozone nonattainment areas, sources with the potential to emit 100 TPY or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as "Marginal" or "Moderate," 50 TPY or more in areas classified or treated as classified as "Serious," 25 TPY or more in areas classified or treated as classified as "Severe," and 10 TPY or more in areas classified or treated as classified as "Extreme"; except that the references in this paragraph to 100, 50, 25, and 10 TPY of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
  - (ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 TPY or more of volatile organic compounds;
  - (iii) For carbon monoxide nonattainment areas:
    - (I) that are classified or treated as classified as "Serious"; and
    - (II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 TPY or more of carbon monoxide; and
  - (iv) For particulate matter (PM<sub>10</sub>) nonattainment areas classified or treated as classified as "Serious," sources with the potential to emit 70 TPY or more of PM<sub>10</sub>.

**"Maximum capacity"** means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

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

**"Permit modification"** means a revision to a Part 70 source construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

**"Permit program costs"** means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

**"Permit revision"** means any permit modification or administrative permit amendment.

**"Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

**"Proposed permit"** means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

**"Regulated air pollutant"** means the following:

- (A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);
- (B) Any pollutant for which a national ambient air quality standard has been promulgated;
- (C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;
- (E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit, and (r) (Prevention of Accidental Releases), including the following:
  - (i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and,
  - (ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or
- (F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

**"Renewal"** means the process by which a permit is reissued at the end of its term.

**"Section 502(b)(10) changes"** means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

**"Small unit"** means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

**"State-only requirement"** means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

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

**"Stationary source"** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act as it existed on January 2, 2006.

**"Subject to regulation"** means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the EPA Administrator in subchapter C of Chapter I of 40 CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

- (A) Greenhouse gases (GHG) shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 TPY CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e) and are otherwise subject to regulation as previously described in this definition.

(B) The term TPY CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e) shall represent an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions (TPY), for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a TPY CO<sub>2</sub>e.

(C) If federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part, the EPA's tailoring rule (75 FR 31514, June 3, 2010), endangerment finding (74 FR 66496, December 15, 2009), or light-duty vehicle greenhouse gas emission standard (75 FR 25686, May 7, 2010), this definition shall be enforceable only to the extent that it is enforceable by the EPA.

**"Traditional NSR process"** means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the Part 70 source (Title V) operating permit program. This process is required for facilities that have not yet received a Part 70 source operating permit, but it may also be used (as an alternative to the enhanced NSR process) for facilities that have already received a Part 70 source operating permit. Under the traditional NSR process, the EPA has an opportunity to review a draft construction permit during the 30-day public review period. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified Part 70 source operating permit that includes a 30-day public review period and a separate 45-day EPA review period, as described in OAC 252:100-8-8 and OAC 252:4-7.

**"Trivial activities"** means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

**"Unit"** means, for purposes of Title IV, a fossil fuel-fired combustion device.

#### **252:100-8-4. Requirements for construction and operating permits**

##### **(a) Construction permits.**

###### **(1) Construction permit required.**

**(A) Facilities without Part 70 operating permits.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit under Part 5 of OAC 252:100-8.

**(B) Facilities with Part 70 operating permits.** A construction permit is also required prior to

- (i) reconstruction of a major affected source under 40 CFR Part 63,
- (ii) reconstruction of a major source if it would then become a major affected source under 40 CFR Part 63, or
- (iii) for commencement of any physical change or change in method of operation that would be a significant modification under OAC 252:100-8-7.2(b)(2), or
- (iv) commencement of any physical change or change in method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY, calculated using the approach in 40 C.F.R. Section 49.153(b).

**(C) Additional Requirements.** In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

###### **(2) Requirement for case-by-case MACT determinations.**

(A) **Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

(B) **Exclusions.** The following sources are not subject to this subsection.

- (i) Electric utility steam generating units unless and until these units are added to the source category list.
- (ii) Stationary sources that are within a source category that has been deleted from the source category list.
- (iii) Research and development activities as defined in 40 CFR § 63.41.

(C) **MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

(b) **Operating permits.**

(1) **Operating permits required.** Except as provided in subparagraphs (A) and (B) of this paragraph, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

(A) If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

(B) If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

(C) Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** ~~Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in OAC 252:100-8-4(b)(4).~~ A timely application is one that is postmarked on or before the relevant date listed ~~in OAC 252:100-8-4(b)~~ below. ~~In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.~~

(4) **Application submittal schedule.** ~~The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule.~~

~~(A) No later than September 5, 1996:~~

- (i) Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act, §407.
- (ii) Any owner or operator shall submit no less than one third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):
- (I) Petroleum and Natural Gas, 1311;
  - (II) Natural Gas Liquids, 1321;
  - (III) Electric Services, 4911, 4961;
  - (IV) Natural Gas Transmission, 4922;
  - (V) Natural Gas Transmission and Distribution, 4923; and
  - (VI) Petroleum Bulk Stations and Terminals, 5171.
- (B) All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.
- (C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:
- (i) Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,
  - (ii) Brick Plants, 3251, 3297,
  - (iii) Commercial Printing, 2752, 2761.
- (D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:
- (i) Refineries, 2911;
  - (ii) Cement Plants, 3241;
  - (iii) Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;
  - (iv) Petroleum Transportation/Terminals/Storage, 4612, 4613;
  - (v) Food Products, 2013, 2074, 2095.
- (E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.
- (5) **Newly regulated sources.** A source that becomes subject to the Part 70 operating permit program at any time on or after March 6, 1996, shall file an administratively complete operating permit application in accordance with the following schedule.
- (A) A new source shall file an administratively complete operating permit application within 180 days of commencement of operation.
- (B) An existing source that becomes subject to the Part 70 operating permit program due to modification shall file an administratively complete operating permit application within 180 days of commencement of operation of the modification.

(C) An existing source that becomes subject to the Part 70 operating permit program without undergoing physical or operational changes resulting in an increase in the emission of any air pollutant subject to regulation shall file an administratively complete operating permit application by March 6, 1999 or within 12 months after the date the source first becomes subject to the Part 70 operating permit program, whichever is later.

(4) [Reserved]

(5) [Reserved]

(6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.

(7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.

(8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least 180 days before the date of permit expiration, unless a longer period (not to exceed 540 days) is specified in the permit. Renewal periods greater than 180 days are subject to negotiation on a case-by-case basis.

(9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).

(10) **Application completeness.** See Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.

(c) **Enhanced NSR process.** An existing Part 70 source covered by an operating permit issued under this subchapter may be eligible to utilize the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) for a construction permit for modification of the source.

## 252:100-8-5. Permit applications

(a) **Confidential information.** If a source submits information to the DEQ under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the DEQ requests that the source do so.

(b) **Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) **Standard application form and required information.** Sources that are subject to the Part 70 permit program established by this Chapter shall file applications on the standard application form that the DEQ makes available for that purpose. The application must include information needed to determine the applicability of any applicable requirement, or state-only requirement, or to evaluate the fee amount required under the schedule approved pursuant to OAC 252:100-5-2.2(b)(2). The applicant shall submit the information called for by the application form for each

emissions unit at the source to be permitted. The source must provide a list of any insignificant activities that are exempted because of size or production rate. Trivial activities need not be listed. The standard application form and any attachments shall require that the information required by OAC 252:100-8-5(d) and/or (e) be provided.

**(d) Construction permit applications.**

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

(A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination will be made on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant.

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(3) Construction permit applications for existing source modifications that are eligible for the enhanced NSR process under 252:100-8-4(c) must indicate in the application whether they intend to utilize:

(A) the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) and the administrative amendment process for the ensuing operating permit modification, or

(B) the traditional NSR process.

**(e) Operating permit applications.**

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(A) All emissions of pollutants for which the source is major, and all emissions (including fugitive emissions) of regulated air pollutants. Fugitive emissions shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The permit application shall describe all emissions of regulated

air pollutants emitted from any emissions unit, except where such units are exempted under OAC 252:100-8-5(c) or OAC 252:100-8-3(b).

(B) Identification and description of all points of emissions described in OAC 252:100-8-5(e)(3)(A) in sufficient detail to establish the basis for fees and applicability of the Act's requirements.

(C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard.

(D) The following information to the extent it is needed to determine or regulate emissions:

- (i) fuels,
- (ii) fuel use,
- (iii) raw materials,
- (iv) production rates, and
- (v) operating schedules.

(E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(F) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source.

(G) Other information required by any applicable requirement, or state-only requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(H) Calculations on which the information in items (A) through (G) of this paragraph is based.

(4) The following air pollution control requirements:

(A) Citation and description of all applicable requirements and all state-only requirements.

(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement and state-only requirement.

(5) Other specific information required under the DEQ's rules and statutes to implement and enforce other applicable requirements of the Act or of this Chapter or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements and state-only requirements.

(7) Additional information as determined to be necessary by the DEQ to define alternative operating scenarios identified by the source pursuant to OAC 252:100-8-6(a)(9) or to define permit terms and conditions implementing OAC 252:100-8-6(f) or 252:100-8-6(a)(10).

