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.)

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.

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 a 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.

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.