

MINUTES
AIR QUALITY ADVISORY COUNCIL
June 16, 2021
Department of Environmental Quality
Oklahoma City, Oklahoma

Official AQAC Approved
at October 20, 2021 meeting

Notice of Public Meeting – The Air Quality Advisory Council (AQAC) convened for its Regular Meeting at 9:00 a.m. on June 16, 2021. Notice of the meeting was forwarded to the Office of Secretary of State on November 4, 2020. The agenda was posted at the DEQ twenty-four hours prior to the meeting. Also, Ms. Beverly Botchlet-Smith acted as Protocol Officer and convened the hearings by the AQAC in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51 and Title 27A, Oklahoma Statutes, Sections 2-2-201 and 2-5-101 through 2-5-117. She entered the agenda and the Oklahoma Register Notice into the record and announced that forms were available at the registration table for anyone wishing to comment on any of the rules. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

MEMBERS PRESENT

Matt Caves
Robert Delano
Gregory Elliott
Garry Keele II
Steve Landers
John Privrat
Laura Lodes

Members Absent
Gary Collins
Jeffrey Taylor

DEQ STAFF PRESENT

Kendal Stegmann
Beverly Botchlet-Smith
Cheryl Bradley
Melanie Foster
Madison Miller
Brooks Kirlin
Phillip Fielder
Kathy Aebischer
Travis Couch
Tom Richardson
Michelle Wynn

Cooper Garbe
Malcolm Zachariah
Lloyd Kirk
Quiana Fields

OTHERS PRESENT

Lori Roberts, Court Reporter

Approval of Minutes – Ms. Lodes called for a motion to approve the Minutes of the October 21, 2020 Regular Meeting and the November 12, 2020 Continued meeting. Mr. Keele moved to approve and Mr. Elliott made the second.

See transcript pages 3 - 5

Matt Caves	Yes	Steve Landers	Yes
Robert Delano	Yes	John Privrat	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele II	Yes		

Election of Officers – Mr. Landers nominated Ms. Lodes to remain as Chair and Mr. Elliott made the second.

See transcript pages 5 - 7

Matt Caves	Yes	Steve Landers	Yes
Robert Delano	Yes	John Privrat	Yes
Gregory Elliott	Yes	Laura Lodes	Abstain
Garry Keele II	Yes		

Mr. Landers nominated Mr. Keele as Vice-Chair and Mr. Caves made the second.

See transcript pages 7 - 8

Matt Caves	Yes	Steve Landers	Yes
Robert Delano	Yes	John Privrat	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele II	Abstain		

Chapter 100. Air Pollution Control
Subchapter 7. Permits for Minor Facilities

Part 3. Construction Permits

252:100-7-15. [AMENDED]

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

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

252:100-8-36.1. [AMENDED]

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

252:100-37-16. [AMENDED]

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

Part 7. Specific Operations

252:100-39-45. [AMENDED]

Ms. Melanie Foster, Manager, Rules & Planning Section of the AQD, stated the Department is proposing to make revisions in Subchapters 7, 8, 37 and 39 as part of the Department's review of Chapter 100 in response to Governor Stitt's Executive Order 2020-03. The Department is proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The Department is proposing to correct the rule and statute references in OAC 252:100-8-36.1 to the proper legal form. The Department is proposing to add an exemption to OAC 252:100-37-16(c) to formalize the Department's interpretation that loading operations from condensate tanks at natural gas compressor stations are not considered loading facilities for the purposes of this at natural gas compressor stations are not considered loading facilities for the purposes of this section. In OAC 252:100-39-45, the Department is proposing to correct the approval process for facilities that incinerate petroleum solvent dry cleaning filters and to remove the outdated compliance schedule. The gist of this rule proposal and the underlying reason for the rulemaking is to remove outdated rule language and/or provide regulatory clarity. Hearing no questions by the Council and none by the public, Ms. Lodes called for a motion, Mr. Elliott moved to approve and Dr. Delano made the second.

See transcript pages 9 - 16

Matt Caves	Yes	Steve Landers	Yes
Robert Delano	Yes	John Privrat	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele II	Yes		

Chapter 100. Air Pollution Control

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

(NSR) Sources

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

252:100-8-36.2. [AMENDED]

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

reducing the recordkeeping burden on Oklahoma’s permitted PSD facilities. Following questions by the Council and by the public, Ms. Lodes called for a motion, Mr. Landers moved to approve and Mr. Caves made the second.

See transcript pages 17 - 33

Matt Caves	Yes	Steve Landers	Yes
Robert Delano	Yes	John Privrat	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele II	Yes		

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

See transcript pages 33

Presentation – Mr. Cooper Garbe, EPS, R&P Section of the AQD, gave a presentation on Regional Haze Update.

Presentation – Ms. Kathy Aebischer, Assistant Division Director of the ASD, gave a presentation on funding.

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

New Business – None

Adjournment – Ms. Lodes called for a motion to adjourn the meeting. Mr. Elliott moved to approve and Mr. Keele made the second. The next scheduled regular meeting is on Wednesday, October 20, 2021 in Oklahoma City.

Matt Caves	Yes	Steve Landers	Yes
Robert Delano	Yes	John Privrat	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele II	Yes		

Transcript and attendance sheet are attached as an official part of these Minutes.