(8) A compliance plan for all covered sources that contains all the following:

(A) A description of the compliance status of the source with respect to all applicable requirements and state-only requirements as follows:

(i) For applicable requirements and state-only requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements and state-only requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

- (iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
  - (B) For sources not in complete compliance, a compliance schedule as follows:
    - (i) A schedule of compliance for sources that are not in compliance with all applicable requirements and state-only requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements and state-only requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.
    - (ii) A schedule for submission of certified progress reports no less frequently than every 6 months.
  - (C) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.
- (9) Requirements for compliance certification, including the following:
- (A) A certification of compliance with all applicable requirements and state-only requirements by a responsible official consistent with OAC 252:100-8-5(f) and section 114(a)(3) of the Act;
  - (B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
  - (C) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement state-only requirements or by the permitting authority; and
  - (D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.
- (10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.
- (f) **Certification.** Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Chapter shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

## **252:100-8-7.2. Administrative permit amendments and permit modifications**

### **(a) Administrative permit amendments.**

- (1) An administrative permit amendment:
  - (A) Corrects typographical errors;

- (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
  - (C) Requires more frequent monitoring or reporting by the permittee;
  - (D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;
  - (E) Incorporates into ~~the~~an existing Part 70 source operating permit the requirements from preconstruction review permits issued by the DEQ under this Part and the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4).
- (2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.
- (3) An administrative permit amendment shall be made by the DEQ in accordance with the following:
- (A) The DEQ shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.
  - (B) The DEQ shall submit a copy of the revised permit to the Administrator.
  - (C) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
- (4) The DEQ shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAC 252:100-8-6(d) for administrative permit amendments made pursuant to OAC 252:100-8-7.2(a)(1)(E).
- (b) **Permit modification.** A permit modification is any revision to a permit that cannot be accomplished under OAC 252:100-8-7.2(a). A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.
- (1) **Minor permit modification procedures.**
- (A) **Criteria.**
- (i) Minor permit modification procedures may be used only for those permit modifications that:
    - (I) Do not violate any applicable requirement, or state-only requirements;
    - (II) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;
    - (III) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
    - (IV) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include federally-enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I and alternative emissions limits approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and
    - (V) Are not modifications under any provision of Title I of the Act.

- (ii) Notwithstanding OAC 252:100-8-7.2(b)(1)(A)(i) and 252:100-8-7.2(b)(2)(A), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State's implementation plan or in applicable requirements promulgated by EPA.
- (B) **Application.** To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the permit application requirements of Tier I under OAC 252:4-7 and shall include the following:
- (i) A description of the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs;
  - (ii) The source's suggested modification language;
  - (iii) Certification by a responsible official, that the application and the proposed modification meet the criteria for use of minor permit modification procedures; and
  - (iv) Completed forms for any notices required by OAC 252:4-7 and OAC 252:100-8-7.2(b)(1)(C).
- (C) **EPA and affected state notification.** If the proposed minor modification is of a permit that underwent EPA review in accordance with OAC 252:100-8-8, the provisions of that section shall apply to the minor modification application.
- (D) **Timetable for issuance.** Within 90 days of the DEQ's receipt of a complete application under OAC 252:4-7 the DEQ shall:
- (i) Issue the minor permit modification as approved;
  - (ii) Deny the minor permit modification application; or
  - (iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures or administrative amendment procedures.
- (E) **Source's ability to make change.** Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change and until the DEQ takes any of the actions specified in OAC 252:100-8-7.2(b)(1)(D)(i) through (iii), the source must comply with the applicable requirements and state-only requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.
- (F) **Permit shield.** The permit shield under OAC 252:100-8-6(d) will not extend to minor permit modifications.
- (G) **Permittee's risk in commencing construction.** The permittee assumes the risk of losing any investment it makes toward implementing a modification prior to receiving a permit amendment authorizing the modification. The DEQ will not consider the possibility of the permittee suffering financial loss due to such investment when deciding whether to approve, deny, or approve in modified form a minor permit amendment.
- (2) **Significant modification procedures.**
- (A) **Criteria.** Significant modification procedures shall be used for applications requesting permit modifications that:

- (i) Involve any significant changes in existing monitoring requirements in the permit;;
  - (ii) Relax any reporting or recordkeeping requirements.
  - (iii) Change any permit condition that is required to be based on a case-by-case determination of an emission limitation or other standard, on a source-specific determination of ambient impacts, or on a visibility or increment analysis;
  - (iv) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include:
    - (I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;
    - (II) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and
  - (v) Are modifications under any provision of Title I of the Act; and,
  - (vi) Do not qualify as minor permit modifications or administrative amendments.
- (B) **Procedures for processing.** Significant permit modifications shall meet all requirements of these rules that are applicable to Tier II applications. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs.
- (C) **Issuance.** The DEQ shall complete review of significant permit modifications within nine months after receipt of a complete application, but shall be authorized to extend that date by up to three months for cause.

#### **252:100-8-8. Permit review by EPA and affected states**

- (a) **Applicability.** This Section applies to all Subchapter 8 permit actions except administrative permit amendments.
- (b) **Format.** To the extent practicable, information provided to the EPA by applicants shall be in computer-readable format compatible with EPA's national database management system.
- (c) **Recordkeeping.** The DEQ will keep for 5 years records required by this Section and will submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this Chapter.
- (d) **Transmission of information to EPA.** The DEQ shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit, unless waived by the Administrator for a category of sources other than major sources. In the alternative, the DEQ may require an applicant upon filing to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the DEQ may submit a permit application summary form and any relevant portion of the permit application and compliance plan, in place thereof.
- (e) **Transmission of notice of draft permit to affected states.** The DEQ shall give notice of each draft permit to any affected State on or before the time that this notice is provided to the public under 27A O.S. § 2-14-302, except to the extent that paragraph 8-7.2(b)(1) regarding minor permit modification applications, and 40 CFR § 70.7(e)(3)(iii) regarding group processing of minor permit modifications, requires the timing of the notice to be different.

(f) **Timelines for submission of EPA draft or proposed permit review copy to EPA.** The For the categories specified in (1), (2), and (3), below, the DEQ shall review public comments, revise the draft permit as appropriate and submit the proposed permit to EPA for review no later than 60 days before the issuance deadline established in OAC 252:4-7-31, except as provided in OAC 252:4-7-9 through 4-7-11, which stop the review timeline and provide additional time for permit review.

(1) Operating permit applications for Part 70 sources that are not currently covered by a Part 70 source operating permit,

(2) Applications to modify existing Part 70 operating permits where the associated construction permit application underwent the traditional NSR process or where a construction permit was not required, and

(3) Construction permit applications eligible to utilize the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4).

(g) **Notice of non-acceptance.** The DEQ shall notify the Administrator and any affected State in writing of any refusal by the DEQ to accept all recommendations for the proposed permit that the Administrator or the affected State submitted during the review period. The notice will include the DEQ's reasons for not accepting any such recommendation. The DEQ is not required to accept recommendations that are not based on applicable requirements of the Oklahoma Clean Air Act or 40 CFR Part 70, as applicable.

(h) **EPA Part 70 source operating permit review and non-objection.** Upon expiration of EPA's 45-day review period or receipt of notice from the EPA that it will not object to a proposed Part 70 source operating permit (or construction permit processed under the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4)), the DEQ shall issue the proposed permit as final unless an administrative permit hearing has been timely and properly requested. [See Tier III procedures under 27A O.S. §2-14-304]

(i) **EPA Part 70 source operating permit review and objection.**

(1) **Timing.** No Part 70 source operating permit for which an application must be transmitted to the Administrator under subsection (a) of this Section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) **Form of objection.** An EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections.

(3) **Additional grounds.** Failure of the DEQ to do any of the following also shall constitute grounds for an objection:

- (A) Comply with subsections (d) or (e) of this Section;
- (B) Submit any information necessary to review adequately the proposed permit; or
- (C) Process the permit application according to the uniform permitting requirements of OAC 252:4-7 Part 1.

(4) **Copy.** The Administrator will provide the permit applicant a copy of the objection.

(5) **DEQ response.** The DEQ shall consult with EPA and the applicant and shall amend the permit and submit for approval an amended proposed permit to EPA within 90 days after the date of EPA's objection. If the Administrator objects to issuance of a Part 70 source operating permit modification associated with a construction permit initially processed under the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4), the Director may choose to notify the Administrator of DEQ's intent to complete the construction permit

application review under the traditional NSR process while working to resolve EPA's objection.

- (6) **Failure of DEQ to respond.** If the DEQ fails, within 90 days after the date of the EPA objection, to amend and resubmit the amended proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of EPA's Part 71 regulations.
- (j) **Public petitions to the Administrator.** If the Administrator does not object in writing to issuance of a Part 70 source operating permit under subsection (h)-(i) of this Section, any person that meets the requirements of this subsection may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in 27A O.S. § 2-14-302.A.2., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the DEQ shall not issue the Part 70 source operating permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the DEQ has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances. If the DEQ revokes the permit, it may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.
- (k) **Effect on administrative permit hearing.** When a public petition or an EPA objection is registered on a proposed permit on which an administrative permit hearing has been requested in accordance with the Oklahoma Uniform Environmental Permitting Act, 27A O.S. §§ 2-14-101 through 2-14-401, the DEQ may stay the evidentiary part of the hearing involving cross-examination until EPA objections are resolved.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**SUMMARY OF COMMENTS AND STAFF RESPONSES FOR PROPOSED REVISIONS**  
**TO**  
**CHAPTER 4. RULES OF PRACTICE AND PROCEDURE, SUBCHAPTER 7**  
**AND**  
**CHAPTER 100. AIR POLLUTION CONTROL RULES, SUBCHAPTERS 1, 7, AND 8**

**COMMENTS RECEIVED PRIOR TO AND DURING THE OCTOBER 21, 2020  
AIR QUALITY ADVISORY COUNCIL MEETING**

**Written Comments**

**The Petroleum Alliance of Oklahoma** – Submitted as an attachment to an email received on August 31, 2020 from Mr. Howard L. (Bud) Ground, Director of Regulatory Affairs. Note that these comments were submitted in response to the Department's request during the July 22, 2020 Air Quality Advisory Council Special Meeting (AQAC) for additional input on the proposal from stakeholders. Their comments are also incorporated by reference in comments later submitted by Enable Midstream Partners, LP (*see below*).

**Comments specific to Chapter 4, Subchapter 7**

- 1. COMMENT:** The Petroleum Alliance of Oklahoma (hereafter "The Alliance") requested clarification that based on the proposed language in OAC 252:4-7-13(g)(7)-(9) it is ODEQ's responsibility to publish the 30-day Public Notices for draft individual permits that are based on Tier I applications and not the applicant's responsibility.

