

MINUTES
AIR QUALITY ADVISORY COUNCIL
October 20, 2021
Department of Environmental Quality
Oklahoma City, Oklahoma

Official AQAC Approved
at January 19, 2022 meeting

Notice of Public Meeting – The Air Quality Advisory Council (AQAC) convened for its Regular Meeting at 9:00 a.m. on October 20, 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 if you wish to make a statement when it’s time for public comments, complete the form at the registration table and you will be called upon at the appropriate time. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

MEMBERS PRESENT	DEQ STAFF PRESENT
Matt Caves	Kendal Stegmann
Gary Collins	Beverly Botchlet-Smith
Robert Delano	Leon Ashford
Gregory Elliott	Madison Miller
Garry Keele	Brooks Kirlin
Steve Landers	Melanie Foster
John Privrat	Phillip Fielder
Jeffrey Taylor	Travis Couch
Laura Lodes	Jonathan Truong
	Michelle Wynn
MEMBERS ABSENT	Mark Hildebrand
None	Bruce Vande Lune
	Tom Richardson
	Malcolm Zachariah
	Christina Hagens
	Quiana Fields

Approval of Minutes – Ms. Lodes called for a motion to approve the Minutes of the June 16, 2021 Regular Meeting. Mr. Caves moved to approve and Mr. Taylor made the second.

See transcript pages 3 - 5

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Meeting Schedule for Calendar Year 2022 – Ms. Lodes stated the proposed meeting scheduled dates are: January 19 in Oklahoma City, May 4 in Oklahoma City and October 5 in Oklahoma City. Following a brief discussion, Mr. Elliot moved to approve the proposed dates and Mr. Landers made the second.

See transcript pages 5 - 7

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Chapter 100. Air Pollution Control

Subchapter 2. Incorporation By Reference [AMENDED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

Ms. Christina Hagens, Environmental Programs Specialist of the AQD, stated the Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference. In addition, the Department is proposing to update language in Subchapter 2, Incorporation by Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q. Hearing no questions by the Council or by the public, Ms. Lodes called for a motion, Mr. Landers moved to approve and Mr. Caves made the second.

See transcript pages 9 - 12

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Chapter 100. Air Pollution Control

Subchapter 1. General Provisions

Subchapter 7. Permits for Minor Facilities

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

Ms. Madison Miller, Supervising Attorney of the Legal Division, stated that the Department is proposing to amend OAC 252:100, Subchapters 1, 7 and 8, to allow for certain construction activities to be conducted at the owner/operator's risk after submission of an administratively complete minor New Source Review (NSR) permit application but prior to issuance of the construction permit. The Department is also proposing to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to NESHAP and NSPS. Following a lengthy discussion, Ms. Lodes called for a motion to take a ten minute break to allow staff to adjust language to the rule. Mr. Elliott moved to approve and Mr. Privrat made the second.

See transcript pages 12 - 37

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Following the ten minute break Ms. Lodes called for a motion to reconvene the meeting. Mr. Taylor moved to approve and Mr. Privrat made the second.

See transcript pages 38 - 39

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

After the break, Ms. Botchlet-Smith asked staff to continue with the presentation. Ms. Miller stated to the Council that the staff has deliberated and would recommend postponing the vote on this rule to come up with potential language. Following discussion by the Council and public, Ms. Lodes called for a motion to carry Subchapters 1, 7 and 8 to a future Air Quality Advisory Council meeting. Mr. Elliot made the motion to approve and Mr. Privrat made the second.

See transcript pages 39 - 43

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Chapter 100. Air Pollution Control

Subchapter 13. Open Burning

Mr. Leon Ashford, Environmental Programs Specialist of the AQD, stated that the Department is proposing to amend OAC 252:100-13, Open Burning, to conform the Department’s rules with Senate Bill 246 (2021) and 27A Okla. Stat. (O.S.) § 2-5-130. Following a question by the Council and none by the public, Ms. Lodes called for a motion to approve the rule. Mr. Landers moved to approve and Dr. Delano made the second.

See transcript pages 44 - 48

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Chapter 100. Air Pollution Control

Subchapter 47. Control of Emissions from Existing Municipal Solid Waste Landfills

Mr. Malcolm Zachariah, Environmental Programs Specialist of the AQD, stated that the Department is proposing to amend OAC 252:100, Subchapter 47, Control of Emissions from Existing Municipal Solid Waste Landfills to incorporate the federal guidelines in 40 C.F.R. Part 60, Subpart Cf into the state rules. Upon promulgation, the revised Subchapter 47 will be incorporated into Oklahoma’s revised State 111(d) Plan. Mr. Zachariah recommends the Council postpone its vote on Subchapter 47 to the next regular business meeting. Following a question by the Council and none by the public, Ms. Lodes called for a motion, Mr. Caves moved to approve and Mr. Landers made the second.

See transcript pages 48 - 57

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

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

See transcript page 57

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. Taylor moved to approve and Mr. Caves made the second. The next scheduled regular meeting is on Wednesday, January 19, 2022. Meeting adjourned at 10:20 a.m.

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes
Garry Keele	Yes		

Transcript and attendance sheet becomes an official part of these Minutes.

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY ADVISORY COUNCIL
PUBLIC MEETING

OCTOBER 20, 2021, at 9:00 A.M.

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

707 North Robinson
1st Floor, Multi-Purpose Room
Oklahoma City, Oklahoma

* * * * *

REPORTED BY DEBRA GARVER, CSR, RPR

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1	A P P E A R A N C E S
2	Council Members:
3	Matt Caves
4	Gary Collins
5	Dr. Robert Delano
6	Gregory Elliott
7	Garry Keele II, Vice Chair
8	Stephen Landers
9	John Privrat
10	Jeffrey Taylor
11	Laura Lodes, Chair
12	
13	Presenters:
14	Beverly Botchlet-Smith, Asst. Div. Director
15	Christina Hagens, EPS, Rules & Planning Section
16	Madison Miller, Supervising Attorney, Legal
17	Melanie Foster, EPM, Rules & Planning Section
18	Leon Ashford, EPS, Rules & Planning Section
19	Malcolm Zachariah, EPS, Rules & Planning Section
20	
21	Also Present:
22	Quiana Fields, DEQ Administration
23	Kendal Stegmann, Division Director
24	Jeremy Jewell, Trinity Consultants
25	