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1 OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
2 AIR QUALITY ADVISORY COUNCIL
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9 AQAC PUBLIC MEETING
10 June 16, 2021 - 9:00 a.m.
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25 Reported by: Lori Roberts, CSR No. 1588

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1 COUNCIL MEMBERS PRESENT
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3 MS. LAURA LODES, CHAIRMAN
4 MR. MATT CAVES
5 DR. ROBERT DELANO
6 MR. GREGORY ELLIOTT
7 MR. GARRY KEELE, II
8 MR. STEPHEN LANDERS
9 MR. JOHN PRIVRAT
10 MR. GARY COLLINS, Absent
11 MR. JEFFREY TAYLOR, Absent
12
13 Also Present:
14 Ms. Quiana Fields, Secretary of Board and Council
15 Ms. Beverly Botchlet-Smith
16 Ms. Kendal Stegmann
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1 (Meeting called to order at 9:00 a.m.)
2 MS. LODES: We will call today's meeting --
3 regular meeting of the Air Quality Advisory Council
4 to order.
5 Quiana, will you please call roll?
6 MS. FIELDS: Mr. Caves?
7 MR. CAVES: Present.
8 MS. FIELDS: Mr. Collins is absent.
9 Dr. Delano?
10 DR. DELANO: Present.
11 MS. FIELDS: Mr. Elliott?
12 MR. ELLIOTT: Present.
13 MS. FIELDS: Mr. Keele?
14 MR. KEELE: Present.
15 MS. FIELDS: Mr. Landers?
16 MR. LANDERS: Present.
17 MS. FIELDS: Mr. Privrat?
18 MR. PRIVRAT: Present.
19 MS. FIELDS: Mr. Taylor is absent.
20 Ms. Lodes?
21 MS. LODES: Present.
22 MS. FIELDS: We have a quorum.
23 MS. LODES: Thank you. The next item on
24 today's agenda is approval of the minutes from the
25 October 21, 2020, regular meeting and the November

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1 12, 2020, continued meeting. Do we have any comments
2 on the minutes?
3 Seeing no comments on the minutes, do we have
4 a motion to approve the minutes?
5 MR. KEELE: Motion to approve.
6 MS. LODES: Do I have a second?
7 MR. ELLIOTT: I'll second.
8 MS. LODES: I have a motion and a second.
9 Quiana, will you please call roll.
10 MS. FIELDS: Mr. Caves?
11 MR. CAVES: Yes.
12 MS. FIELDS: Dr. Delano?
13 DR. DELANO: Yes.
14 MS. FIELDS: Mr. Elliott?
15 MR. ELLIOTT: Yes.
16 MS. FIELDS: Mr. Keele?
17 MR. KEELE: Yes.
18 MS. FIELDS: Mr. Landers?
19 MR. LANDERS: Yes?
20 MS. FIELDS: Mr. Privrat?
21 MR. PRIVRAT: Yes.
22 MS. FIELDS: Ms. Lodes?
23 MS. LODES: Yes.
24 MS. FIELDS: Motion passed.
25 MS. LODES: Thank you. The next item on

AQAC Public Meeting - June 16, 2021

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1 today's agenda is the election of officers. This is
2 open for discussion and action by the Council.
3 **MS. BOTCHLET-SMITH:** We have two minutes to
4 be approved today.
5 **MS. LODES:** Oh, do we not approve them as a
6 single package?
7 **MS. BOTCHLET-SMITH:** I don't think he
8 moved --
9 **MS. LODES:** Okay.
10 **MS. BOTCHLET-SMITH:** Can she read back the
11 motion?
12 **MS. LODES:** Can you read back the motion? I
13 listed both when I said the approval of the minutes.
14 **COURT REPORTER:** Motion to approve is what
15 was said and then, Do we have a second? Motion to
16 second.
17 **MS. MILLER:** Okay. I think that's right.
18 **MS. LODES:** Okay. I was hoping, because I
19 read them as one item that they were good?
20 **MS. MILLER:** Yeah.
21 **MS. LODES:** Okay. No. 4 on today is election
22 of officers. Who would you all like to be chair and
23 vice chair?
24 **MR. LANDERS:** I would like to nominate Laura
25 Lodes, chair.

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1 **MS. LODES:** Thank you.
2 **MR. LANDERS:** Do you need these separate?
3 **MS. LODES:** We usually do them as I think a
4 single, don't we? Do we do them as a single to do
5 the chair and vice-chair?
6 **MS. BOTCHLET-SMITH:** I don't think you have
7 to.
8 **MS. LODES:** Okay.
9 **MS. BOTCHLET-SMITH:** I would get a second on
10 yours.
11 **MS. LODES:** Okay. You nominated that one.
12 Do we have a second?
13 **MR. ELLIOTT:** I will second.
14 **MS. LODES:** I have a motion and a second.
15 Will you call roll -- will Quiana please call roll?
16 **MS. FIELDS:** Mr. Caves?
17 **MR. CAVES:** Yes.
18 **MS. FIELDS:** Dr. Delano?
19 **DR. DELANO:** Yes.
20 **MS. FIELDS:** Mr. Elliott?
21 **MR. ELLIOTT:** Yes.
22 **MS. FIELDS:** Mr. Keele?
23 **MR. KEELE:** Yes.
24 **MS. FIELDS:** Mr. Landers?
25 **MR. LANDERS:** Yes.