**RESPONSE:** Under the proposal, it will be the Department's responsibility to publish all Air Quality-related Tier I public notices on its web site.

- 2. COMMENT:** The Alliance requested that the 30-day public review period under proposed OAC 252:4-7-13(g)(7) & (9) be changed to 14-days to allow the regulated entities more flexibility and to obtain permits more expeditiously. The Alliance cited excerpts from 85 FR 26641 for EPA's proposed approval of portions of the State of Florida's SIP that would allow a 14-day public review period for Federally Enforceable State Operating Permits (FESOPs).

**RESPONSE:** The Department believes that a 30-day public review period is generally a reasonable length of time to afford interested parties the opportunity to evaluate a proposed action and to provide comments to the Department, without causing an undue delay or burden on applicants. It is the minimum public review period specified for many proposed actions under federal and state statutes and program rules. Cases can be made for both flexibility and consistency in many aspects of environmental programs.

The Department notes that any NSR-type modifications that could be made to the FESOP (but which would not require a construction permit under Oklahoma rules) would still require 30-day public review. For example, an increase in the throughput limit for tanks

could be accomplished as a modification to the FESOP with 30-day public review but would not also require a construction permit (minor NSR permit).

The Department recognizes that the federal requirements for FESOPs are not as well-defined as they might be. However, the Department is hesitant to base its policy on a Florida FESOP rule change for which EPA approval is only at the proposed stage of the process at the time the Department is developing its version of the rules. In addition, the Department believes that the proposed *FESOP enhanced NSR process* it is proposing for Oklahoma facilities will expedite issuance of modifications to FESOPs without requiring *any* public review of those operating permit modifications. That is, the incorporation of the requirements established in a minor NSR permit into the FESOP (as a permit modification) will not require another round of public review under *FESOP enhanced NSR*. In this way, the Department's proposal offers more flexibility than does Florida's.

In short, the Department believes that a consistent 30-day web-based comment period for Subchapter 7 individual facility construction permits (minor NSR permits), the initial FESOP, and any FESOP modification that does *not* follow a construction permit that uses the FESOP enhanced NSR process is the most appropriate path forward, combining flexibility and SIP approvability.

**UPDATE TO RESPONSE:** It was brought to the Department's attention that EPA approved Florida's rule change that would allow a 14-day public review period for FESOPs. The Department's response otherwise remains unchanged.

3. **COMMENT:** The Alliance submitted the following comment: "OAC 252:4-7-31 sets forth timelines ODEQ must meet for issuance of air quality permits. The Alliance is aware of ODEQ tolling permits in order to circumvent these codified permit issuance timelines. With the proposed rule changes in this rule package, more air quality permits will be undergoing public review, thus increasing the time that it will take to issue these permits. In the case of construction permits, the Alliance is concerned that projects could be delayed due to ODEQ unnecessarily tolling the permit in order to avoid current timelines already codified. The Alliance respectfully requests that OAC 252:4-7-31 be opened and changes be made to limit the number of times that a permit can be tolled by ODEQ."

**RESPONSE:** The Department does not agree that the changes recommended by the Alliance are necessary or appropriate. OAC 252:4-7-9 limits the circumstances when application review time is tolled, primarily to allow the applicant to address and correct administrative and technical deficiencies, so that staff can complete the review of a complete permit application. The Department understands the frustration that applicants feel when their permits are not issued as expeditiously as all parties would like, particularly when timelines are affected by agency workload and staffing constraints, especially when construction activities are booming. The Department prioritizes resources, where it can, to ensure that applicants' higher priority permitting actions are reviewed and issued as quickly as practicable, even if that may slow down the issuance of a permit whose delayed issuance will not slow down facility construction activities. For example, the issuance of a Title V renewal may be delayed to prioritize issuance of a construction permit. The Department tries to work with each applicant to get a technically complete permit application in place

as quickly as possible to ensure prompt permit issuance. The Department encourages applicants to reach out for feedback from the assigned permit writer early in the process, to ensure the application is administratively and technically complete. Further, if an applicant is concerned that an application is moving through the system too slowly, the applicant may reach out to AQD permitting managers to request assistance in expediting the process.

4. **COMMENT:** The Alliance requested clarification that it is the Department's intent that all Title V minor modifications are required to undergo public review. The Alliance stated that if this is the case, then no Title V minor modifications can be classified as Tier I applications; therefore, OAC 252:4-7-32(b)(2)(B) was inadvertently not revised or removed.

**RESPONSE:** Previously, a Title V minor modification did not require either a construction permit or public review. As such, the corresponding operating permit modification was considered to be a Tier I permitting action. The reason for part of the proposed rulemaking is that some facility changes that qualify as minor modifications under Title V (and 252:100-8-7.2(b)(1)) are required to undergo NSR (get a construction permit), including public review, to satisfy federal rules. The subsequent modification of the Part 70 operating permit would still be considered a Tier I action, and that action would not be required to undergo public review. The Department's existing three-tiered public review system was set up by Oklahoma statute, which accommodates additional provisions needed to satisfy federal program requirements. These new Tier I permitting actions, which will require public review on the web, would not typically be classified as Tier II under Oklahoma statutes, but *are* required to undergo public review to satisfy federal rules. To satisfy both state and federal requirements while minimizing the burden on the facility, the Department is proposing to, in effect, create a subcategory of Tier I applications for those that are required to undergo public review exclusively due to federal requirements. The advantage for the applicant is that the subcategory does not need full Oklahoma Tier II processing (e.g., publication in a newspaper). Tier II applications will still require publication in the newspaper, but for Tier I applications (including construction permits for projects that are considered minor modifications to Title V permits) that require public notice, only the web notice, prepared and posted by the Department, will be required. That is one of the reasons why the proposal retains the Tier I classification in OAC 252:4-7-32(b)(2)(B). The Department would also note (as discussed in more detail in response to a later question) the minor modification to the Title V operating permit will still require no public review. It is the construction permit (minor NSR permit) that will require public review.

The Department recognizes that these new public notice and new construction permit requirements will add to facilities' regulatory burden. Staff has and will continue to work on solutions to address this concern. For instance, following the July 22 Special AQAC meeting, the proposal was updated to allow that, for projects that would be minor modifications, those that fall below proposed emissions thresholds would be exempt from the requirement to get minor NSR permits. The Department will discuss this proposal in more detail later in response to another question.

For these reasons, the Department does not concur with the Alliance's conclusion regarding Tier I classification and the need for a corresponding revision or removal of OAC 252:4-7-32(b)(2)(B).

### **Comments specific to Chapter 100, Subchapter 7**

- 5. COMMENT:** The Alliance requested that the wording in the proposed definition of "FESOP Enhanced NSR process" in OAC 252:100-7-1.1 be clarified, in that the proposal improperly "... use[s] a definition to codify procedural requirements" that should be located in a more appropriate place in Subchapter 7.

**RESPONSE:** Much of the language included in the proposed definition of "FESOP Enhanced NSR process" was adapted from EPA's description of the enhanced NSR process. The key point is that under FESOP enhanced NSR, both the public and EPA review will occur only during the issuance of the construction (NSR) permit. There will be no further public or EPA review when the requirements are incorporated into an existing FESOP as a permit modification. That is, the EPA and public will have one 30-day period to comment on NSR issues specifically, and also how the NSR and operating requirements will be integrated into the operating permit. All of that review will occur exclusively during the 30-day review of the construction permit. The Department believes that the language used in the proposed definition is explanatory, and that the actual requirements are properly established in other parts of the rules.

- 6. COMMENT:** The Alliance requested that the proposal clarify whether Subchapter 7 is intended to include a "traditional NSR process" for minor facilities, similar to the "traditional NSR process" for Part 70 Sources, as proposed for Subchapter 8.

**RESPONSE:** The Department does intend to allow both the traditional NSR process and the FESOP enhanced NSR process as options for permitting actions under Subchapter 7. In response to the Alliance's comment, the Department intends to supplement the posted proposal when it is brought to the October AQAC meeting by adding a formal definition of "traditional NSR process" to OAC 252:100-7-1.1 that describes what has been our regular process.

As you pointed out, the Department is allowing both traditional NSR and enhanced NSR as options for permitting actions in Subchapter 8.

The Department would like to go over the comparative advantages of traditional versus enhanced NSR for major source permitting actions before it addresses the comparison for minor sources. For Subchapter 8, the traditional NSR process requires a shorter review period, because the 30-day NSR review for the public and EPA are one and the same. Enhanced NSR adds 45-day Title V review – EPA's review for implications of incorporating the new NSR requirements into the existing operating permit – onto the review of the construction permit. If an applicant requests "concurrent review," and no substantive public comments are received, the *draft* permit is deemed to be the *proposed* permit and the EPA has an additional 15 days beyond the 30-day public review period to complete their review. If substantive public comments are received during the 30-day

public comment period, AQD reviews and answers the comments (making changes to the permit if warranted) and issues a *proposed* permit for EPA review. At that point, EPA has the full 45 days for their review of the proposed permit. Because enhanced NSR combines review of both the NSR permit and the Title V permit implications, the process is at least 15 days longer than traditional NSR and, perhaps, 45-days longer, not including the additional time needed to address substantive comments. The benefit of enhanced NSR to the applicant is that the public review occurs only once.

For Subchapter 7, there is no 45-day EPA review period. Therefore, it would seem that FESOP enhanced NSR would almost always be preferable to traditional NSR. However, there may be a case where the equipment or limitations established in the construction permit need to be changed in a manner that necessitates another 30-day review period when the FESOP permit is modified. Or there may be other advantages to the applicant that may make traditional NSR more appealing. In any event, the Department has chosen to retain both options: traditional NSR and FESOP enhanced NSR for flexibility. Further, traditional NSR will be required for a facility that does not already have an operating permit.

7. **COMMENT:** The Alliance noted that the definition of "FESOP Enhanced NSR process" in OAC 252:100-7-1.1 states that the "process is only available for facilities already operating under a FESOP permit," and requested that the Department clarify what process new minor source facilities that have never been constructed follow if they cannot use the FESOP Enhanced NSR process.