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1	P R O C E E D I N G S
2	CHAIR LODES: All right. We'll call today's
3	meeting to order.
4	Quiana, will you please call roll.
5	MS. FIELDS: Mr. Caves.
6	MR. CAVES: Here.
7	MS. FIELDS: Mr. Collins.
8	MR. COLLINS: Here.
9	MS. FIELDS: Dr. Delano.
10	DR. DELANO: Here.
11	MS. FIELDS: Mr. Elliot.
12	MR. ELLIOTT: Here.
13	MS. FIELDS: Mr. Keele.
14	MR. KEELE: Here.
15	MS. FIELDS: Mr. Landers.
16	MR. LANDERS: Here.
17	MS. FIELDS: Mr. Privrat.
18	MR. PRIVRAT: Here.
19	MS. FIELDS: Mr. Taylor.
20	MR. TAYLOR: Here.
21	MS. FIELDS: Ms. Lodes.
22	CHAIR LODES: Here.
23	MS. FIELDS: We have a quorum.
24	CHAIR LODES: The next item on today's Agenda
25	is the approval of the minutes from the June 16, 2021,

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1	regular meeting.
2	Do we have any questions or comments from the
3	council on the minutes?
4	(No response.)
5	CHAIR LODES: Hearing no comments, do we have
6	a motion to approve the minutes?
7	MR. CAVES: I will make a motion to approve.
8	MR. TAYLOR: I'll second it.
9	CHAIR LODES: I have a motion and a second.
10	Quiana, will you please call roll.
11	MS. FIELDS: Mr. Caves.
12	MR. CAVES: Yes.
13	MS. FIELDS: Mr. Collins.
14	MR. COLLINS: Yes.
15	MS. FIELDS: Dr. Delano.
16	DR. DELANO: Yes.
17	MS. FIELDS: Mr. Elliot.
18	MR. ELLIOTT: Yes.
19	MS. FIELDS: Mr. Keele.
20	MR. KEELE: Yes.
21	MS. FIELDS: Mr. Landers.
22	MR. LANDERS: Yes.
23	MS. FIELDS: Mr. Privrat.
24	MR. PRIVRAT: Yes.
25	MS. FIELDS: Mr. Taylor.

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1	MR. TAYLOR: Yes.
2	MS. FIELDS: Ms. Lodes.
3	CHAIR LODES: Yes.
4	MS. FIELDS: Motion passed.
5	CHAIR LODES: Thank you.
6	The next item on today's Agenda is the meetings
7	scheduled for calendar year 2021. The staff-suggested
8	dates are Wednesday, January 19th, 2022, in Oklahoma
9	City; Wednesday, May 4th, 2022, in Oklahoma City; and
10	Wednesday, October 5th, 2022, in Oklahoma City.
11	They've moved up the May date to give more time
12	before the Environment Quality Board meeting in June, if
13	we need it, and to cover things.
14	Do you have any questions or comments regarding the
15	dates?
16	(No response.)
17	CHAIR LODES: None.
18	Did they set the next EFO meeting? It wasn't set
19	when we had the pre-meeting, we looked.
20	BUD GROUND: I think it's the 10th, 11th, and
21	12th --
22	CHAIR LODES: Okay. So we are good on that
23	one.
24	BUD GROUND: -- that same week in October.
25	CHAIR LODES: Okay.

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1 MR. ELLIOTT: So we are not planning to do a
2 Tulsa meeting?
3 CHAIR LODES: With Covid, I think they had
4 decided to keep the meetings for now in Oklahoma City.
5 I guess we could change that back to Tulsa if we wanted
6 to next year at some point. Correct? If we vote on it?
7 How does that work?
8 MS. MILLER: Yes.
9 MS. STEGMANN: I think if we do proper
10 noticing.
11 MS. MILLER: Yes, we can modify it with the
12 Secretary of State.
13 CHAIR LODES: Yeah. But at this time, with
14 the travel and everything, the staff felt it was easier
15 just to keep it in Oklahoma City.
16 MR. ELLIOTT: Okay.
17 CHAIR LODES: Any other questions or comments
18 on the proposed meeting dates?
19 Hearing none, do I have a motion to approve?
20 MR. ELLIOTT: I'll make a motion to approve
21 the dates.
22 MR. LANDERS: I'll second.
23 CHAIR LODES: Okay. I have a motion and a
24 second.
25 Quiana, will you please call roll.

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1 officer for today's hearing.
2 The hearings will be convened by the Air Quality
3 Council in compliance with the Oklahoma Administrative
4 Procedures Act and Title 40 of the Code of Federal
5 Regulations, Part 51, as well as the authority of
6 Title 27 A of the Oklahoma Statute, Section 2-2-201 and
7 Sections 2-5-101 through 2-5-117.
8 Notice of the October 20, 2021, hearings were
9 advertised in the Oklahoma Register for the purpose of
10 receiving comments pertaining to the proposed OAC
11 Title 252 Chapter 100 rules as listed on the Agenda and
12 will be entered into each record along with the Oklahoma
13 Register filing.
14 Notice of the meeting was filed with the Secretary
15 of State on November 4, 2020. The Agenda was posted 24
16 hours prior to this meeting here at the DEQ.
17 If you wish to make a statement, it's very
18 important for you to complete the form at the
19 registration table. You'll be called upon at the
20 appropriate time.
21 Audience members, please come to the podium for
22 your comments and please state your name prior to making
23 those comments.
24 At this time we'll proceed with what is marked as
25 Agenda Item 5A on the Hearing Agenda.

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1 MS. FIELDS: Mr. Caves.
2 MR. CAVES: Yes.
3 MS. FIELDS: Mr. Collins.
4 MR. COLLINS: Yes.
5 MS. FIELDS: Dr. Delano.
6 DR. DELANO: Yes.
7 MS. FIELDS: Mr. Elliot.
8 MR. ELLIOTT: Yes.
9 MS. FIELDS: Mr. Keele.
10 MR. KEELE: Yes.
11 MS. FIELDS: Mr. Landers.
12 MR. LANDERS: Yes.
13 MS. FIELDS: Mr. Privrat.
14 MR. PRIVRAT: Yes.
15 MS. FIELDS: Mr. Taylor.
16 MR. TAYLOR: Yes.
17 MS. FIELDS: Ms. Lodes.
18 CHAIR LODES: Yes.
19 MS. FIELDS: Motion passed.
20 CHAIR LODES: We will now enter the public
21 rulemaking portion of it.
22 Beverly.
23 MS. BOTCHLET-SMITH: Good morning. I'm
24 Beverly Botchlet-Smith, assistant director of the Air
25 Quality Division. As such, I'll serve as the protocol