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1 **MS. FIELDS:** Mr. Privrat?
2 **MR. PRIVRAT:** Yes.
3 **MS. FIELDS:** Ms. Lodes?
4 **MS. LODES:** I will abstain.
5 **MS. FIELDS:** Motion passed.
6 **MS. LODES:** Thank you. I appreciate that.
7 Do I have a vice-chair?
8 **MR. LANDERS:** I will make a nomination for
9 Garry Keele as vice-chair.
10 **MR. CAVES:** I will second that.
11 **MS. LODES:** I have a motion and a second.
12 Quiana, will you please call roll?
13 **MS. FIELDS:** Mr. Caves?
14 **MR. CAVES:** Yes.
15 **MS. FIELDS:** Dr. Delano?
16 **DR. DELANO:** Yes.
17 **MS. FIELDS:** Mr. Elliott?
18 **MR. ELLIOTT:** Yes.
19 **MS. FIELDS:** Mr. Keele?
20 **MR. KEELE:** Abstain.
21 **MS. FIELDS:** Mr. Landers?
22 **MR. LANDERS:** Yes.
23 **MS. FIELDS:** Mr. Privrat?
24 **MR. PRIVRAT:** Yes.
25 **MS. FIELDS:** Ms. Lodes?

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1 **MS. LODES:** Yes.
2 **MS. FIELDS:** Motion passed.
3 **MS. LODES:** Garry, congratulations.
4 We'll now enter the public rulemaking hearing
5 portion.
6 Beverly.
7 **MS. BOTCHLET-SMITH:** Good morning. I'm
8 Beverly Botchlet-Smith. I'm the assistant director
9 of the Air Quality Division and as such I will serve
10 as the protocol officer for today's hearings.
11 The hearings will be convened by the Air
12 Quality Council in compliance with the Oklahoma
13 Administrative Procedures Act in Title 40 of the Code
14 of Federal Regulations, Part 51, as well as the
15 authority of Title 27-A of the Oklahoma Statutes,
16 Section 2-2-201 and Sections 2-5-101 through 2-5-117.
17 Notice of the June 16, 2021, hearings were
18 advertised in the Oklahoma Register for the purpose
19 of receiving comments pertaining to the proposed OAC
20 Title 252, Chapter 100 rules as listed on the agenda
21 and will be entered into each record along with the
22 Oklahoma Register filing. Notice of the meeting was
23 filed with the Secretary of State on November 20,
24 2020. The agenda was posted -- duly posted 24 hours
25 prior to the meeting here at DEQ.

1 If you wish to make a statement, it's very
2 important that you complete a form that can be found
3 at the registration table and you'll be called upon
4 at the appropriate time. Audience members, please
5 come to the podium for your comments and please state
6 your name prior to making your comments.

7 At this time we'll proceed with what's marked
8 as agenda item Number 5-A. This is Chapter 100, Air
9 Pollution Control, Subchapter 7, Permits For Minor
10 Facilities. Part 3, Construction Permits.
11 252:100-7-15, Subchapter 8, Permits For Part 70
12 Sources and Major New Source Review, or NSR sources.
13 Part 7, Prevention of Significant Deterioration, PSD,
14 Requirements For Attainment Areas.

15 252:100-8-36.1, Subchapter 37, Control of
16 Emission of Volatile Organic Compounds or VOCs.
17 252-100-37-16, Subchapter 39, Emission of
18 Volatile Organic Compounds, VOCs, in Nonattainment
19 Areas and Former Nonattainment Areas. And part 7,
20 Specific Operations. 252-100-39-45.

21 That's a long list. Ms. Melanie Foster of
22 our staff will give the staff presentation.
23 Melanie.

24 **MS. FOSTER:** Thank you, Beverly.
25 Madam Chair, Members of the Council, members

1 of the public, my name is Melanie Foster. I'm the
2 rules and planning section manager and today I am
3 presenting the proposed rule changes to four
4 different subchapters in OAC 252 Chapter 100.

5 Specifically, the changes as Beverly
6 mentioned are in Subchapter 7, permits for minor
7 facilities; Subchapter 8, Permits For Part 70 Sources
8 and Major NSR Sources; Subchapter 37 Control of
9 Emission of Volatile Organic Compounds, and
10 Subchapter 39, Emission of Volatile Organic Compounds
11 in Nonattainment Areas and Former Nonattainment
12 Areas. All of these changes are relatively minor
13 changes that are being undertaken to remove outdated
14 rule language and/or provide regulatory clarity.

15 As you may be aware Governor Stitt's
16 Executive Order 2020-03 required the agency to review
17 its statutes and regulations for costly, ineffective,
18 unnecessary, and outdated language. These changes I
19 am presenting to you today are in response to the Air
20 Quality Division's review of Chapter 100. This is by
21 no means meant to imply that these are the only
22 changes we plan to make in response to our review of
23 Chapter 100, but these were some updates that we felt
24 we could make relatively quickly.

25 Please refer to the rules inside your

1 electronic packet or in the folder in front of you.
2 If you have notes on your electronic packet you may
3 want to start there but you will end up at some point
4 turning to the folder in front of you.