The Alliance asked if these proposed changes are approved:

- A. Will all current minor source operating permits be considered FESOPs?
  - a. If not, what process will they need to undergo if they have to obtain a construction permit?
  - b. What would be the basis for stating existing permits are not FESOP, since Oklahoma has a SIP approved minor source permitting program?
  - c. What is the risk to industry with synthetic minor source facilities if the Department states the current permits are not FESOPs?
- B. Will General Permits be considered FESOPs?
  - a. If so, what process will someone need to go through if they obtain a NOI to Construct under a General Permit and then instead of applying for a NOI to Operate under the General Permit, they apply for a minor source operating permit?
  - b. If not, what is the process if an applicant obtains an NOI to Construct under a General Permit, and then instead of applying for a NOI to Operate under the General Permit, they apply for a minor source operating permit?

**RESPONSE:**

- A. The Department believes that all existing Subchapter 7 individual facility operating permits are federally enforceable, and thus have been, in effect, FESOPs. As the Alliance noted, language currently in the SIP includes approval of older agency rules covering minor facility operating permits, making them federally enforceable. However, EPA has raised concerns about our process, and believes that the Department

needs to formalize the process – particularly by adding a public review component for minor facilities. To that end, our permitting group is developing an approach and a schedule to public notice all current individual facility Subchapter 7 operating permits for 30-day public review on the web, followed by re-issuance of those permits with a formal FESOP designation. Again, the Department would note that, for Subchapter 7 permits, the 30-day public review also represents an opportunity for EPA to comment on a permit. For Subchapter 7 permits, there is no separate EPA review that takes place after the public comment period closes.

If the proposal is approved and goes into effect, a modification for a facility with a Subchapter 7 operating permit that has not yet undergone this formal upgrade to official FESOP status, will be required to undergo Traditional NSR for new construction. A facility that requests a modification to a current operating permit – that does not first require a construction permit – will undergo 30-day public review on the web after which the modified version of the operating permit will be issued, formally, as a FESOP.

A new minor facility that will not pursue a GP or PBR would be required to undergo traditional NSR. That is, the facility will need to obtain a Subchapter 7 individual facility construction permit. That permit will undergo Tier I 30-day public review on the web. Within 180 days after startup, the facility will need to submit an application for the operating permit (the FESOP). The FESOP will also undergo Tier I 30-day public review on the web.

A facility that is currently operating, but was never required to obtain a construction permit, would need to undergo Tier I 30-day public review to obtain a FESOP for the existing equipment if the facility chooses to obtain a permit. (Some previously permit exempt facilities may desire to have permits even if not required to have them.)

**UPDATE TO RESPONSE:** As stated in our original response, the Department believes that all existing Subchapter 7 individual facility operating permits are federally enforceable. Additional discussion with EPA staff lends support to the Department's belief that the current rules incorporated into the SIP provide a foundation for the federal enforceability of all current Subchapter 7 operating permits. There are issues with some aspects of our program that could, should EPA choose to issue a finding of deficiency, imperil that status in the future. That element of risk will continue until the Department addresses all outstanding issues, both with regard to the minor NSR program and the Subchapter 7 operating permit program. Further, EPA staff has clarified that if DEQ submits and EPA approves a FESOP program in Oklahoma's SIP, the approval would be "date forward." That is, EPA would approve DEQ's FESOP issuance process, and would then consider all minor facilities to be FESOPs that are issued under the process after the effective date of the SIP approval. Paragraphs 2 through 4 of our original response remain unchanged.

- B. Yes, PBRs and General Permits (GPs) will be considered FESOPs if the proposed rules are adopted. They have already undergone public and EPA review, so that is not a concern. Registration under PBRs and Notices of intent to construct and operate under

GPs do not need to undergo additional public review, because they signify that the facility in question will abide by an already established FESOP (the PBR or GP). Our current rule changes are intended to formalize that definition and to make the process explicit.

A facility with a current operating permit may, therefore, not use the FESOP enhanced NSR process for any new individual facility construction permit.

All GPs are considered to be FESOPs, and our current process under which an applicant submits an NOI to construct under a GP will not be altered as a result of these rule changes. PBRs are also FESOPs and the registration process for PBRs will continue without any changes.

However, the approach where a facility with an individual Subchapter 7 operating permit submits an NOI to construct under a GP (to authorize construction activities) but then submits an application for an individual minor source operating permit once the new equipment is installed and operating is a different, more complicated process. The Department's current thinking is that, when the modified individual FESOP is to be issued, that permit would be required to undergo 30-day public review on the web. The NOI process used to authorize construction would not be impeded or slowed down by these new requirements, but for the facility to move out of the GP and back into an individual operating permit will require 30-day public review on the web.

**UPDATE TO RESPONSE:** Based on further discussions with EPA, the Department understands that "FESOP" is a *term of art* that will apply to permits that meet requirements established in EPA guidance (which the Department is adopting into the rules establishing the program) only after EPA has formally approved the incorporation of these rules into the Oklahoma SIP. All current PBRs and GPs are federally enforceable, but they will not be considered to be FESOPs, in a formal sense, until after the EPA finalizes approval of our SIP submission (including the PBR rules proper) and, subsequently, the Department issues an updated version of a particular GP or PBR, should the Department determine this action is warranted.

- 8. COMMENT:** The Alliance requested that the Department replace all instances of the term "operating permit" in Subchapter 7 with "FESOP" to avoid confusion, since the proposed definition of FESOP in OAC 252:100-7-1.1 is "an operating permit issued under Subchapter 7 of this Chapter..."

**RESPONSE:** The Department does not believe that defining all Subchapter 7 operating permits as FESOPs introduces ambiguity, nor does the Department believe it is practical or necessary to open each section of Subchapter 7 that contains the term "operating permit" to make the requested change. If it is brought to the Department's attention that there is a particular provision where that change would be helpful in one of the sections that is currently open for rulemaking, the Department would consider recommending that change. The proposal has been updated to clarify in the definition that these terms are synonymous.

**9. COMMENT:** The Alliance requested that the Department revise the construction permit requirements in OAC 252:100-7-15(a)(2)(B) to align with the operational flexibility that is allowed in Subchapter 8 by changing agency guidance, and either removing OAC 252:100-7-15(a)(2)(B)(i), or revising the language of OAC 252:100-7-15(a)(2)(B)(i) as follows:

"to install a new piece of equipment or a new process 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) which is not already covered under an existing permit Specific Condition; or"

**RESPONSE:** The Department agrees that there are many cases where a construction permit is not warranted for simple replacement of an existing unit, as you and other stakeholders have suggested. The proposed rules posted on the web address these concerns by adding a definition for "replacement unit" in 252:100-7-1.1, and adding a provision in 252:100-7-15(a)(2) such that a "replacement unit" does not trigger a construction permit requirement.

**10. COMMENT:**

- A. If a regulated entity obtains a modified FESOP without utilizing the FESOP Enhanced NSR Process, because a construction permit is not required for the modification, is it ODEQ's intent that this modified FESOP is not required to undergo public review per OAC 252:4-7-13(g)(9)?
- B. If it is ODEQ's intent that the modified FESOP is not required to undergo public review per OAC 252:4-7-13(g)(9), the proposed OAC 252:100-7-15(h) creates regulatory uncertainty. The proposed OAC 252:100-7-15(h) states that only the authorization to construct or modify expires, but the permit requirements of the construction permit established under OAC 252:100-7-15(d) will remain in effect until the facility ceased operations, is not constructed, or the requirement is superseded under a subsequent construction permit or FESOP that has undergone public review. Regulatory uncertainty occurs if the modified FESOP has a requirement that differs from the construction permit that is NOT superseded because the modified FESOP is not required to undergo public review. The Alliance requests ODEQ eliminate the regulatory uncertainty by clearly stating that a modified FESOP that does not utilize the FESOP Enhanced NSR Process is required to undergo public review per OAC 252:4-7-13(g)(9).

**RESPONSE:**

- A. The Department's intent is that, under the scenario described in the comment (6A), modification of the existing individual FESOP would be required to undergo Tier I 30-day public review on the web. The exception would be administrative changes to the permit where no public review is required. And this discussion assumes that the facility will retain an individual facility FESOP and not seek coverage under a GP or PBR. Please see the earlier discussion regarding GPs and PBRs.

This position was reached after extensive internal staff discussions, with consideration of The Alliance's comment, and input from EPA staff. Note that the posted version of proposed paragraph OAC 252:4-7-13(g)(9) includes an exception to the 30-day public

review on the web if the minor facility "... operating permit modification accommodates a change for which no construction permit is required under 100-7-15(a)(2) ..." The Department now believes that this exception is not appropriate or necessary. Therefore, the Department intends to supplement the posted proposal when it is brought to the October AQAC meeting by removing the phrase quoted above, and inserting an explicit requirement that notices be posted "... for draft modifications of existing minor facility operating permits for Tier I applications." The proposed OAC 252:4-7-13(g)(9) would then read:

"(9) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft minor facility individual operating permits for Tier I applications and for draft modifications of existing minor facility operating permits for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of OAC 252:4-7-13(c), and may be posted in tabular form with appropriate links to additional information sources. A modification of an existing minor facility operating permit may be issued without further public review if the operating permit modification is based on a construction permit that was made available for review and comment under 252:4-7-13(g)(7)."

- B. The Department believes that the proposal, with the wording change discussed above, would remove the regulatory uncertainty of concern to The Alliance, and result in the following scenarios: Initial FESOPs will undergo 30-day public review. Modified FESOPs that follow construction permits using the FESOP enhanced NSR process will not need additional public review. In other cases, where the FESOP is modified without following FESOP enhanced NSR, the modified FESOP will undergo Tier I 30-day public review. For a facility that already has a FESOP, a 30-day public review will be required either at the construction phase or the operating phase for all subsequent actions.