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1 This is Chapter 100, Air Pollution Control;
2 Subchapter 2, Incorporation by Reference [AMENDED];
3 Appendix Q, Incorporation by Reference [REVOKED]; and
4 Appendix Q, Incorporation by Reference, [NEW].
5 The presentation for this will be given by
6 Christina Hagens, Environmental Programs Specialist with
7 the Rules & Planning staff.
8 MS. HAGENS: Thank you.
9 Good morning, Madam Chair and members of the
10 council. My name is Christina Hagens. I am an
11 Environmental Programs Specialist in the Air Quality
12 Division.
13 The Department is proposing to update language in
14 Subchapter 2, Incorporation by Reference, to reflect the
15 new date of incorporation for Appendix Q.
16 In addition, the Department is proposing to revoke
17 the current Chapter 100 Appendix Q, Incorporation by
18 Reference, and adopt a new Appendix Q.
19 This proposal is part of the annual update of
20 Title 40, Code of Federal Regulations, Incorporation by
21 Reference in Chapter 100.
22 The Oklahoma rules on Rulemaking dictates the
23 procedure for amending a rule appendix by revoking the
24 old and creating an entirely new appendix.
25 The proposed changes to Appendix Q reflect federal

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1 regulations, mostly New Source Performance Standards,
2 (NSPS), and National Emission Standards for Hazardous
3 Air Pollutants (NESHAP), which have been implemented as
4 of June 30, 2021.

5 The update would incorporate any amendments to
6 standards currently listed in Appendix Q. These changes
7 also include the addition of Part 60, Subpart Cf for
8 Municipal Solid Waste Landfills and the updated name of
9 Part 60 Subpart WNW, also related to MSW landfills.

10 A list of the standards that are currently included
11 in Appendix Q, which have been modified since July 1,
12 2020, was provided in your packet.

13 A Notice of the proposed changes was published in
14 the Oklahoma Register on September 15, 2021. Written
15 comments from the public and other interested parties
16 was requested in the Notice, and no comments have been
17 received as of today.

18 Staff requests the Council recommend this
19 rulemaking to the Environmental Quality Board for
20 permanent adoption.

21 Thank you.

22 MS. BOTCHLET-SMITH: At this time we'll have
23 discussion of the council and any questions for
24 Christina.

25 (No response.)

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1 MR. ELLIOTT: Yes.
2 MS. FIELDS: Mr. Keele.
3 MR. KEELE: Yes.
4 MS. FIELDS: Mr. Landers.
5 MR. LANDERS: Yes.
6 MS. FIELDS: Mr. Privrat.
7 MR. PRIVRAT: Yes.
8 MS. FIELDS: Mr. Taylor.
9 MR. TAYLOR: Yes.
10 MS. FIELDS: Ms. Lodes.
11 CHAIR LODES: Yes.
12 MS. FIELDS: Motion passed.
13 MS. BOTCHLET-SMITH: The next item on today's
14 Agenda is 5B, Chapter 100, Air Pollution Control;
15 Subchapter 1, General Provisions; Subchapter 7, Permits
16 for Minor Facilities; and Subchapter 8, Permits for
17 Part 70 Sources and Major New Source Review, or NSR,
18 Sources.

19 The presentation will be given by Madison Miller.
20 Madison is a supervising attorney for Air in our legal
21 division.
22 Madison.

23 MS. MILLER: Good morning, Madame Chair,
24 Members of the Council. I am Madison Miller,
25 Supervising Attorney of the Air Quality Division,

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1 MS. BOTCHLET-SMITH: Hearing none.
2 I haven't received any notice of public comments
3 from the audience. Does anyone wish to comment or ask a
4 question about this rule?
5 (No response.)
6 MS. BOTCHLET-SMITH: Hearing none, Laura, one
7 last chance for the council to discuss?
8 CHAIR LODES: Hearing no further comments,
9 staff has recommended that -- recommended for approval,
10 Chapter 100, Subchapter 2, and Appendix Q.
11 Do I have a motion?
12 MR. LANDERS: It includes revoking and
13 inserting?
14 CHAIR LODES: Yes.
15 MR. LANDERS: I'll make a motion to approve.
16 MR. CAVES: I'll second it.
17 CHAIR LODES: I have a motion and second.
18 Quiana, please call roll.
19 MS. FIELDS: Mr. Caves.
20 MR. CAVES: Yes.
21 MS. FIELDS: Mr. Collins.
22 MR. COLLINS: Yes.
23 MS. FIELDS: Dr. Delano.
24 DR. DELANO: Yes.
25 MS. FIELDS: Mr. Elliot.

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1 presenting the Department's proposed changes to OAC
2 252:100 Subchapters 1, 7, and 8.
3 Historically, DEQ has allowed, on a case-by-case
4 basis, facilities to commence and conduct certain minor
5 NSR construction activities prior to the issuance of a
6 permit (but after the administratively complete
7 Application has been submitted). The purpose of today's
8 rulemaking is to clarify this policy in the Air Quality
9 rules.

10 On January 13, 2021, DEQ received a letter of
11 comment from Mid America Industrial Park regarding the
12 most recent permit SIP rule changes approved by the Air
13 Quality Advisory Council and Environmental Quality
14 Board, which were promulgated into the OAC on September
15 15 of this year.

16 That permit SIP package required Tier I air quality
17 permits undergo public notice and comment where they
18 were not previously required to do so by the OAC rules.

19 In its comments, the industrial park requested that
20 DEQ formalize or provide guidance on the construction
21 permit activities policy previously described,
22 specifically regarding the commencement of minor NSR
23 construction activities prior to the issuance of a minor
24 NSR construction permit.

25 Upon review of the Air Quality rules, DEQ

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1 determined it is warranted to update the rules to
2 reflect this permitting policy more clearly.
3 Before the most recent changes to DEQ rules
4 regarding public notice and comment on air quality,
5 permits were in effect prior to Sept. 15, 2021, Tier I
6 minor NSR construction activities under Subchapter 7 and
7 Tier II minor NSR construction activities under
8 Subchapter 8 could commence upon submittal of the
9 administratively complete minor NSR construction permit
10 pursuant to DEQ policy. This historic practice is
11 consistent with the rule changes recommended today.
12 However, this policy did not apply to construction
13 activities that were considered minor mods to Title V
14 permits under Subchapter 8 because the rules prior to
15 September 15, 2021, did not require a minor NSR
16 construction permit and specifically allowed
17 construction activities to begin upon submittal of an
18 administratively complete permit application.
19 After September 15, 2021, such activities are
20 considered Tier I minor NSR construction activities
21 under Subchapter 8 and must undergo 30-day public review
22 before construction activities may begin.
23 Recognizing this, the proposed rule would allow
24 construction activities for these permit actions to
25 begin upon submittal of the administratively complete