5 I will be going in subchapter order so I will
6 be starting with Subchapter 7, specifically Section
7 7-15, Construction Permit. We are proposing to
8 revise OAC 252:100-7-15(a)(2)(B)(i) to give
9 regulatory clarity to when a construction permit is
10 required by inserting the federal terms for pieces of
11 equipment and processes subject to the New Source
12 Performance Standards (NSPS) and National Emission
13 Standards For Hazardous Air Pollutants (NESHAP). We
14 think it makes good sense to update this language to
15 the terms that facilities are familiar with using
16 from the federal regulations.

17 We do not anticipate this changing what
18 facilities currently experience during the permitting
19 process so this change should not be a concern for
20 the regulated community. However, due to the fact
21 that section 7-15 was changed in our last permitting
22 revisions that you all worked on with us in the fall
23 and because we believe that we may need to make
24 additional changes to this section in October, I will
25 be asking you to not move forward with this revision

1 at the end of my presentation and leave this section
2 out of your motion.

3 The next change is to Subchapter 8-36.1. As
4 you can see the department is proposing to correct
5 the Rule and Statute references in OAC 252:100-8-36.1
6 to the proper legal form. None of the actual
7 citations are changing, only their form.

8 The third change is to 37-16 for loading
9 facilities. For this change you will want to look at
10 the revised version provided in the folder in front
11 of you, if you're not already using this copy. For
12 reference, the footer of this copy says "Chapter 100
13 Cleanup Revisions Council Update." I will give you a
14 moment to turn to the top of page 4. There has often
15 been some question as to whether loading from
16 condensate tanks at natural gas compressor stations
17 is subject to this section's control requirements.
18 We want to make it clear that these operations are
19 not considered loading facilities under this section,
20 which is in line with both how Permits and Compliance
21 and Enforcement treat the condensate tanks at
22 compressor stations. In this section we are
23 proposing to effectively add an exemption for natural
24 gas compressor stations from being considered
25 loadings facilities. The changes from the version

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1 that was public noticed and the version you have
 2 before you resulted from internal discussions. These
 3 changes do not change the intent of the exemption but
 4 rather clarify what we meant -- what we mean by
 5 "compressor station" since this term is not elsewhere
 6 defined in Chapter 100.

7 We also removed the term "condensate tanks"
 8 since this term can have many synonyms, and more
 9 directly apply the exemption to the compressor
 10 station facilities themselves rather than the
 11 individual tanks. Again, we are simply proposing to
 12 provide regulatory clarity and certainty to a
 13 practice that is already in place.

14 The fourth and final proposed change is in
 15 Section 39-45. This section is specific to petroleum
 16 solvent dry cleaners in Tulsa County. The department
 17 is proposing to correct the approval process for
 18 facilities that incinerate petroleum solvent dry
 19 cleaning filters. The Rule formerly read that the
 20 Fire Marshall's office would approve incineration.
 21 The State Fire Code does have requirements for dry
 22 cleaning facilities but we felt that the current
 23 language was outdated. We have clarified that
 24 incineration would only be allowed if permitted by
 25 the appropriate regulatory entity. This could

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1 include being covered in an Air Quality Permit or
 2 even possibly a RCRA permit. Based on dry cleaning
 3 inspections in Oklahoma, and even specifically Tulsa
 4 County, AQD is not aware that any dry cleaning
 5 facilities currently incinerate their filters so we
 6 do not expect this to affect any facilities. These
 7 filters are usually picked up by their waste
 8 contractor for off-site disposal.

9 We are also proposing to remove the outdated
 10 compliance schedule since these dates are nearly 35
 11 years past when facilities should have been in
 12 compliance with these rules. As you know, new
 13 facilities are required to be in compliance upon
 14 startup.

15 This concludes the revisions that we are
 16 proposing to make in this rule package. Notice of
 17 the proposed rule change was published in the
 18 Oklahoma Register on May 3, 2021, and no written
 19 comments have been received prior to the close of the
 20 comment period on June 3rd on any of these proposed
 21 rule revisions.

22 DEQ requests the Council vote on these minor
 23 changes in a single vote. As I mentioned earlier,
 24 we're not requesting you to act on the proposed
 25 change to OAC 252:100-7-15 at this time since there's

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1 a high likelihood that we will need to make
 2 additional revisions to this section in October. We
 3 ask the Council to recommend to the Board for
 4 approval the changes to Section 100-8-36.1,
 5 100-37-16, and 100-39-45 with the changes as
 6 presented in the meeting today. Thank you.

7 **MS. BOTCHLET-SMITH:** At this time we would
 8 like for the Council to have an opportunity for
 9 discussion or to ask questions.

10 **MS. LODES:** Any questions from the Council?
 11 **MS. BOTCHLET-SMITH:** Not seeing either. We
 12 didn't have any of the forms filled out from the
 13 audience. I would like to give the audience an
 14 opportunity, if you have any questions or comments
 15 after hearing the presentation, would you please
 16 indicate so?

17 (No response.)

18 **MS. BOTCHLET-SMITH:** Seeing none, if the
 19 Council doesn't have any questions, you can refer it
 20 for a motion.

21 **MS. LODES:** Seeing no further questions or
 22 comments, the staff has requested a motion to
 23 approve, which she put kindly on the board for us to
 24 get it right, because it's convoluted so that we get
 25 it worded correctly.

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1 Do I have a motion?

2 **MR. ELLIOTT:** I make a motion that we approve
 3 the revisions to Sections OAC 252:100-8-36.1, OAC
 4 252:100-37-16 and OAC 252:100-39-45 with the changes
 5 as presented in today's meeting.