### Comments specific to Chapter 100, Subchapter 8

- 11. COMMENT:** The Alliance requests that the Department clearly state that the proposed changes to OAC 252:100-8-4(a)(1) will not change a permitted Title V source's ability to conduct replacements without having to obtain a construction permit as long as no new permit conditions are needed in order to comply with the applicable NSPS or NESHAP.

**RESPONSE:** The Department concurs that the proposed changes will not affect the operational flexibility under Title V as currently interpreted.

- 12. COMMENT:** The Alliance recommended that OAC 252:100-8-4(b)(4) be removed and marked as [RESERVED], because the "Application Submittal Schedule" under OAC 252:100-8-4(b)(4) appears obsolete. The submittal dates under this section have passed, as this section was for the original implementation of the Title V permitting program.

**RESPONSE:** The Department agrees that the requirements are obsolete, and the posted proposal would remove the bulk of them. However, the Department believes that some part of the rule should remain in place to retain the requirement that all facilities that became

subject to Title V permitting requirements when the program went into effect were to have submitted an application no later than March 6, 1999 (the final date where all applications were required to have been submitted). That will ensure that any facility that may have missed the deadline would have an ongoing requirement.

- 13. COMMENT:** The proposed language in OAC 252:100-8-4(c) appears to be redundant and already covered under the definitions of "Enhanced NSR process" and "Traditional NSR process" in OAC 252:100-8-2. The Alliance recommends that OAC 252:100-8-4(c) be removed to avoid confusion.

**RESPONSE:** The Department does not concur. The two definitions are proposed because defining terms is important for clarity, but the proposed language in OAC 252:100-8-4(c) creates the formal requirement.

- 14. COMMENT:** The Alliance requested clarification that it is the Department's intent that all Title V minor modifications are required to undergo public review. The Alliance stated that if this is the case, then no Title V minor modifications can be classified as Tier I applications; therefore, the reference to "Tier I under OAC 252:4-7" was inadvertently not revised or removed in OAC 252:100-8-7.2(b)(1)(B).

**RESPONSE:** The Department does not concur with the Alliance's conclusion regarding Tier I classification, and a corresponding revision or removal of the reference to "Tier I under OAC 252:4-7" in OAC 252:100-8-7.2(b)(1)(B). Please note that minor modifications to the Title V operating permit were not in the past required to undergo public review, and the current proposal would not change that. However, some actions that the Department previously allowed to go forward (as minor mods) without requiring a construction permit will, in the future, be required to undergo minor NSR. The Department has also added a threshold so that qualifying projects, with potential emissions increases no greater than 10 tons per year of any single regulated air pollutant, may go forward as minor modifications to the Title V operating permit without requiring a minor NSR construction permit. So, it is the minor NSR construction permit under Subchapter 8 that will undergo Tier I public review (for projects eligible to be, eventually, incorporated into the Title V operating permit as minor modifications). The minor mods themselves are not required to undergo public review.

The construction permit emissions increase threshold language in OAC 252:100-8-4(a)(1) is a change from the proposal that was presented at the July 22 Special AQAC meeting. The change also removes the phrase "... a minor modification under OAC 252:100-8-7.2(b)(1)" as a construction permit requirement criterion that was included in the July proposal. Please take a look at the updated proposed rule language on the web.

In addition, the Department would note that the new requirements for some Tier I permitting actions to undergo public review would do so exclusively on the web. There will be no requirement for public notices in the newspaper for these new requirements so the Department will consider them to be a new subset of Tier I. There will still be Tier I permitting actions that will not undergo public review.

**Enable Midstream Partners, LP** – Submitted as an attachment to an email received on September 18, 2020 from Mr. Sean Walker Senior Environmental Specialist, Air Quality, on behalf of Mr. Lance Lodes, Senior Manager, Air Compliance & Monitoring, Environmental, Health & Safety, Enable Midstream Partners, LP (hereafter "Enable Midstream"). Enable Midstream's comments endorsed and incorporated by reference the comments submitted by The Petroleum Alliance of Oklahoma (*see* above), and requested clarification for some different permitting scenarios.

### **Comments specific to Chapter 100, Subchapter 7**

- 15. COMMENT:** If an applicant obtains a Notice of Intent (NOI) to Construct using the Air Quality Minor Source General Permit for Oil and Gas Facilities (GP-OGF) and then converts to an individual minor source operating permit, will the individual minor source operating permit need to undergo public review?

**RESPONSE:** Yes, the individual operating permit issued to a minor facility that constructed under an Authorization to Construct under the GP-OGF would need to undergo public review.

- 16. COMMENT:** If an applicant reconstructs or modifies an engine/turbine, currently authorized under an individual permit, such that it becomes subject to a New Source Performance Standard (NSPS), would a construction permit be required or a modified operating permit? If a modified operating permit, would it be required to undergo public review?

**RESPONSE:** The change described would likely not require a new construction or modified operating permit if the reconstructed or modified engine or turbine would not need any changes made to the emission limits in the current permit. However, the reconstructed or modified unit would be subject to applicable requirements of the NSPS in question.

- 17. COMMENT:** If an applicant modifies an existing individual minor source operating permit to increase the condensate throughput limit and therefore also increase volatile organic compound (VOC) emissions less than 5 TPY, will this modified permit be required to undergo public review?

**RESPONSE:** The described modification scenario would not require a construction permit. However, the applicant would need to obtain a modification to the operating permit to authorize an increase in the throughput limit and/or emission limit, before exceeding that limit. That permit modification would need to undergo 30-day public review on the web.

- 18. COMMENT:** If an applicant replaces a 1.0 MMBTU reboiler with a 1.5 MMBTU reboiler and the emissions increases are less than 1 TPY for each pollutant, would a construction permit be required or a modified operating permit? If a modified operating permit, would it be required to undergo public review?

**RESPONSE:** The described modification scenario would not require a construction permit, unless the small increase would push the facility over the major source threshold.

However, the applicant would need to obtain a modification to the operating permit to authorize an increase in the emission limit. That permit modification would need to undergo 30-day public review on the web.

### **Comments specific to Chapter 100, Subchapter 8**

- 19. COMMENT:** What would be the permitting avenue to incorporate MSS activities into a Title V permit? We believe this can currently be accomplished under OAC 252:100-8-6(f)(1) during the TV renewal permit application or during a construction permit application.

**RESPONSE:** Specific scenarios may require a case-by-case determination, but the facility would likely need to establish separate limits for MSS activities. The facility would need to obtain a construction permit as the vehicle for establishing those limits. Any such changes (to incorporate MSS activities) that require a construction permit should qualify to use the enhanced NSR process.

**Altamira-US, LLC** – Submitted as an attachment to an email received on October 9, 2020 from Ms. Adrienne Burchett, E.I., Project Manager, Altamira-US, LLC (hereafter "Altamira").

### **Comments specific to Chapter 4, Subchapter 7**

- 20. COMMENT:** The suggested changes to OAC 252:4-7-13(g)(4) includes a typographical error. The suggested change is highlighted:

*(4) ~~An A modification of an existing Part 70 source operating permit may be issued to an applicant for a new Part 70 operating permit without further public review if the operating permit modification accommodates a change for which no construction permit is required under 100-8-4(a)(1), or is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B) 252:4-7-32(b)(2)(A) or (B).~~ In the latter case, and the public notice for the construction permit contains shall contain the following language.*

**RESPONSE:** Thank you for bringing the error to our attention. The Department will include the correction in the supplement to the posted proposal when it is brought to the October AQAC meeting.

### **Comments specific to Chapter 100, Subchapter 1**

- 21. COMMENT:** The proposed definition in OAC 252:100-1-3 of "Title V permit" indicates it "means (unless the context suggests otherwise) an operating permit for a Part 70 source." Should this include a reference to a Title V construction permit as well? What is the significance of "(unless the context suggests otherwise)"?

**RESPONSE:** Your comment brought to our attention the fact that the posted proposal erroneously indicated that this was a proposed addition to OAC 252:100-1-3. In fact, this

definition was adopted by the Department last year, and became effective on September 15, 2020. The Department will include the correction in the supplement to the posted proposal when it is brought to the October AQAC meeting.

In answer to the question posed: No, the definition of "Title V permit" intentionally refers only to operating permits. It was added because Title V permit is a commonly-used term for a major source operating permit throughout the U.S. To implement Oklahoma's Title V program, the Department created a new Subchapter 8, with major source operating permit program rules based on 40 CFR Part 70, with certain additional relevant operating permit rules from the comprehensive permitting rules of Subchapter 7. Shortly thereafter, the Department moved construction permit requirements for major sources from Subchapter 7 to Subchapter 8. Requirements for PSD sources and for "Major Sources Affecting Nonattainment Areas" were moved to Parts 7 and 9 of Subchapter 8, respectively. Construction permit requirements for other major sources, which under EPA terminology would be Minor NSR permits, were integrated with the Part 70-based operating permit rules in Subchapter 8. The Department based the divide between major sources (Subchapter 8) and minor facilities (Subchapter 7) on whether or not they are, or would be following construction, subject to a "Part 70 operating permit," and thus chose to use the term "Part 70 permit" as the collective term for permits issued (i.e., to "Part 70 sources") under Subchapter 8. "Title V permit" would be synonymous with "Part 70 source operating permit," while a "minor NSR permit" (for a Subchapter 8 source) would be synonymous with "Part 70 source construction permit."

The phrase "unless the context suggests otherwise" was included in the definition of "Title V permit," as it has been included elsewhere, as a precaution. The Department is not aware of any specific use of the term that would be confusing.

### Comments specific to Chapter 100, Subchapter 7

22. **COMMENT:** OAC 252:100-7-1.1 Definitions is proposed to be revised to include a definition for a "Replacement Unit" as follows:

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

- (A) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
- (B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- (C) The replacement unit does not alter the basic design parameter(s) of the process unit.
- (D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

Should section (A) include a reference to the definition of reconstruction in 40 CFR 63.2? By incorporating the definition of reconstruction in 40 CFR 63.2, those minor source

emission units that are subject to an area source NESHAP would be included by this language in the event a subject emission unit is considered reconstructed under the area source NESHAP standard.