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1 when a construction permit is required under Subchapter
2 7. This exception states that an applicant may, after
3 submission of an administratively complete Minor NSR
4 permit, begin construction on any new, modified, or
5 reconstructed source, but it may not make the unit
6 operational such that it has the ability to emit any
7 regulated air pollutant.
8 The exception further clarifies that the applicant
9 conducts any such construction activities at its own
10 risk prior to the issuance of the construction permit by
11 DEQ.
12 Essentially, this provision in the rules in no way
13 provides a permit shield and is not de facto approval by
14 DEQ of any construction activities for which the
15 facility has applied. We have specifically stated that
16 DEQ retains the authority to deny a construction permit
17 regardless of how much money has been invested in a
18 project.
19 And the language that you see in red was added to
20 the rule proposal after the initial publication of the
21 rule change language, so I went ahead and added that in
22 there just for reference and for clarity.
23 In 100-7-15(a), we have provided a caveat to when a
24 construction permit is required by referencing the
25 exception in 100-7-2(b)(5), so just to tie everything

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1 minor NSR construction permit.
2 Specifically, DEQ has recommended changes to
3 Subchapters 1, 7, and 8.
4 So on the screen here is a complete list of the
5 sections we have opened up and are proposing changes to.
6 In Subchapter 1, we have recommended adding a
7 definition of "minor NSR," which you see on the screen,
8 since that term is not defined in the rules and it is
9 used in the changes that we've made to both Subchapters
10 7 and 8.
11 In Subchapter 7, we have recommended adding a
12 definition providing what is an administratively
13 complete permit, as that term is not defined in
14 Subchapter 7 and comes into play in the next change I am
15 about to discuss.
16 This definition, for the most part, mirrors the
17 existing Subchapter 8 definition with the exception of
18 subparagraph D, which requires "valid certification" of
19 the permit application.
20 Valid Certification here would refer to the
21 requirements set forth in the applicable permit forms,
22 rather than proscribing a specific standard for what is
23 valid. This approach is intended to provide flexibility
24 for industry.
25 Next, we have added a category of exceptions to

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1 together.
2 And then, finally, in Subchapter 8, we have
3 mirrored those changes in Subchapter 7 by adding the
4 same exception and caveats to 100-8-4, as seen on the
5 slide here.
6 And the same here with the red language; it was
7 added after we published the rules on the website.
8 So, importantly, this preconstruction activity
9 policy and proposed rules do not apply to PSD at all nor
10 do they apply to nonattainment NSR, which, fortunately,
11 is not relevant today in Oklahoma since we are currently
12 in attainment for all the NAAQS.
13 So, switching gears, going back to 100-7-15, you'll
14 see a change in Section 100-7-15(a)(2)(B)(i), and that
15 is unrelated to the construction permit policy. This
16 rule change proposal is rule cleanup intended to align
17 the OAC rule language with terminology set forth in the
18 federal rules.
19 This proposed change was presented at the June 2021
20 council meeting by Melanie Foster, but staff did not
21 recommend it for approval, and that is because
22 Section 7-15 was modified in last year's permit SIP rule
23 revisions and said modifications had not yet been
24 promulgated and incorporated into the OAC.
25 We were also considering additional changes to

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1 7-15, i.e., those changes presented today regarding the
2 preconstruction rule.
3 Thus, we waited to recommend adoption of this rule
4 change for two reasons: to allow the previous changes to
5 7-15 be incorporated into the OAC before again modifying
6 it; and to bring all proposed changes to this section
7 all at once.
8 So, on the screen is DEQ staff recommendation that
9 council recommend the proposed changes to OAC 252:100,
10 Subchapters 1, 7, and 8, to the Environmental Quality
11 Board for permanent adoption.
12 That concludes my presentation.
13 MS. BOTCHLET-SMITH: Do we have any questions
14 from the Council?
15 CHAIR LODES: I do have a question. On the
16 red highlighted stuff added in 100-8-4 -- there we go.
17 So it talks about, in addition, when performing
18 cost calculations to determine BACT for Minor NSR
19 projects determination shall be made without regard to
20 investments made for project-related installation or
21 modification of equipment prior to permit issuance.
22 I'm not -- one, if it's a minor mod, usually you're
23 not doing a BACT analysis to begin with. So it's a
24 little unclear.
25 I guess this is part of the EPA-added language?

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1 deduct those costs, essentially, or add those costs that
2 I have lost from selecting the wrong BACT.
3 Does that make sense?
4 CHAIR LODES: It does. I'm not sure it reads
5 like that, because, to me, it reads as though I submit a
6 permit, a Tier II mod now, and I'm going to install an
7 IFR tank, and I'm going to do the cost analysis saying,
8 you know, based off those controls, it's almost as
9 though I can't include the cost of that roof or do those
10 costs of that versus, you know, an IFR plus additional
11 controls, is the way it's kind of reading to me.
12 MS. MILLER: Laura, are you saying -- is it
13 coming to play with "the determination shall"?
14 CHAIR LODES: Yes. Because it says cost
15 calculation to determine BACT technology for Minor NSR
16 projects, the determination shall be made without regard
17 to investments made for project-related installation or
18 modification of equipment prior to permit issuance.
19 So if I waited to start construction, you would
20 have agreed that the control technology was the proper
21 one, but it almost reads, if it takes you guys 18 months
22 to issue it and we've started construction but haven't
23 made it operational, I can't include the cost of that --
24 what would be a proper control technology, is how it's
25 reading to me.

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1 MS. MILLER: Melanie is saying yes.
2 MS. FOSTER: Melanie Foster.
3 Yes, so EPA did give us some informal discussion
4 over this rule. One of the things that they did want to
5 make it very clear is that no matter how much money had
6 been invested, that we could still say no to a permit
7 application or, you know, the activities therein.
8 And the other part of that is that they wanted to
9 make sure that if somebody had gone forward with a
10 project -- and, theoretically, you're right -- generally
11 not for a Minor NSR, but if there was a state BACT
12 requirement or something.
13 CHAIR LODES: Yeah, I mean, a Tier II -- most
14 of ours are now going to be a Tier II, but a Tier II
15 construction permit may be not triggering PSD, but we
16 might be doing a state BACT analysis.
17 They're saying, okay, I've already said I'm going
18 to install these controls, but I can't include the cost
19 of that in the BACT analysis?
20 MS. FOSTER: What we're saying is,
21 essentially, if you have moved forward prior to getting
22 the actual permit issuance with what you selected -- or
23 the facility selected for their state BACT and we said,
24 yeah, that wasn't proper BACT, you couldn't then go say,
25 oh, well, now I have to retrofit it and I'm going to

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1 MS. MILLER: So do we need to include some
2 more clarifying language around the determination?
3 CHAIR LODES: I think so.
4 MS. MILLER: So, the determination of whether
5 or not the permit shall be issued or?
6 CHAIR LODES: Well, it -- so, in addition,
7 when performing the cost calculations to determine BACT
8 for Minor NSR projects, determination shall be made
9 without regard to investment made for project-related
10 installation or modification of equipment prior to
11 permit issuance.
12 If it's improper or something to that -- I think
13 that's where -- if I'm doing a regular BACT analysis, we
14 may all agree that the flare on the tanks was right, or
15 whatever it is.
16 You know, the catalyst I've got, I don't need to go
17 to SER for an engine, but they're saying, well, I can't
18 include that cost -- it almost reads -- something there.
19 And I don't know.
20 Does anybody else have any brilliant ideas?
21 MR. ELLIOTT: If the technology proposed was
22 not approved by DEQ? I mean, maybe something as easy as
23 that?
24 CHAIR LODES: And maybe -- I don't think it's
25 much. I think it's just a little bit of clarification.