6 **MS. LODES:** Do I have a second?
 7 **DR. DELANO:** I will second that.

8 **MS. LODES:** I have a motion and a second.
 9 Quiana, will you please call roll?

10 **MS. FIELDS:** Mr. Caves?
 11 **MR. CAVES:** Yes.
 12 **MS. FIELDS:** Dr. Delano?
 13 **DR. DELANO:** Yes.
 14 **MS. FIELDS:** Mr. Elliott?
 15 **MR. ELLIOTT:** Yes.
 16 **MS. FIELDS:** Mr. Keele?
 17 **MR. KEELE:** Yes.
 18 **MS. FIELDS:** Mr. Landers?
 19 **MR. LANDERS:** Yes.
 20 **MS. FIELDS:** Mr. Privrat?
 21 **MR. PRIVRAT:** Yes.
 22 **MS. FIELDS:** Ms. Lodes?
 23 **MS. LODES:** Yes.
 24 **MS. FIELDS:** Motion passed.
 25 **MS. LODES:** Thank you.

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1 **MS. BOTCHLET-SMITH:** The next item on today's
 2 agenda is Item 5-B. This is Chapter 100, Air
 3 Pollution Control, Subchapter 8, Permits For Part 70
 4 Sources and Major New Source Review for (NSR) Sources
 5 and Part 7, Prevention of Significant Deterioration
 6 (PSD) Requirements for Attainment Areas
 7 252:100-8-36.2. And Mr. Tom Richardson of our staff
 8 will give the presentation.
 9 Tom?
 10 **MR. RICHARDSON:** Good morning, Madam Chair.
 11 It feels very strange to do this in person rather
 12 than virtually so please bear with me. And if anyone
 13 has any trouble hearing me -- oh, I should turn it
 14 on.
 15 So I will start again. Good morning, Madam
 16 Chair, Members of the Council, ladies and gentlemen.
 17 I'm Tom Richardson, an engineer in the Air Quality
 18 Division's Rules and Planning Section. My purpose
 19 today is to provide an overview of our proposal to
 20 amend the source obligation requirements under the
 21 Prevention of Significance Deterioration, or PSD,
 22 Program. I would like to begin by noting that these
 23 proposed changes were prompted by the request from
 24 stakeholders -- and I think I saw Adrienne Burchett
 25 in the back, thank you -- and by feedback provided

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1 during the discussion of our permitting rule changes
 2 last fall.
 3 Before we get to the details of our proposal,
 4 I would like to provide some background and
 5 particulars of this rule, a description of our
 6 approach, a discussion why our approach deviates from
 7 EPA's and a summary of the proposed changes we need
 8 to consider.
 9 First I would like to direct your attention
 10 to the specific location we are proposing to make the
 11 changes to our rules. We are focused quite narrowly
 12 under Subsection C.
 13 Major New Source Review (or NSR) includes
 14 only one relevant component for us and that's the
 15 Prevention of Significant Deterioration (or PSD)
 16 Program. And I say it's the only relevant component,
 17 because Oklahoma is in attainment of all of the
 18 National Ambient Air Quality Standards. The PSD
 19 program requires that owners and operators of
 20 facilities subject to those rules, that they must
 21 evaluate each new project to determine whether it
 22 should be classified as a "major modification."
 23 NSR reform, adopted in 2002, provided the
 24 option of using the "Actual-to-Projected-Actual"
 25 applicability test for existing emission units to

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1 calculate emission increases to determine whether a
 2 project exceeds the PSD significance levels.
 3 Subsection (c) of Section 36.2 establishes the
 4 recordkeeping requirements that apply when a company
 5 uses projected actual emissions.
 6 This slide shows important dates, including
 7 the date EPA proposed the "Reasonable Possibility"
 8 rule in the Federal Register, the date the state of
 9 New Jersey submitted a petition requesting that EPA
 10 reconsider the Rule and the date EPA issued a letter
 11 to New Jersey stating that, in spite of a previous
 12 announcement that EPA would consider the Rule,
 13 ultimately EPA was no longer reconsidering the Rule
 14 or taking public comments on the Rule.
 15 The Current Status of the Reasonable
 16 Possibility Rule. New Jersey sued EPA over their
 17 decision not to reconsider the Rule. While the case
 18 was under review by the DC Circuit Court of Appeals,
 19 the Reasonable Possibility rule remained in effect in
 20 jurisdictions where the EPA operates the PSD program
 21 or in jurisdictions where the state, local, or tribal
 22 agency has received formal delegation of the EPA
 23 program. We should note that the Oklahoma DEQ
 24 operates its program under a federally approved State
 25 Implementation Plan, or SIP, rather than under formal

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1 delegation of EPA's program.
 2 Due to the concerns with the litigation
 3 between EPA and the state of New Jersey, we did not
 4 revise our rules to incorporate the Reasonable
 5 Possibility Language. That change on March 5, 2021,
 6 when the DC Circuit Court of Appeals ruled in favor
 7 of EPA and against the state of New Jersey.
 8 Previously I noted that we did not adopt
 9 EPA's rule text verbatim. The reason is that EPA's
 10 version of the Reasonable Possibility Rule does not
 11 require facilities to maintain records that were
 12 generated before the change was made. These records
 13 are used to demonstrate that a project is eligible
 14 for the exemption from the requirement to maintain
 15 records after the change was made. This was New
 16 Jersey's most salient objection to EPA's rule and we
 17 concur with that objection. Since the records need
 18 to be generated to demonstrate eligibility for the
 19 exemption, it only makes sense to retain those
 20 records. Our rulemaking remedy is to require that a
 21 facility retain the pre-change records but to exempt
 22 facilities that are not determined to have a
 23 reasonable possibility of exceeding the PSD
 24 significance thresholds from the post-change
 25 recordkeeping requirements.