**RESPONSE:** The Department agrees that it is appropriate to include language in the definition for a "Replacement Unit" in OAC 252:100-7-1.1 to accommodate reconstruction of minor facility emission units that are subject to an area source NESHAP. Therefore, the Department intends to supplement the posted proposal when it is brought to the October AQAC meeting by revising the proposed definition to add the highlighted phrase as follows:

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

- (A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. Section 60.15(b)(1), the emissions unit is a reconstructed unit within the meaning of paragraph (1) in the definition of "Reconstruction" in 40 C.F.R. Section 63.2, or the emissions unit completely takes the place of an existing emissions unit.
- (B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- (C) The replacement unit does not alter the basic design parameter(s) of the process unit.
- (D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

23. **COMMENT:** Should OAC 252:100-7-15(a)(2)(C) reference the definition of a replacement unit in OAC 252:100-7-1.1?

**RESPONSE:** The Department believes use of the defined term "replacement unit" in OAC 252:100-7-15(a)(2)(C) is adequate.

### Comments specific to Chapter 100, Subchapter 8

24. **COMMENT:** Many permittees often use the Title V (TV) Minor Permit Modification Application option in OAC 252:100-8-7.2(b)(1) (Minor Mod) in order to accomplish changes to a facility that require a quick turnaround, but do not result in an emission increase above PSD significance levels. Oftentimes, these are important modifications due to safety or critical infrastructure concerns that will be delayed for three (3) to six (6) months due to permit review time, including the public and EPA review time periods, at the ODEQ. There appears to have been a substantial change between the July 2020 and October 2020 proposals, revising the revisions to OAC 252:100-8-4(a). This language appears to allow for some of those physical or operational changes that have an emissions increase less than 10 tpy. Is this correct? We anticipate this will allow for quick permitting mechanisms for changes that are due to safety and critical infrastructure concerns (i.e. fire pump replacements) or minimal changes such as tank replacements at the refineries, even though the equipment may be subject to NSPS or NESHAP regulations. Is this accurate?

**RESPONSE:** As you noted, staff made significant changes to the language (and structure) of the proposed revision to OAC 252:100-8-4(a)(1) following the July 22 Special AQAC meeting. This language does allow permittees to make some physical or operational changes that would increase PTE by less than 10 TPY without first undergoing NSR (i.e., obtaining a construction permit), provided the change would not fall under one of the other criteria listed in OAC 252:100-8-4(a)(1)(B). Under the same circumstances, this would be the case even if the newly installed unit is subject to an NSPS or NESHAP. Such changes would then be subject to the operating permit minor modification procedures under OAC 252:100-8-7.2(b)(1) (or under OAC 252:100-8-7.2(a) administrative amendment procedures).

- 25. COMMENT:** The proposed definition of "Enhanced NSR process" in OAC 252:100-8-2 indicates that the 30-day public review period for a draft NSR permit can be concurrent with the 45-day EPA review period. This is currently an option for Title V sources. Does this just make the concurrent review process automatic when requested in the application? How will this impact facilities that request concurrent public and EPA review following submittal of the application? Is that no longer allowed? Will ODEQ forms be revised accordingly to indicate whether enhanced NSR review or traditional NSR review is requested OR will this need to be up to the permittees to include as part of the body of future applications?

**RESPONSE:** Under the proposed revisions, including the Enhanced NSR process for existing Part 70 sources, concurrent review will be typical for modifications for which a construction permit is required. The Enhanced NSR process fulfills multiple public participation requirements, including the 30-day public and EPA review of the draft construction permit to meet NSR requirements, and the 45-day EPA review on the operating permit modification implications of the project and construction permit requirements. The Department intends to revise the appropriate application forms to provide an item for the permittee to indicate its preference to use the Enhanced NSR process or the Traditional NSR process, as indicated by the proposed language in OAC 252:100-8-5(d)(3). However; the facility will be able to update its preference prior to publishing/posting of the public notice of the draft construction permit. [Note that the Enhanced NSR process is available only for modification of an existing permitted facility. The Traditional NSR process applies to a new Part 70 source, for both the construction permit and the operating permit. Under the Traditional NSR process, the construction permit's 30-day EPA and public reviews coincide. Then, the operating permit's 45-day EPA review follows the 30-day public review, unless concurrent review is requested by the applicant.]

- 26. COMMENT:** The proposed revisions to OAC 252:100-8-4(a)(1)(B)(iv) indicate that a Title V construction permit would be required for physical changes or changes in the method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY. What is the basis of the 10 TPY limit proposed in this paragraph? Please confirm that, as currently proposed, permittees can still apply for and begin operations following submittal of a minor Title V permit modification that meets the requirements of OAC 252:100-8-7.2(b)(1) without any public or EPA review as long as

the increase in emissions is below the PSD significance thresholds and an increase in the PTE of a single pollutant of 10 TPY.

**RESPONSE:** Yes, the Department can confirm that permittees may still apply for a minor modification and, with some risk (that, perhaps, the applicant's assessment of the project was incorrect and the project was not actually a minor modification), begin operation of units authorized under the minor modification on submission of a complete application as long as the project potential emission increases are below the thresholds noted.

With regard to the basis of the proposed 10 TPY threshold, the Department considered a number of factors in setting the threshold in OAC 252:100-8-4(a)(1)(B)(iv). Oklahoma's air quality permitting program has historically included an emissions increase threshold of one pound per hour for requiring a construction permit. This was later converted to a more practical 5 TPY actual emissions increase threshold for minor facilities at the same time that the major source construction permit requirement for a modification was tied to a significant modification under Title V requirements, creating a de facto exemption from NSR for minor mods. It should be noted that this exemption was never explicitly adopted into the SIP. The current rulemaking effort was initiated in part because some changes that would qualify as a minor modification under Title V operating permit program requirements are, absent an explicit exemption adopted into the SIP, subject to minor NSR requirements. Following extensive staff discussions, the Department proposed that a major source construction permit be required for a modification that would increase potential to emit by more than 10 TPY. This threshold is proposed at a level that would allow many projects that will likely have minimal air quality impacts to proceed without the cost in time and resources that would accompany preparation (by the applicant) and review and issuance (by DEQ staff) of a minor NSR (construction) permit. The Department settled on the 10 TPY PTE increase for a number of reasons, including that this threshold correlates well with a 5 TPY actual emissions increase, and is easier to determine without recourse to project emissions accounting necessitated by a full PSD analysis and has practical advantages for both the facility and DEQ. In addition, this threshold (for a number of pollutants) was adopted in a similar manner by the EPA under the Tribal NSR Rule. The Department has received informal stakeholder inquiries regarding how best to calculate project emissions increases for comparison with this threshold, and in response to these inquiries, DEQ intends to supplement the posted proposal when it is brought to the October AQAC meeting adding a phrase to the end of OAC 252:100-8-4(a)(1)(B)(iv), so that it would read:

"(iv) commencement of any physical change or change in method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY, calculated using the approach in 40 C.F.R. Section 49.153(b)."

The Department has posted an Outline and Summary document for a CAA §110(l) Demonstration justifying the 10 TPY PTE threshold that DEQ will prepare and submit to EPA with the SIP submittal if the rule is adopted. The document notes that DEQ took a similar approach and reached a similar conclusion to other State and Federal programs in the adoption of minor NSR thresholds that exempt projects from NSR.

Returning to the final question, in the situation described in the comment, if a planned facility change does not trigger a PSD permit requirement, nor meet any of the criteria listed under OAC 252:100-8-4(a)(1)(B)(i)-(iv) as proposed, the project for a potential emissions increase less than 10 TPY would not require a construction permit. The permittee would still need to submit an application for a minor modification to the operating permit. On submission of a complete application, and assuming the assessment of the project (as a minor mod) was proper, the applicant could proceed with installation and operation of units authorized by the minor mod, without waiting for issuance of the minor modification of the Part 70 source operating permit. The Department would go through the process of project evaluation and would draft the minor modification. This permitting action is not subject to public review, but the proposed version of the permit would be sent to EPA for a 45-day review. If EPA does not object to the permit, it would then be issued by the Department.

27. **COMMENT:** While OAC 252:100-8 is open for rulemaking, Altamira requests the ODEQ consider incorporating the "reasonable possibility" language from 40 CFR 52.21(r) into OAC 252:100-8-36.2(c) source obligation requirements. This will reduce the reporting burden of subject facilities while maintaining compliance and consistency with federal regulations. The consulting cost of this additional reporting for facilities that would be otherwise exempt under the federal regulations can range from \$750 per year to \$3,000 per year for five years depending on the number of projects. Additionally, the preconstruction notice requirements cost approximately \$2,500 - \$7,500 depending on the project type for consulting fees, alone. These additional consulting costs are in addition to internal costs for permitted facilities. These costs associated with reporting could be reduced or eliminated by incorporating the federal "reasonable possibility" language.

The source obligation requirements under 40 CFR 52.21(r)(6)(vi) reduces the reporting burden if permittees can document the emissions increase using the PAE to BAE methodology is less than 50% of the PSD significance levels for each applicable NSR pollutant. If the increase in emissions is less than the 50% threshold, the preconstruction notice and annual reporting requirements are not required since there is no "reasonable possibility" that the PSD significance levels would be exceeded due to the project. Since the ODEQ air quality rules in OAC 252:100-8 do not include the "reasonable possibility" language, permittees regulated by the ODEQ are subject to more stringent reporting requirements than those permitted in nearby states. Altamira requests the following revised provisions be incorporated.