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1 I don't want end up in a Do Loop with certain permit
2 writers on this.

3 MR. LANDERS: The only question I would bring
4 up -- and something you might want to check -- is when
5 you're doing BACT costs, they're published factors,
6 right?

7 CHAIR LODES: Right.

8 MR. LANDERS: Hours per ton of pollutant
9 removed.

10 CHAIR LODES: Well, it's not really published.
11 It's really kind of assumption on what -- their view,
12 so.

13 MR. LANDERS: It's in the BACT clearinghouse,
14 right?

15 CHAIR LODES: Well, yeah, you can -- the BACT
16 clearinghouse would determine what's typically BACT
17 analysis. You're doing BACT analysis. Yes, you're
18 going through the BACT, the RBLC database and comparing
19 the different technologies.

20 MR. LANDERS: I guess the question is, do you
21 have to use those BACT cost figures to determine BACT or
22 can you -- you know, or can you use, you know, truly
23 installed costs.

24 CHAIR LODES: Well, usually we would do -- and
25 you would go off with those and you would get there and

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1 MS. MILLER: Okay. So this is what I was
2 trying to suggest earlier. I'm not sure that I was
3 clear enough though. Tell me -- if you've already
4 answered this, sorry, but tell me again.

5 If we say the determination to approve or deny the
6 permit shall be made without regard to the
7 investments --

8 CHAIR LODES: Yes.

9 MS. MILLER: -- does that work?

10 CHAIR LODES: Yes.

11 MS. MILLER: Okay. So then --

12 CHAIR LODES: Which I think is really what the
13 first sentence says. I just don't know that we need the
14 second sentence, basically. It's the BACT determination
15 question I've got there.

16 MS. MILLER: Oh, okay.

17 MR. LANDERS: The risk is that the DEQ would
18 disagree.

19 CHAIR LODES: On your BACT choice, yes.

20 MR. LANDERS: Not the cost really of --

21 CHAIR LODES: Right. They're going to come
22 back and say you should have picked a different BACT,
23 and when you do your next BACT analysis, you can't take
24 into account what you've already spent, is what the
25 intent is here. But that's not how this reads to me at

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1 say, okay, it's -- you know, I'm doing my analysis, it's
2 Low NOx burners for this and not having to do another
3 add-on control beyond it.

4 You know, you just think a standard BACT analysis,
5 and so that's why I'm thinking it just needs a tweak
6 there.

7 MR. LANDERS: I just thought, to determine
8 BACT, you use those cost factors, so that's where you
9 pick your BACT.

10 CHAIR LODES: Right. That's where you're
11 picking what your BACT is, but the way this reads, if I
12 start constructing my heater with Low NOx burners on it
13 and that's what the RBLC database says is BACT, I can't
14 use the cost of the burners I installed is the way this
15 is reading here at first glance.

16 I would have to look at -- I would have to have
17 gone to Ultra or something like that. I don't think
18 that's the intent, but I'm afraid there could be a
19 question here down the road.

20 And so I think it needs a slight clarification on
21 it. I get what EPA is saying, I just think we just need
22 to insert a phrase somewhere in here. And I'm not sure
23 exactly what that phrase is, but reading what we -- what
24 we added based on EPA, I think, isn't exactly what we
25 intended.

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1 first glance.

2 MR. ELLIOTT: I agree with you, that it
3 doesn't read that way at all.

4 CHAIR LODES: It doesn't. And I just don't
5 want to end up in that -- I think we've got the right
6 intent here. I just don't want to spend -- you know,
7 two years from now arguing it out with permit writers.
8 That wasn't the intent, no.

9 MS. BOTCHLET-SMITH: Other discussions in the
10 Council?

11 CHAIR LODES: Any other questions, comments,
12 while they discuss it?

13 MR. CAVES: I did have a question regarding
14 potential enforcement with 100-8-4(D). Start after the
15 submission of an administratively complete application,
16 and I know we're defining "administratively complete,"
17 however, even with the certification, what if
18 something's deemed inaccurate or unfactual?

19 This says once you've submitted it, you can start.
20 Should there be any acknowledgement from the DEQ that
21 it's administratively complete, because this just says
22 upon submission.

23 CHAIR LODES: Which is what has -- in
24 practice, most people have used. Sometimes it takes a
25 while to get those administratively complete letters

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1 back.

2 So, yeah, clarification -- additional clarification

3 might be great there. I mean, it is at your own risk.

4 MR. CAVES: And I appreciate putting the rules

5 in place that shore up the policy or process, but don't

6 necessarily want to get hung up on that issue either.

7 MR. LANDERS: In your mind, you may have

8 submitted an administratively complete application, but

9 the DEQ, I guess, could come back and say, no, it was --

10 you know, by our estimation it was never

11 administratively complete. You shouldn't have started

12 construction.

13 MR. COLLINS: I agree with that.

14 And, Laura, too, we've always waited for the

15 administratively complete letter. We haven't proceeded

16 without that letter.

17 CHAIR LODES: And that's what a lot have done,

18 but not everybody does that.

19 MR. ELLIOTT: To speak on that -- and I know

20 it's a little bit different, but we have submitted what

21 we believe was administratively complete applications,

22 and so if there's anything wrong in that application,

23 then theoretically it wasn't an administratively

24 complete application.

25 We have done that in the past, and the DEQ used

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1 MS. MILLER: No.

2 MR. COLLINS: You guys have a internal memo or

3 -- okay.

4 CHAIR LODES: So it says on the

5 administratively complete definition, that's all the

6 information required. The landowner affidavit, the

7 appropriate application fees, and a valid certification

8 is what it says administratively complete means.

9 So there may be technical inconsistencies with it

10 that they're going to come back and ask questions on,

11 but what is administratively complete is just basically

12 the basic did you submit the application with the right

13 fees, did you check all the boxes.