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1 We believe that this approach has the best
 2 chance of pre-empting future objections to Reasonable
 3 Possibility rule.
 4 What is pre-change rulemaking? This slide
 5 identifies the records that must be kept to
 6 demonstrate that a project does not have a reasonable
 7 possibility of increasing emissions in a manner that
 8 would exceed the PSD significance thresholds.
 9 The records required include a description of
 10 the project, identification of the emission units
 11 involved in the project, a description of the
 12 applicability test used to calculate emission
 13 increases, a description of the emissions that may be
 14 excluded, for example, due to demand growth, and any
 15 netting calculations, if applicable.
 16 But, you may ask? You mean to say that EPA
 17 does not require pre-change recordkeeping? No, not
 18 in the version of the Reasonable Possibility rule
 19 that was adopted. EPA claims that, in effect, other
 20 programs duplicate the requirements for these
 21 records. Perhaps not in a direct way, but
 22 indirectly.
 23 The Oklahoma DEQ believes that it is more
 24 straightforward to just include these requirements
 25 explicitly in the Source Obligations section of the

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1 rules. That way there's no ambiguity. Again, since
 2 these records have already been generated, it only
 3 makes sense to retain them.
 4 What about future challenges to our approach?
 5 The litigation appears to have been resolved, because
 6 the DC Circuit Court of Appeals ruled in favor of the
 7 EPA and against the state of New Jersey. However,
 8 under the new administration, EPA could revisit this
 9 rule.
 10 Whatever happens, we believe that our
 11 approach addresses the most significant flaw
 12 identified by New Jersey. If our proposed rule
 13 language is adopted, we will submit these changes to
 14 EPA Region 6 for incorporation into our SIP. Once
 15 the language is approved into our SIP, it would
 16 require separate action from EPA or from the courts
 17 to jeopardize our approach.
 18 Also of note, on December 20, 2019, EPA
 19 published a notice in the Federal Register proposing
 20 to correct a number of errors in various NSR rules.
 21 One of the proposed changes corrected a mistake in
 22 the identification which paragraph was referenced
 23 internally in the Reasonable Possibility rule. The
 24 Department's proposal today corrects that error
 25 although EPA has not finalized that rule.

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1 We are now ready to turn to the specific rule
 2 language. Please turn in your packets to the
 3 proposed amendments to rule text in chapter 100,
 4 Subchapter 8, Section 36.2.
 5 Please note that in this presentation much of
 6 the Rule language not being changed has been omitted.
 7 The complete text of each section is included in the
 8 rule text documents included in the packet and on the
 9 web.
 10 Subsection (c) states that, for projects that
 11 use projected actual emissions for existing sources
 12 to determine whether a project will result in a
 13 significant emissions increase under the PSD rules,
 14 additional recordkeeping is required.
 15 The changes shown on this slide reference the
 16 location in the rules where the term "projected
 17 actual emissions" is defined.
 18 Let's take another look at the language in
 19 this paragraph. It is important to note that these
 20 requirements apply whether or not a project reaches
 21 the reasonable possibility threshold. These records
 22 establish the basis on which the determination was
 23 made, whether or not the project has a reasonable
 24 possibility of meeting or exceeding the 50 percent
 25 threshold. And these are the "pre-change records"

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1 mentioned by EPA in their letter to New Jersey.
 2 These changes shown in slide 15 represent the
 3 heart of Oklahoma's "reasonable possibility"
 4 approach. This language establishes the criteria
 5 under which a project is determined to have a
 6 "reasonable possibility" of resulting in a
 7 significant emission increase as defined by the PSD
 8 rules. If the project does not reach the 50 percent
 9 threshold, no additional records beyond the
 10 pre-change records discussed previously are required.
 11 This slide shows the location where we
 12 inserted the new text that creates the exemption from
 13 the requirements for post-change recordkeeping for
 14 projects below the 50 percent threshold. All of the
 15 text shown on the left was inserted after the number
 16 (2) which previously started the paragraph discussing
 17 requirements for existing electric utility steam
 18 generating units, or EUSGUs.
 19 The remaining changes are intended to clean
 20 up the formatting. Here the post-change
 21 recordkeeping requirements are indented and
 22 renumbered.
 23 This slide shows additional formatting
 24 clean-up. Because we indented the requirements
 25 above, we designated the paragraphs (3), (4), and (5)