(c) **Requirements when using projected actual emissions.** Except as otherwise provided in paragraph (c)(8)(b), 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) when the owner or operator elects to use the method specified in (B)(i) through (iii) of the definition of "projected actual emissions" for calculating projected actual emissions in circumstances where there is a reasonable possibility, as defined in section (c)(8) of this section, that a project is not a part of a major modification that may result in a significant emissions increase.

(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" and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- (2) 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) 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) 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) 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(c)(3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (5) 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) The name, address and telephone number of the major stationary source;
  - (B) The annual emissions as calculated pursuant to OAC 252:100-8-36.2(c)(3); and
  - (C) 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).
- (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.

(8) A "reasonable possibility" under paragraph (c) of this section occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as described in OAC 252:100-8-50(b) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded as an increase in utilization due to product demand growth as described in the definition of "projected actual emissions" (B)(iii) under OAC 252:100-8-31, sums to at least 50 percent of the amount that is a "significant emissions increase," as described in OAC 252:100-8-50(b) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (c)(8)(b) of this section, and not also within the meaning of paragraph (c)(8)(a) of this section, then provisions (c)(2) through (c)(5) do not apply to the project.

**RESPONSE:** OAC 252:100-8-36.2 was not included the rulemaking notice, so it is not open for revision at this time. Regarding the comment itself, the Department believes that, as written, the rule is more protective of industry and the environment by requiring the recordkeeping.

The Department presented a proposed OAC 252:100-8-36.2 before the AQAC in October 2005 that included "reasonable possibility" language. At that time, the Department received comment from EPA on our proposed rule because the "reasonable possibility" language had been remanded back to EPA by the courts. Staff removed the language in question, and the proposed OAC 252:100-8-36.2 was approved by the Council in January 2006, adopted by the EQB in February 2006, and became effective June 15, 2006. These rules were then submitted for inclusion in our SIP in July 2010, and approved by EPA in September 2016. [[81 FR 66532](#), September 28, 2016] Note: In December 2007, EPA issued a final rule that provided additional explanation and more detailed criteria to clarify the "reasonable possibility" recordkeeping and reporting standard. [[72 FR 72607](#), December 21, 2007]

In conjunction with EPA's review of Oklahoma's SIP and related discussions, the Air Quality Division submitted a letter, dated February 8, 2016, demonstrating that the Department's recordkeeping requirements are as stringent as those in 40 CFR § 51.166(r)(6)(i) through (vi), which includes the "reasonable possibility" language that was omitted from OAC 252:100-8-36.2 when it was adopted. At that time, Staff believed that adding the "reasonable possibility" language to OAC 252:100-8-36.2 would not have provided any significant relief to Oklahoma's PSD sources.

The Department believes that determining whether the additional recordkeeping is more burdensome than protective is a complex issue that would require additional discussion with industry to determine if this needs to be brought forward separately in a future rulemaking.

**UPDATE TO RESPONSE:** Based on additional verbal comments received during the October 21, 2020 AQAC meeting, the Department is planning to move forward with a proposed rulemaking to address this issue at a future AQAC meeting.

**U.S. Environmental Protection Agency, Region 6** – Submitted as an attachment to an email received on October 15, 2020 from Ms. Adina Wiley, Environmental Engineer, on behalf of Mr. David Garcia, Director, Air and Radiation Division, U.S. EPA, Region 6 (hereafter "EPA").

- 28. COMMENT:** EPA supports the revisions to OAC 252:4 and 252:100 proposed on September 15, 2020. The revisions are the result of a multi-year collaborative effort between EPA Region 6 and DEQ to address areas of concern in the Oklahoma air permit program. EPA believes the proposed revisions will meet the federal public notice requirements for minor NSR at 40 C.F.R. 51.160 - 51.164 by requiring electronic notice for all minor NSR permit actions. EPA also believes the proposed revisions will meet the federal Title V requirements in 40 C.F.R. 70.7 by requiring public notice for all initial title V permits. In addition, the proposed revisions establish the enhanced NSR process and clearly establish a federally enforceable state operating permit program.

**RESPONSE:** DEQ appreciates the collaborative process that has resulted in the proposed revisions that address outstanding SIP approvability concerns.

#### Oral Comments

##### **Brian McQuown – Oklahoma Gas & Electric (OG&E)**

- 29. COMMENT:** Mr. McQuown stated that OG&E supports Altamira's submitted comments that requested incorporating the "reasonable possibility" language from 40 CFR 52.21(r) into OAC 252:100-8-36.2(c) source obligation requirements for PSD sources. Mr. McQuown also acknowledged that the request was outside of scope of the rulemaking on the October AQAC meeting agenda.

**RESPONSE:** As stated in response to the referenced Altamira comment (#27), OAC 252:100-8-36.2 was not included the rulemaking notice, so it is not open for revision at this time. As the Department also stated, we believe that the issues involved in the requested change are complex. Based on the verbal comments received during the October 21, 2020 AQAC meeting in support of this change, the Department is planning to move forward with a proposal in a future rulemaking.

##### **Sean Walker– Enable Midstream Partners, LP (Enable Midstream)**

- 30. COMMENT:** Mr. Walker requested clarification on a particular scenario, for a modification (e.g., increased condensate throughput limit) that did not trigger a

construction permit requirement for a permitted minor facility. His question was whether the operating permit modification would be required to undergo a 30-day public review. Mr. Walker also made reference to the 14-day public review period used in Florida's FESOP program.

**RESPONSE:** The Department's intent is that when the rule proposal is implemented, the permit action in such a scenario would be required to undergo a 30-day public review. The resulting action would be issuance of a FESOP (if the existing operating permit had not previously undergone public review), or a modification of the existing FESOP. In either case, the facility would be eligible to use the FESOP Enhanced NSR process for future changes that require a construction permit. See response to Comment #2 regarding the 14-day public review period used in Florida's FESOP program.

**Adrienne Burchett – Altamira-US, LLC (Altamira)**

- 31. COMMENT:** Ms. Burchett reiterated Altamira's submitted comment (Comment and Response #27), which requested that the DEQ consider incorporating the "reasonable possibility" language from 40 CFR §52.21(r) into the PSD Source Obligation requirements of OAC 252:100-8-36.2(c). Ms. Burchett stated that the requested change would reduce the reporting burden of subject facilities while maintaining compliance and consistency with federal regulations. Ms. Burchett noted that Altamira's comments and the Department's responses were not included in the document posted on the DEQ website.

**RESPONSE:** As stated in response to Altamira's submitted (10-9-2020) Comment #27, OAC 252:100-8-36.2 was not included in the rulemaking notice, so it is not open for revision at this time. However, based on additional verbal comments received during the October 21, 2020 AQAC meeting, the Department is planning to move forward with a proposed rulemaking to address this issue at a future AQAC meeting.

The summary of comments and responses document posted on the DEQ website was inadvertently not updated to the October 20, 2020 version prior to the AQAC meeting. This oversight was corrected shortly after the meeting adjourned.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

November 6, 2020

Ms. Kendal Stegmann  
Director, Air Quality Division  
Oklahoma Department of Environmental Quality  
707 North Robinson Street  
P.O. Box 1677  
Oklahoma City, Oklahoma 73101-1677

RE: Clarifications to the Oklahoma SIP and Part 70 Permit Program

Dear Ms. Stegmann:

The United States Environmental Protection Agency Region 6 is writing to express our continued support of the revisions to the Oklahoma Administrative Code (OAC) at Title 252, Chapter 4, Sections 4-7-13, 4 -7-32, and 4-7-33 and Chapter 100, Sections 100-1-3, 100-1-4, 100-2-3, 100-7-1.1, 100-7-15, 100-7-18, 100-8-2, 100-8-4, 100-8-5, 100-8-7.2, 100-8 and Appendix Q, as proposed on September 15, 2020. As stated in our October 15, 2020, comment letter, we believe the proposed revisions could address certain areas of concern in the Oklahoma air permitting program which have been identified through several years of discussions between the Oklahoma Department of Environmental Quality (ODEQ) and the EPA Region 6.

The EPA staff attended an October 21, 2020 meeting with the Oklahoma Air Quality Advisory Council (AQAC) in support of the proposed revisions. The AQAC did not approve the proposed revisions at this meeting; instead expressing significant concerns and doubts about the necessity of the proposed revisions.

This letter provides clarification of the scope of the existing Oklahoma construction permit program in the Oklahoma State Implementation Plan (SIP) and the EPA-approved Oklahoma Part 70 air permitting program and highlights the necessity for the proposed revisions. We have several pending Oklahoma SIP submittals and revisions to the Oklahoma Part 70 air permitting program that we have not yet acted upon, choosing to work with the ODEQ in an effort to develop State regulatory solutions designed to meet federal Clean Air Act (CAA) requirements for SIPs and Title V programs. If an acceptable regulatory solution is not adopted by Oklahoma, the EPA will proceed with actions on the pending submittals and revisions consistent with our CAA obligations. Enclosed are several clarifications regarding the Oklahoma SIP and the Oklahoma Part 70 air permitting program, as well as, the impact of the proposed regulatory revisions.

We hope the enclosed clarifications will be useful to the ODEQ in its effort to support the changes necessary to address our mutual concerns in the rulemaking process. Should you have questions, please reach out to me directly at 214-665-7593, or feel free to contact Ms. Cynthia Kaleri at 214-665-6772.

Sincerely,

11/6/2020

X 

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David F. Garcia, P.E.

Signed by: DAVID GARCIA

Director  
Air and Radiation Division

Enclosure

cc: Melanie Foster, ODEQ

### Minor New Source Review (NSR) Public Notice Requirements

We would like to start by defining the scope of the approved minor NSR permit program in Oklahoma. The ODEQ staff explained during the October 21, 2020 public meeting that the minor NSR construction permitting program is covered under both OAC 252:100, Subchapter 7 and Subchapter 8. The EPA has SIP-approved the majority of the permit issuance mechanisms under Subchapters 7 and 8, but we have taken no action on the Tier I public notice provisions under OAC 252:4 and any cross-references to those provisions within OAC 252:100, Subchapters 7 and 8. The EPA’s May 15, 2017 final action to update Oklahoma’s minor NSR SIP provisions stated that all Tier I public notice provisions were outside the scope of that rulemaking. This means that revisions to the application requirements, including the permit application, the application content, and the issuance procedures were approved into the SIP, but the Tier I provisions allowing minor NSR permit actions to proceed without public notice were not SIP-approved.

