

Clean Air Act, Title 1, Section 110(l) Demonstration
Outline and Summary
October 15, 2020

This document is not the formal 110(l) demonstration per the requirements of 42 U.S.C. §7410 that will accompany the Oklahoma Department of Environmental Quality's (DEQ's) State Implementation Plan (SIP) submittal to incorporate upcoming permitting rule changes into the Oklahoma SIP. Rather this document provides an outline of topics that will be included in the formal 110(l) demonstration, and a summary of key points. In addition, this outline only addresses the proposed permitting thresholds that will be adopted into the Oklahoma Administrative Code (OAC) at 252:100-8-4, Requirements for construction and operating permits. The new rule, as proposed, will require the owner or operator of a facility with a Title V operating permit to undergo New Source Review (NSR) and obtain a construction permit for any project that, for any one regulated pollutant, would increase potential emissions by more than ten tons per year (10 TPY). This outline and summary will be posted on the web in support of proposed changes to permitting rules which will be discussed during the October 21, 2020, Air Quality Advisory Council (AQAC) meeting.

Outline of Topics to Be Discussed in the 110(l) Demonstration

- Background and Condensed Rule History
- State Obligations Under Section 110(l) of the Clean Air Act
- Description of the Proposed Subchapter 8 Minor NSR Exemption Threshold
- Discussion of Similar Exemptions in Other State and Federal Programs
- Permitting Activity and Emission Trends for the Oklahoma Airshed
- Explanation Why Modeling Is Not Needed
- Expected Timelines and the SIP Submission Process
- Request for Comments
- References

Background and Condensed Rule History

The full 110(l) demonstration will include a more detailed background and a condensed rule history. For this outline of topics and summary, the DEQ would like to highlight a few important issues. While the current Oklahoma SIP includes a *de minimis* threshold of 1 pound per hour (actual emissions of any one regulated air pollutant), that threshold was originally adopted to exclude facilities from the requirement to obtain a construction permit. That is, if any owner or operator intended to construct a facility with emissions of each regulated air pollutant below 1 pound per hour (1 lb/hr), that facility could be constructed without the owner or operator first obtaining a construction permit. The 1 lb/hr *de minimis* threshold was submitted for inclusion in the Oklahoma SIP by the Oklahoma State Department of Health (OSDH) and was subsequently recodified and resubmitted by DEQ in 1994. (The 1 lb/hr *de minimis* threshold is approximately equivalent to 5 tons per year and that measure was subsequently used as an annualized approximation in many cases before being formally adopted as described below.) At that time, the threshold applied both to new facilities, and also to changes to existing facilities. So, a project which would increase emissions of an existing, permitted facility would need a construction permit if the project would result in actual emission increases of 1 lb/hr of any regulated air pollutant. The 1 lb/hr threshold was replaced for minor facilities by a 5 TPY threshold within a definition of "de minimis facility" effective June 25, 1998.

Effective July 1, 1996, the Oklahoma DEQ adopted specific language from 40 CFR Part 70 to incorporate the U.S. Environmental Protection Agency's (EPA's) Title V (TV) operating permit program into Subchapter 8 of the Oklahoma rules. When additional changes to the permitting rules (effective June 25, 1998) moved the construction permit requirements for Part 70 sources into Subchapter 8 alongside the TV permitting requirements, the Oklahoma DEQ "required a construction permit for any physical change that would be a significant modification under ..."¹ Part 70 requirements.² This, *in effect* exempted all projects that would constitute a minor modification to a facility with an existing Title V operating permit from the requirement to obtain a construction permit (a minor NSR permit) prior to commencement of construction and operation. (Note: Prevention of Significant Deterioration and Nonattainment NSR permit requirements were not affected.) A facility was still required to submit an application for a minor modification before commencing construction, but there was no requirement to obtain a separate construction permit. The criteria for a minor modification are found in OAC 252:100-8-7.2(b)(1). Because this *de facto* exemption was never formally incorporated into the Oklahoma SIP, the Oklahoma DEQ is proposing changes to the rules to better bring the program into alignment with federal rules and statutes regarding Minor NSR review. After the proposed rules are adopted, a project resulting in *potential* emission increases of any one regulated air pollutant in excess of 10 TPY will require a construction (NSR) permit before the owner or operator may commence construction and operation. Projects below that threshold may proceed without a construction permit, but the company will still be required to apply for an operating permit minor modification unless the project exclusively involves the installation of sources of emissions that meet the definitions of "trivial" or "insignificant."

The proposed changes to OAC 252:100-8-4, Requirements for construction and operating permits, will incorporate this threshold of 10 TPY potential emissions of any regulated air pollutant under OAC 252:100-8-4(a)(1), to require a construction permit for projects with potential emissions increases above that threshold. Because the DEQ historically has, in effect, exempted all minor modifications from the requirement to obtain a construction permit, these proposed changes constitute a tightening of the requirement for a construction permit rather than a relaxation of existing requirements. DEQ has operated its program for over 20 years with this broader exemption, and the State of Oklahoma has remained in compliance with all National Ambient Air Quality Standards (NAAQS). The Oklahoma DEQ recognizes the requirement to bring its permitting program into alignment with federal rules and statutes, and the DEQ acknowledges the requirement to update Oklahoma's SIP, and to prepare a document demonstrating that these changes to the rules will not adversely impact the ability of the state to maintain attainment of the NAAQS. Because these changes are not, in effect,³ a relaxation, it is the position of the Oklahoma DEQ that this demonstration may be addressed through a relatively straightforward analysis of (1) the expected impacts on the Oklahoma DEQ's permitting program, (2) a survey of other state programs, (3) a review of similar thresholds adopted by other states and by the EPA under the Tribal NSR rule, and (4) an evaluation of Oklahoma pollutant emission trends.