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1 as "reserved." That way we can pick back up at
 2 paragraph 6 without any further disruption or an
 3 accidental reference anomalies.
 4 I would like to note that we received no
 5 comments during the public comment period that closed
 6 on June 2nd. That concludes my presentation on our
 7 proposed changes to Section 36.2. Please note that
 8 staff is recommending that the Council recommend to
 9 the board approval of the proposed changes to
 10 Chapter 100, Subchapter 8, Section 36.2 during
 11 today's meeting.
 12 Thank you. And once again, I will ask
 13 Beverly Botchlet-Smith to discuss the next steps in
 14 the process.
 15 **MS. BOTCHLET-SMITH:** Thank you, Tom.
 16 At this point, Council, do you have any
 17 questions for Tom Richardson?
 18 **MR. ELLIOTT:** Yes. Tom, on page 17 of the
 19 slide show, paragraph E, the -- in this rule we have
 20 several different uses of the word "significant."
 21 One of them is under the reasonable possibility is a
 22 50 percent increase, you know, of -- you know, of
 23 that. That throws you into it. And then -- so what
 24 is the -- what is the meaning of the word
 25 "significant" in this paragraph that says, By an

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1 amount that is significant for that regulated NSR
 2 pollutant?
 3 **MR. RICHARDSON:** Greg, thank you for that
 4 question. There is -- PSD rules are complicated and
 5 anyone that works in air knows that, and I think here
 6 in particular it shows when the use of the word
 7 significant has these different context, but in this
 8 particular area, which we are now renumbering as E,
 9 the language there refers to the PSD significant
 10 threshold, so the significant emission rates
 11 specified in the PSD rules.
 12 So, for example, for VOCs or NOx, that's
 13 40 tons per year. So if you exceed 40 tons per year,
 14 or rather you find out that a project not expected to
 15 be a major modification under PSD, if later you find
 16 out the project exceeded those thresholds, that
 17 creates the responsibility to submit a report to the
 18 director. But the threshold you're crossing at that
 19 point that requires that report, those are the actual
 20 PSD levels, not the 50 percent reasonability
 21 threshold we discussed before. So I appreciate that
 22 clarification.
 23 **MR. ELLIOTT:** Okay.
 24 **MS. BOTCHLET-SMITH:** Any other comments or
 25 questions from the Council?

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1 **MS. LODES:** I do have one and I'm sorry on
 2 this one, but -- okay, so you were going through the
 3 different stuff with the litigation and the rest of
 4 it, and I know we have had a change in
 5 administration, so we're going to send this down to
 6 Region 6 to try to improve our SIP. How is the new
 7 administration -- we were making -- we were rocking
 8 on getting our SIP approved and getting it all
 9 cleaned up. Has that totally stalled now or are we
 10 getting anywhere with getting it?
 11 **MR. RICHARDSON:** So our communication with
 12 Region 6 has been very collegial, we've been having
 13 monthly discussions not only with Carrie Paige's
 14 group that works on SIP proper but Adina Wiley who
 15 really focusses on our permitting SIP. And we feel
 16 like we have a great relationship, they're totally on
 17 board with our changes. However, anytime they're
 18 going through the process of approving our SIP, it
 19 will end up being reviewed by the Office of General
 20 Counsel and that's where who knows what issues may
 21 arise.
 22 So if the new administration decides that
 23 they're holding back this Reasonable Possibility
 24 rule, in all likelihood, they would have to go
 25 through formal rulemaking to do that so we would get

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1 that heads-up. But once we adopt the rules into our
 2 particular rule package, those rules then become the
 3 rules we operate under in terms of the State of
 4 Oklahoma.
 5 Now, it would be odd for EPA to step in and
 6 under Part 52 come after a particular facility in
 7 Oklahoma for violating rules that are no longer on
 8 EPA's books, and that are no longer on our books but
 9 due to an anomaly in the process because of the delay
 10 in SIP approval, that would just be -- that is so
 11 unlikely. I think we might have a delay in the
 12 approval of the SIP, but I think if there's any -- if
 13 there's any potential risk in terms of this
 14 particular rule-making package, that's way down the
 15 road and there would be a series of actions that
 16 would have to take place before that would be a
 17 problem.
 18 **MS. LODES:** Okay. I just was curious as to
 19 where we were with getting -- with keeping the SIP
 20 moving.
 21 **MS. STEGMANN:** It's still going forward.
 22 **MS. LODES:** Okay, good.
 23 **MR. LANDERS:** So outside the SIP, when would
 24 these rule changes be effective if we pass them
 25 today, environmental quality board and so on?

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1 **MR. RICHARDSON:** That's a great question. So
 2 right now because of where we are in the cycle, if
 3 the rules were approved by -- I keep saying approved.
 4 I think there's an actual -- a term of art, it's like
 5 the Council recommends that the Environmental Quality
 6 Board formally adopt the rules. If that passes today
 7 and then EQB passes it during their next meeting in
 8 September, so then that would then go into the cycle.
 9 So then the governor and the legislature have the
 10 option of looking at it. It would not be until
 11 September 15th of 2022 before these rules would be
 12 formally adopted. So, you know, we are early in that
 13 process and you know that whole annual cycle we go
 14 through.
 15 **MS. BOTCHLET-SMITH:** Any other questions from
 16 the Council?
 17 **MR. LANDERS:** So if it happens that way and
 18 you say -- so we have to keep records pre-change --
 19 pre-change recordkeeping, we have to continue that.
 20 So in 2022, let's say you are in year three of your
 21 post-project emissions tracking. Can you stop them
 22 once it's approved or do you have to continue the
 23 five-year post project.
 24 **MR. RICHARDSON:** That's where I would
 25 hesitate to say anything because that's where I would