14 MS. STEGMANN: Yes. Because we're just

15 saying -- because there's a difference between

16 administratively complete and technically complete. So

17 once you're administratively complete, it goes into

18 technical review.

19 So we're not saying that you can't -- you have to

20 have the technical review complete to begin

21 construction, it's just the administrative part.

22 CHAIR LODES: And I see that in Subchapter 7.

23 Do we have that same definition in Subchapter 8?

24 MS. MILLER: So I wanted to clarify that

25 Subchapter 8 does have a definition of administratively

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1 enforcement discretion and didn't say, hey, you

2 commenced construction without an administratively

3 complete application.

4 It wasn't something significant, you know. It

5 was -- you know, it was minor, right? It's a Minor NSR,

6 a minor permit. So I do know that they have used that.

7 But if there is an error in the application, then,

8 theoretically, it wasn't administratively complete

9 because it was inaccurate for whatever reason.

10 MR. LANDERS: And on bigger permitting

11 exercises, there's always something to follow up on,

12 seems like, you know.

13 CHAIR LODES: Absolutely.

14 MR. LANDERS: If you're going to clean it up,

15 this probably would be a good time to say the DEQ should

16 have some type of completeness.

17 MR. COLLINS: Madison, so the language that's

18 in 8-4(B), that talks about the administratively

19 complete submission, is that the -- is that within the

20 spirit of what the DEQ has communicated in the past and

21 that language is a direct pull from that?

22 MS. MILLER: Yes. Yes, it's completely in

23 line with the policy that we've practiced.

24 MR. COLLINS: And that policy that you

25 practiced, was that in writing?

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1 complete, and it's Subparagraph D that differs between

2 the Subchapter 7 proposed definition here and

3 Subchapter 8.

4 CHAIR LODES: I don't see it in our packet.

5 MS. MILLER: Yeah, we weren't proposing to

6 modify the Subchapter 8 definition of administratively

7 complete.

8 CHAIR LODES: Yeah. I think that covers the

9 questions you've got there, Matt.

10 Let me pull it up.

11 Do you know where it is in Subchapter 8? Anyone?

12 Oh, here we go. Here we go. See if that covers

13 what y'all are thinking. That part of it --

14 MS. MILLER: Do you want me to read it into

15 the record?

16 CHAIR LODES: Yes. If you want to read it

17 into the record.

18 MS. MILLER: Okay. So Subchapter 8

19 252:100-8-2, Definitions, "Administratively Complete"

20 means an application that provides:

21 A, all information required under OAC

22 252:100-8-5(c), (d), or (e);

23 B, a landowner affidavit as required by OAC

24 252:4-7-13(b);

25 C, the appropriate application fees as required by

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1 OAC 252:100-8-1.7;
2 And D, certification by the responsible official as
3 required by OAC 252:100-8-5(f).
4 MR. CAVES: And I think (D) closes that.
5 CHAIR LODES: Yes. Yeah. So I think that --
6 I think that covers your concern there. Do you?
7 MR. CAVES: I agree.
8 CHAIR LODES: Okay.
9 MS. MILLER: We have some language that was
10 put together by permitting for the other issue if you
11 want me to read that.
12 CHAIR LODES: That'd be great. That's what I
13 figured, you-all were having that conversation.
14 So what do we think here?
15 MS. MILLER: So they're proposing -- I'll just
16 read the whole sentence. Let me try to read the whole
17 sentence. Sorry.
18 CHAIR LODES: Okay.
19 MS. MILLER: In addition, when performing cost
20 calculations -- wait, where does this go?
21 Melanie's going to do it.
22 MS. FOSTER: Okay. So, starting with the
23 second red sentence:
24 In addition, when performing cost
25 calculations to determine best available

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1 equipment prior to permit issuance -- so I think we
2 still end up with the same problem.
3 If I start construction on my project when it's
4 administratively complete, it's almost as though it's
5 excluding what I've spent before this permit was issued,
6 and I don't think that's the intent here.
7 MS. FOSTER: That is not. You are correct.
8 That is not the intent. The intent is just to say
9 that --
10 MR. KEELE: Instead of "shall," you need
11 "may."
12 MS. FOSTER: So you're saying the project BACT
13 determination "may" be made without regard to
14 investments?
15 MR. ELLIOTT: I still think it's all back to
16 what you said, that if you start and you're doing BACT
17 based on what your minor permit application said and DEQ
18 comes back later and says we don't approve that --
19 CHAIR LODES: We want you to pick a different
20 BACT --
21 MR. ELLIOTT: -- you have to pick a different
22 BACT. So when you're picking that new BACT, you can't
23 use the cost of this one that you already did to that
24 one. And that's still -- even with that wording, I
25 don't get to that either still.

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1 control technology for Minor NSR, the project
2 BACT determination shall be made without
3 regard to investments made for project-related
4 installation or modification of equipment
5 prior to permit issuance.
6 So it would be adding the phrase "project BACT"
7 before determination. Again, that determination is
8 meant to be BACT determination.
9 So, again, we're trying to say that you make your
10 BACT determination just based on the merits of what's
11 existing, you know, now, what project you're doing, not
12 what you have started through the process of the permit
13 that you plan to get approved but has not yet been
14 approved.
15 So, again, after the comma: The project BACT
16 determination shall be made.
17 Does that resolve your concern, Laura?
18 I understand your concern is that you want to make
19 sure that you get to essentially create the BACT from
20 the beginning.
21 CHAIR LODES: Right. And that's what I'm
22 still worried that it doesn't say here, because if I
23 look at this -- the project BACT determination shall be
24 made without regard to investment made for
25 project-related installation or modification of

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1 MS. FOSTER: Okay.
2 MR. ELLIOTT: It needs to be something in
3 there that if the DEQ does not approve that, you cannot
4 use that money spent on unapproved for the one that the
5 DEQ does approve. I mean, something like that.
6 MS. STEGMANN: So do we need to go back and
7 try to figure out language and continue this?
8 CHAIR LODES: Or do we want to take a
9 ten-minute break and have a conversation?
10 MS. STEGMANN: We're going to have to
11 re-Notice this, in my opinion.
12 CHAIR LODES: I mean, it's just one sentence.
13 I don't think so. We're tweaking. We're wordsmithing
14 one sentence. I just don't know if we want to take a
15 ten-minute break and have a conversation.
16 MS. BOTCHLET-SMITH: I think before we agree
17 to take a ten-minute break, we need to offer the public
18 to make a comment so we can take everything into our
19 consideration.
20 So at this point is there anyone in the public that
21 wants to make a comment on this rule?
22 (No response.)
23 CHAIR LODES: Jeremy, do you have any
24 wordsmith suggestions?
25 MR. JEWELL: Yeah.