During the October 21, 2020 public meeting, the ODEQ correctly stated that federal NSR requirements at 40 CFR 51.160 – 51.164 require public notice for minor NSR permitting actions. The September 15, 2020 proposed revisions would address the federal minor NSR public notice requirements by requiring electronic notice for all Tier I construction permit actions.

Currently, the EPA has before us in our SIP backlog, portions of several SIP submittals pertaining to Tier I. We have chosen to take no action on these submittals in the hope that we could work with the ODEQ to resolve concerns identified in the pending SIP submittals. The September 15, 2020 proposed revisions were the result of several years of collaborative efforts between the EPA and ODEQ to correctly incorporate federal minor NSR public notice requirements. If these revisions are not adopted and submitted as revisions to the Oklahoma SIP, the EPA will move forward with our review and action on the backlogged portions of these pending Oklahoma SIP submittals which may include proposed disapprovals.

Disapproval of minor NSR public notice requirements could have a ripple effect on the rest of the Oklahoma air program. The Oklahoma infrastructure SIP is required to show the existence of an approved permit program under Clean Air Act (CAA) section 110(a)(2)(C) sufficient to protect air quality; this includes minor NSR and all requirements of minor NSR. Disapproval of Oklahoma’s minor NSR SIP program on the basis of deficient public notice could result in approvability issues associated with future Oklahoma infrastructure SIP submittals.

### Initial Issuance of Title V Permits

The existing Part 70 air permitting program under OAC 252:100, Subchapter 8 does not require public notice of initial Title V permits as required under Title V of the CAA and 40 CFR 70.7(h). The EPA initially identified this concern in our December 5, 2001 final Title V program approval as a deficiency that would need to be corrected in the future through the EPA’s oversight capacity or through a Notice of Deficiency (NOD). *See* 66 FR 63170. More recently, the EPA has continued to note the lack of public notice for initial Title V permits through conversations with ODEQ during our monthly oversight conference calls, via comment letters on permits, and through a letter to Mr. Eddie Terrill, dated March 5, 2020.

The September 15, 2020 proposed revisions would amend the Oklahoma regulations and require all initial Title V permits to be public noticed via Tier II provisions. To date, the EPA has elected to work

## Enclosure – EPA’s Clarifications to the Oklahoma SIP and Part 70 Permit Program

with the ODEQ through our oversight capacity to address this lack of public notice. However, if these proposed revisions are not adopted and submitted as revisions to the Oklahoma Part 70 Air Operating Permits Program, the EPA may need to consider whether a NOD pursuant to 40 CFR 70.10(b)(1) is necessary to address the problem. A NOD would put the ODEQ on a timetable to correct the deficiency. If the deficiency is not corrected timely, the EPA could move, consistent with our regulations, to withdraw the EPA program approval of the Oklahoma Part 70 program and become the permitting authority under 40 CFR Part 71.

### Synthetic Minor Permit Issuance

For years, the ODEQ has allowed a source to move from the major source permit program under OAC 252:100, Subchapter 8 to the minor source permit program under OAC 252:100, Subchapter 7, through a process commonly referred to as “synthetic minor” permitting. This process is not currently provided for in the existing Oklahoma regulations, but is rather implemented through guidance. The EPA Region 6 has frequently raised concerns about this process and the Oklahoma authority to issue synthetic minor permits through both our oversight monthly calls and by issuing permit comment letters.

The September 15, 2020 proposed revisions provide a clear regulatory process for limiting potential to emit emissions through legally and practically enforceable permit limits and require public notice of this transition through the Tier II provisions. Synthetic minor permitting is not a requirement of the CAA nor the EPA’s federal air permitting regulations; therefore, the ODEQ is not required to develop or adopt regulations providing for synthetic minor permitting. However, at a minimum, a state that is issuing synthetic minor permits should have a SIP-approved regulatory framework that outlines the permitting process and requires public participation consistent with the requirements of 40 CFR 51.160 and 51.161.

### Conflation of Minor NSR and Minor Modifications under Title V

The Oklahoma permitting program for major sources under OAC 252:100, Subchapter 8 conflates the requirements of NSR and Title V permitting. The existing program enables minor construction activities to bypass minor NSR and be permitted directly in a Title V permit via a minor modification. This practice presents a two-fold problem. First, permitting construction activities without a valid NSR permit action could be considered circumvention of the NSR requirements. Second, the Title V minor modification procedures are separate and distinct from the minor NSR public notice requirements. Construction activities that are subject to minor NSR must undergo adequate minor NSR public notice.

The September 15, 2020 proposed revisions seek to address this conflation by requiring minor NSR construction activities to be completed under a construction permit with adequate minor NSR public notice. As mentioned above, minor NSR public notice is a federal requirement for all minor NSR permitting actions. Under Section 110(k)(5) of the Clean Air Act, should the EPA make a finding of substantial inadequacy in the Oklahoma SIP for failing to meet the Clean Air Act requirements for minor NSR SIPs, the EPA could consider a SIP call to address the deficiency in the minor NSR permit program and a NOD to address the misuse of the Title V permitting program to authorize construction permit activities.

### Enhanced NSR

The September 15, 2020 proposed revisions seek to establish permitting flexibility and streamlining through the creation of an enhanced NSR program. Under this type of program, a source with an

## Enclosure – EPA’s Clarifications to the Oklahoma SIP and Part 70 Permit Program

existing Title V permit may make a construction permit modification through an enhanced NSR permitting process under the SIP that also meets the criteria for a part 70 permitting actions. The modification may be added to the existing Title V permit through an administrative amendment. *See* 40 CFR 70.7(d)(1)(v). This flexibility has the potential to shorten the overall time the permit modification is available for public review and comment under the NSR and Title V programs. The ODEQ has also clarified that this type of flexibility is only available to sources with existing part 70 permits, thus maintaining consistency with the part 70 public notice requirements for initial permits as described above. We note that enhanced NSR is not a requirement of the NSR or Title V federal permitting requirements. However, if a state chooses to implement an enhanced NSR process, the EPA must act to approve the process in the SIP and part 70 programs.

## Federally Enforceable State Operating Permit (FESOP) Program

As described in the EPA’s final rulemaking amending the definition of “federally enforceable” in 40 CFR 51.165(a)(1)(xiv), the EPA interprets CAA section 110(a)(2) to allow the EPA to approve certain state operating permit programs into a SIP. *See* 54 FR 27274, 27282 (June 28, 1989). Under the policy clarification expressed in that rulemaking, the EPA noted that all terms and conditions contained in a state operating permit would be considered “federally enforceable,” provided that the state’s operating permit program was approved by the EPA and incorporated into the applicable SIP under section 110 of the Act, and provided that the operating permit meets certain requirements. *Id.* at 27281. Such permits would be enforceable for NSR and other SIP purposes. As noted previously, portions of the Oklahoma minor source permitting program at OAC 252:100, Subchapter 7 have been SIP-approved, including some provisions related to the issuance mechanisms of minor operating permits. However, the EPA never took an affirmative action to review and approve the Subchapter 7 program, applying the criteria enumerated by the EPA for an approvable FESOP program *Id.* at 27282. Furthermore, the EPA believes that it may not be able to approve Oklahoma’s Subchapter 7 operating permits program into the SIP as a FESOP program because it does not provide an opportunity for public comment on the permit applications prior to issuance of the operating permit *Id.* Therefore, the Oklahoma SIP does not include a FESOP program at this time.

The September 15, 2020 proposed revisions establish a FESOP program by providing clear implementing processes and require public notice of Tier I actions. The revisions as proposed appear to satisfy the public participation requirements for an approvable FESOP program and could be included in a proposed revision to the Oklahoma SIP. Permits issued pursuant to the SIP-approved FESOP program could then be used by the ODEQ to demonstrate attainment of the NAAQS or a source could use the terms and conditions of the permit to “net out” of major NSR requirements.

## Status of Existing Subchapter 7 Operating Permits

The October 21, 2020 discussion with the Oklahoma AQAC included many questions about the status of existing Subchapter 7 Operating Permits, and whether these permits are federally enforceable. While the Subchapter 7 regulations have not been approved by the EPA as meeting the requirements for an approvable FESOP program, the EPA acknowledges that many aspects of the state’s operating permit program under Subchapter 7 have been approved into the Oklahoma SIP. The EPA generally believes that terms and conditions in permits issued pursuant to the EPA-approved SIP are federally enforceable. Additionally, any terms of state operating permits that contain limitations that are the same as limitations under a NSPS, NESHAP or MACT are independently federally enforceable by virtue of the EPA’s authority to enforce the NSPS, NESHAP, or MACT.

Enclosure – EPA’s Clarifications to the Oklahoma SIP and Part 70 Permit Program

However, as previously discussed, the EPA may decide to initiate a rulemaking, under CAA section 110(k)(5), to find the existing Subchapter 7 Operating Permits SIP provisions substantially inadequate to comply with the CAA requirements for SIPs (e.g., public participation requirements), and require Oklahoma to revise the SIP to correct the deficiency or withdraw its state operating permits program from the SIP.

If the ODEQ wishes to pursue the creation of a FESOP program as envisioned by the EPA in its 1989 action discussed above, then existing Subchapter 7 operating permits that Oklahoma may wish to use for SIP purposes or that a source is using to qualify as a minor source, to net out of NSR requirements, or to create external emissions offsets, should be authorized under a SIP-approved FESOP program. The issuance of operating permits under a SIP-approved FESOP program would allow the EPA to enforce noncompliance with the terms and conditions of such permits as violations of the SIP.