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1 throw it to either Madison or Compliance and
 2 Enforcement. They might discuss interpretation and
 3 enforcement discretion, but really at that point I
 4 would maybe ask Kendal or I guess that would be
 5 looked at, at that point but I'm sorry, I don't have
 6 the answer to that question.
 7 **MS. STEGMANN:** I would assume that we would
 8 do enforcement discretion if this package passes.
 9 **MS. LODES:** So I would think some of it would
 10 be how you worded it in your permit.
 11 **MS. STEGMANN:** Right.
 12 **MR. KEELE:** This is Garry. I will follow in
 13 on that. Instead of enforcement discretion, would
 14 the agency be willing to submit or provide a letter
 15 saying that the recordkeeping could be finished at
 16 that point?
 17 **MS. STEGMANN:** We can talk about that at a
 18 later time. I'm not willing to commit to that.
 19 **MR. KEELE:** Fair enough.
 20 **MR. LANDERS:** I would just ask you to
 21 consider that because to me this has been a rule
 22 change that has been a long time coming, and it would
 23 just -- it's really -- would reduce the recordkeeping
 24 burden, you know, if we can stop when it's completely
 25 adopted, you know.

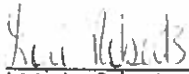
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1 **MS. STEGMANN:** Yeah. We will definitely take
 2 all of that in account, and we'll go back and have
 3 internal discussions with staff on the best way to
 4 implement it when we are in between, you know,
 5 passing it today versus when the legislature okays
 6 it.
 7 **MR. LANDERS:** Thank you.
 8 **MR. RICHARDSON:** And I think I -- of course,
 9 I don't have the authority to do this, but I think
 10 I've stated that it might be a good idea for us to
 11 develop some guidance that might address some of
 12 these issues, so I don't know if Lee Warden is in the
 13 audience, if she is I may be getting in trouble with
 14 Lee, but I think it would helpful if this new rule
 15 change for us to have that guidance at some point.
 16 So while I can't commit to that, I think that would
 17 be a good idea.
 18 **MS. BOTCHLET-SMITH:** Okay. We have received
 19 one notice of oral comment from the public. Adrienne
 20 Burchett from Altamira. If you would like to step to
 21 the podium.
 22 **MS. BURCHETT:** Hi. Thank you for the
 23 opportunity to comment. It's going to be real quick
 24 and I just want to say it's great to see everybody in
 25 person.

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1 **MS. BOTCHLET-SMITH:** Thank you. Would you
 2 please restate your name and your affiliation?
 3 **MS. BURCHETT:** Yes. My name is Adrian
 4 Burchett. I'm with Altamira. And I just wanted to
 5 thank the DEQ staff and Council for considering our
 6 comments, and I believe that proposed changes
 7 incorporate those. So thank you.
 8 **MS. BOTCHLET-SMITH:** I haven't received any
 9 other notice of comment from the public. Anyone else
 10 wish to comment at this time?
 11 Seeing and hearing none, this would be a last
 12 opportunity for the Council to ask questions or
 13 potentially make a motion.
 14 **MS. LODES:** Seeing no further comments or
 15 questions from the Council, staff has recommended we
 16 pass the proposed changes as presented today. Do I
 17 have a motion?
 18 **MR. LANDERS:** I will make a motion that we
 19 adopt the proposed rule changes to Chapter 100,
 20 Subchapter 8, Section 36.2.
 21 **MR. CAVES:** I will second the motion.
 22 **MS. LODES:** I have a motion and second.
 23 Quiana, will you please call roll?
 24 **MS. FIELDS:** Mr. Caves?
 25 **MR. CAVES:** Yes.

1 MS. FIELDS: Dr. Delano?
2 DR. DELANO: Yes.
3 MS. FIELDS: Mr. Elliott?
4 MR. ELLIOTT: Yes.
5 MS. FIELDS: Mr. Keele?
6 MR. KELLE: Yes.
7 MS. FIELDS: Mr. Landers?
8 MR. LANDERS: Yes.
9 MS. FIELDS: Mr. Privrat?
10 MR. PRIVRAT: Yes.
11 MS. FIELDS: Ms. Lodes?
12 MS. LODES: Yes.
13 MS. FIELDS: Motion passed.
14 MS. BOTCHLET-SMITH: While the staff does
15 have some presentations today, this concludes the
16 hearing portion of today's meeting.
17 (Meeting concluded.)
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1 -- CERTIFICATE --
2 I, Lori L. Roberts, Certified Shorthand
3 Reporter for the State of Oklahoma, certify that the
4 foregoing proceedings are a true and correct
5 transcript of the record of the machine shorthand
6 notes taken by me and transcribed into written form
7 under my supervision, direction and control.
8 I further certify that I am not an attorney
9 for nor relative of any interested party, or
10 otherwise interested in the event of said action.
11 IN WITNESS WHEREOF, I have hereunto set my
12 hand and seal of office this 29th day of June, 2021.
13
14 
15 _____
16 Lori L. Roberts
17 CSR No. 1588
18 Commission Expires: 12/31/21
19
20
21
22
23
24
25



AIR QUALITY ADVISORY COUNCIL

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June 16, 2021

Oklahoma City, Oklahoma

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AIR QUALITY ADVISORY COUNCIL

Attendance Record

June 16, 2021

Oklahoma City, Oklahoma

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