The docket for Oklahoma DEQ's revisions to the minor NSR permitting program may be reviewed on the Regulations.gov web site: [EPA-R06-OAR-2007-0989](https://www.regulations.gov/docket/EPA-R06-OAR-2007-0989)

¹ OAC 252:100-8-4(a) as in effect on June 25, 1998.

² OAC 252:100-8-7.2(b)(2) as in effect June 25, 1998.

³ Or even *in fact*, considering what requirements are currently in the Oklahoma SIP.

State Obligations Under Section 110(l) of the Clean Air Act

Section 110(l) of the Clean Air Act establishes the obligation of a state to demonstrate that revisions to the SIP will not interfere with attainment of the NAAQS or any other applicable requirement.

110(l) PLAN REVISIONS.—Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

Oklahoma is currently in attainment of all NAAQS. The formal 110(l) demonstration will be submitted for public review and comment and, if necessary, a hearing. No other applicable requirements of the Clean Air Act are impacted by this change to the Oklahoma permitting rules.

Description of the Proposed Subchapter 8 Minor NSR Exemption Threshold

As mentioned previously, the proposed changes to the Oklahoma permitting rules will require that a project which may be authorized as a minor modification to an existing Title V operating permit will be required to undergo NSR, and authorization of the project will require a construction permit, unless project potential emission increases are less than or equal to 10 TPY for any regulated air pollutant. The proposed rule change will follow the process for estimating project emissions increases outlined in the Tribal NSR Rule, although the Oklahoma DEQ may make some alterations to the process, if warranted, through guidance.

The proposed rule text follows.

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 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.

Discussion of Similar Exemptions in Other State and Federal Programs

In developing the Tribal NSR Rule, EPA reviewed 23 state air permitting programs to evaluate the use of permitting thresholds and exemptions to those thresholds in state minor NSR permits. The findings are summarized in a memorandum (dated October 27, 2005) addressed to Raj Rao (EPA OAQPS) by Joanne O'Loughlin and Stephen Edgerton of EC/R Incorporated.

In the formal 110(l) demonstration, the DEQ will provide a summary of thresholds found in the EC/R report and will supplement those findings by reaching out to nearby states for confirmation.

In addition to other state programs, the DEQ has reviewed the approach taken by the EPA under the Tribal NSR Rule, leading to the adoption of minor NSR thresholds that exempt projects from NSR. In the formal 110(l) demonstration, the DEQ will provide an analysis of the supporting documentation and related analyses provided by EPA in support of that rule.

Permitting Activity and Emission Trends for the Oklahoma Airshed

In the 110(l) demonstration that will accompany the Oklahoma DEQ's SIP submittal, DEQ will provide data on the number of minor modifications to facilities with Title V operating permits over the last five years and an estimate of the emissions associated with those projects. The document will also include a qualitative assessment of the impacts of those emissions and an estimate of the number of similar actions going forward that would require construction permits in comparison with those that would be exempt due to the proposed permitting threshold.

Explanation Why Modeling Is Not Needed

Many 110(l) demonstrations include air quality modeling to support the changes to the SIP. Because the proposed changes to the rules under review will not constitute a true relaxation of program requirements when evaluated in light of the extensive experience Oklahoma has had exempting, in effect, all minor modifications from the requirement to obtain a construction permit, it is the position of the Oklahoma DEQ that air quality modeling is not needed. In this section of the formal 110(l) demonstration, the DEQ will make this case in more detail.

Expected Timelines and the SIP Submission Process

The proposed rule changes will be discussed during the October 21, 2020, AQAC meeting. DEQ staff will request that the Council approve those rule changes during that meeting and recommend that they be presented to and adopted by the Oklahoma Environmental Quality Board (EQB) during a future meeting. If the rules are adopted by the EQB, they will be made available for review by the Governor and State Legislature. If they are not rejected by either the Governor or the State Legislature, they will become final on September 15, 2021. To facilitate adoption of the proposed rule changes into the Oklahoma SIP, the DEQ will develop the SIP package, including the full 110(l) demonstration document, for submission to EPA Region 6 for review and approval on or near the September 15, 2021, date when the rules become final.

It should be noted that this schedule is tentative and adjustments may need to be made based on the public comments submitted, the Council's deliberations as well as those of the EQB, and other factors which may arise.

In the formal 110(l) demonstration document, most of these issues will have been resolved and the timeline will be, for the most part, retrospective rather than prospective.

Request for Comments

The Oklahoma DEQ intends to publish a draft version of the SIP submission on its website, including the full 110(l) demonstration for a round of public comment, with the opportunity for a public hearing if requested, prior to submitting the SIP updates to the EPA.

References

O'Loughlin, Joanne, Stephen Edgerton, EC/R Incorporated, "Update of State Minor New Source Review (NSR) Programs," Memorandum to Raj Rao, October 27, 2005.

U.S. Environmental Protection Agency, Final Minor New Source Review Program in Indian Country, 40 C.F.R. Part 49, Sections 49.151-165.