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1 MS. BOTCHLET-SMITH: I saw people moving
2 around, but no one would raise their hand.
3 MR. JEWELL: And I'll fill out a card. I
4 guess I need to do that.
5 So what if we did -- oh, sorry. Jeremy Jewell,
6 Trinity Consultants and Environmental Federation of
7 Oklahoma.
8 What if we did, in addition, "following the denial
9 of a permit application," so that we put some context
10 about what's then coming.
11 So this doesn't happen if it's approved, of course;
12 the original BACT is accepted, et cetera. And I don't
13 think that's exactly right, but I'm wondering if that
14 would help.
15 CHAIR LODES: I think that helps. But you see
16 my concern.
17 MR. JEWELL: Yes -- yeah. Absolutely. I
18 agree with the concern.
19 MR. LANDERS: You're not saying disapproval of
20 the entire application, right? You're just saying
21 there's a disagreement on BACT -- the BACT analysis?
22 CHAIR LODES: Following denial --
23 MR. JEWELL: I don't know. Is that
24 disapproval of the application? I don't know. Maybe
25 that's a nuance that needs to be vetted out, but ...

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1 conversation on some language? I think we're tweaking
2 one sentence here and I don't think it's significant.
3 MS. BOTCHLET-SMITH: So with the understanding
4 that we will take the recess, but if we can't -- if we
5 cannot agree on language that we feel comfortable
6 putting forth, we may have to continue.
7 CHAIR LODES: Yes. I think that's fair. All
8 right.
9 MS. FOSTER: Let me interrupt real quick. I
10 think you guys will not able to huddle and discuss it.
11 Only our staff.
12 CHAIR LODES: Yeah.
13 MS. BOTCHLET-SMITH: All the council's
14 comments will need to be on the record.
15 CHAIR LODES: That is correct. Yes.
16 MR. CAVES: I do have a question for clarity.
17 The red language was EPA's recommendation; correct? How
18 imperative is it that it be included? Is it a
19 directive?
20 CHAIR LODES: They didn't give that language
21 directly.
22 MS. FOSTER: Correct. They did not give us
23 that specific language. They told us their concerns and
24 we drafted a response. They've seen this, so they've
25 tacitly approved what we came up with, but, no, it's not

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1 MR. ELLIOTT: Because the idea is that that
2 one wasn't approved, so you can't double dip, basically.
3 You can't say, Hey -- because then that makes your BACT
4 analysis -- you know what I mean --
5 CHAIR LODES: Right.
6 MR. ELLIOTT: It makes it -- so I think you
7 need something in there that says about if you don't --
8 if it's not approved -- the original BACT submission is
9 not approved, the subsequent BACT analysis cannot
10 utilize the money spent for the original unapproved one
11 for the approved BACT, something like that.
12 CHAIR LODES: Right. Yes.
13 MR. ELLIOTT: That would clear me up
14 100 percent.
15 MS. BOTCHLET-SMITH: Okay. Anyone else from
16 the public that wants to ask a question or make a
17 comment?
18 (No response.)
19 MS. BOTCHLET-SMITH: Okay. Hearing none,
20 Laura, if you want to call a recess, we can do that and
21 have some work on additional language.
22 CHAIR LODES: I think that might be easier if
23 we did that. What do you all think?
24 Do you think it would be good if we took a
25 ten-minute break and we had a huddle-up and have a

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1 a you must include this language.
2 CHAIR LODES: Are we good giving the staff ten
3 minutes to sit there and see what they -- knowing your
4 concerns, you guys, can we -- you want that?
5 Okay. I'm going to -- do I have to actually vote
6 on a ten-minute break?
7 MS. BOTCHLET-SMITH: I think you probably
8 should.
9 CHAIR LODES: Okay.
10 MR. ELLIOTT: I make a motion for a ten-minute
11 break to allow the DEQ staff to adjust the language of
12 that sentence.
13 CHAIR LODES: Okay. Do I have a second?
14 MR. PRIVRAT: Second.
15 CHAIR LODES: I have a motion and a second.
16 Quiana, please call the roll.
17 MS. FIELDS: Mr. Caves.
18 MR. CAVES: Yes.
19 MS. FIELDS: Mr. Collins.
20 MR. COLLINS: Yes.
21 MS. FIELDS: Dr. Delano.
22 DR. DELANO: Yes.
23 MS. FIELDS: Mr. Elliot.
24 MR. ELLIOTT: Yes.
25 MS. FIELDS: Mr. Keele.

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1 MR. KEELE: Yes.
2 MS. FIELDS: Mr. Landers.
3 MR. LANDERS: Yes.
4 MS. FIELDS: Mr. Privrat.
5 MR. PRIVRAT: Yes.
6 MS. FIELDS: Mr. Taylor.
7 MR. TAYLOR: Yes.
8 MS. FIELDS: Ms. Lodes.
9 CHAIR LODES: Yes.
10 MS. FIELDS: Motion passed.
11 CHAIR LODES: Okay. It is 9:40. Let's say
12 ten minutes, back at 9:50.
13 (Off record from 9:40 a.m. to 9:50 a.m.)
14 CHAIR LODES: We need to vote to go back into
15 session. Do I have a motion to return to session?
16 MR. TAYLOR: So moved.
17 MR. PRIVRAT: Second.
18 CHAIR LODES: Motion and second.
19 Quiana, please call roll.
20 MS. FIELDS: Mr. Caves.
21 MR. CAVES: Yes.
22 MS. FIELDS: Mr. Collins.
23 MR. COLLINS: Yes.
24 MS. FIELDS: Dr. Delano.
25 DR. DELANO: Yes.

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1 instead of that, it could state, "The BACT determination
2 shall be based on cost calculations as if no pre-permit
3 construction activities had taken place."
4 CHAIR LODES: Will you read that again?
5 MS. MILLER: Yes.
6 The BACT determination shall be based on cost
7 calculations as if no pre-permit construction activities
8 had taken place.
9 MS. BOTCHLET-SMITH: Okay. While the council
10 thinks about that for a moment, are there any questions
11 or do you have any comments you'd like to submit for
12 staff consideration?
13 MR. KEELE: This is Garry Keele.
14 On the sentence she just read, is it possible that
15 instead of saying will, can, so it's not mandated that
16 you won't consider previous?
17 Does that make sense?
18 MS. MILLER: Yes. We will take that into
19 consideration.
20 CHAIR LODES: To make sure I've written this
21 down correctly: The BACT determination shall be based
22 on cost calculations as though no preconstruction
23 activity has taken place.
24 Did I read that back right?
25 MS. MILLER: Pre-permit construction

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1 MS. FIELDS: Mr. Elliot.
2 MR. ELLIOTT: Yes.
3 MS. FIELDS: Mr. Keele.
4 MR. KEELE: Yes.
5 MS. FIELDS: Mr. Landers.
6 MR. LANDERS: Yes.
7 MS. FIELDS: Mr. Privrat.
8 MR. PRIVRAT: Yes.
9 MS. FIELDS: Mr. Taylor.
10 MR. TAYLOR: Yes.
11 MS. FIELDS: Ms. Lodes.
12 CHAIR LODES: Yes.
13 MS. FIELDS: Motion passed.
14 MS. BOTCHLET-SMITH: Madison, do you have any
15 presentation to continue with here?
16 MS. MILLER: Yes, I do.
17 So DEQ staff deliberated and after some discussion
18 we decided that we'd like to postpone the vote on this
19 so that we can actually go back and put together
20 something that's more thoughtful, but we came up with
21 some potential language that I can read to you.
22 And we would like to get any thoughts on it so that
23 we have more information from you going into making any
24 modifications to this.
25 So striking the sentence that discusses BACT,

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1 activities.
2 CHAIR LODES: Okay. Pre-permit.
3 To me, that seems to clear up my concerns there.
4 Do we have any other questions or comments?
5 MR. ELLIOTT: Yes. So on that one there -- if
6 there was no issue with the preconstruction BACT and it
7 was approved, based on that right there, you still can't
8 consider those costs in that BACT.
9 MR. KEELE: That's why I wanted --
10 MR. ELLIOTT: Yeah, if you can get what Garry
11 said in there, "can" or just something that's not
12 mandated, that gives you flexibility to say this was
13 approved so you can use that, but if it wasn't approved,
14 then you don't use that.
15 MS. MILLER: Okay. So, Garry, is your
16 suggestion that it say the BACT determination can be
17 based on cost calculations as if no pre-permit
18 construction activities had taken place?
19 MR. KEELE: Yeah. I mean, it's either
20 negative or positive. That's the positive way to say
21 it. So, yes.
22 MR. ELLIOTT: That would -- that satisfies me
23 too. I think that's very good.
24 MS. BOTCHLET-SMITH: Any other comment from
25 the council?

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1 Okay. We want to give the public a chance to weigh
2 in.
3 Jeremy? I thought you might.
4 MR. JEWELL: Jeremy Jewell again with Trinity
5 Consultants and EFO.
6 I'm still not exactly sure we've resolved it. So I
7 think EFO just supports the continuation of this to the
8 next hearing. So, thanks.
9 MS. BOTCHLET-SMITH: Okay. Hearing no other
10 comments from the public, Laura, if you want to ask for
11 a motion?
12 CHAIR LODES: After further considerations,
13 staff has recommended that we continue this rulemaking
14 to the next -- to a future council meeting.
15 Do I have a motion?
16 MR. ELLIOTT: All of it or just that one
17 section? Can we go forward with the other and not that?
18 What do you want to do?
19 MS. MILLER: We recommend you carry forward
20 all of it, Subchapters 1, 7, and 8.
21 MR. ELLIOTT: I make a motion that we carry
22 the DEQ's recommendations forward to a future Air
23 Quality Advisory Council meeting.
24 CHAIR LODES: Do I have a second?
25 MR. PRIVRAT: I'll second.

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1 who is an Environmental Programs Specialist from the
2 Rules & Planning section.
3 Leon.
4 MR. ASHFORD: Good morning, Madam Chair,
5 members of the council, members of the public. My name
6 is Leon Ashford.
7 DEQ is proposing to amend OAC 252:100-13, Open
8 Burning, to conform to the Department's rules -- to
9 conform the Department's rules to statutory changes
10 enacted in the 2021 legislative session.
11 Senate Bill 246, for calendar year 2021, changed
12 27A of Oklahoma Statute Section 2-5-130 to only require
13 an air curtain incinerator to be used in counties or
14 areas within a county that are or have been designated
15 non-attainment or where an ambient air quality monitor
16 has documented a violation of the National Ambient Air
17 Quality Standards, or those counties with a population
18 of greater than 500,000 for land clearing operations or
19 the burning of clean wood waste or yard brush.
20 Effectively, the Senate Bill restricted the
21 requirements to use an air curtain incinerator for those
22 three waste types to only Oklahoma and Tulsa Counties.
23 Previously, all seven counties in the Oklahoma City MSA
24 and all seven counties in the Tulsa MSA were included.
25 Because of the need to change the rule to conform

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1 CHAIR LODES: I have a motion and a second.
2 Will you please call roll.
3 MS. FIELDS: Mr. Caves.
4 MR. CAVES: Yes.
5 MS. FIELDS: Mr. Collins.
6 MR. COLLINS: Yes.
7 MS. FIELDS: Dr. Delano.
8 DR. DELANO: Yes.
9 MS. FIELDS: Mr. Elliot.
10 MR. ELLIOTT: Yes.
11 MS. FIELDS: Mr. Keele.
12 MR. KEELE: Yes.
13 MS. FIELDS: Mr. Landers.
14 MR. LANDERS: Yes.
15 MS. FIELDS: Mr. Privrat.
16 MR. PRIVRAT: Yes.
17 MS. FIELDS: Mr. Taylor.
18 MR. TAYLOR: Yes.
19 MS. FIELDS: Ms. Lodes.
20 CHAIR LODES: Yes.
21 MS. FIELDS: Motion passed.
22 MS. BOTCHLET-SMITH: The next item on today's
23 Agenda is 5C. This is Chapter 100 Air Pollution
24 Control, Subchapter 13 Open Burning.
25 Presentation today will be given by Leon Ashford,

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1 to the statute, DEQ took this opportunity to do some
2 additional restructuring of the rule to try and make the
3 requirements more clear.
4 Within 100-13-7, we modified the Land Clearing
5 Operations in (4)(B) and the Yard Brush in (7) to
6 reflect that these new statutory requirements for when
7 an ACI are required can be found in 13-8 or, if waste is
8 being transported, in 13-8.1.
9 We also added 13-7(9) to reflect materials --
10 namely, wood waste and clean lumber -- that are allowed
11 to be open burned, but were previously only found within
12 the ACI provisions of 13-8.
13 Changes to 100-13-8(b)(1) and (2) were made to
14 clearly separate out the provisions related to the
15 statute for the three open burning materials. As I just
16 mentioned, the wood waste and clean lumber were moved
17 above into 100-13-7 allow the open burning.
18 The requirement to follow the incinerator
19 provisions in Subchapter 17 and NSPS were moved down to
20 100-13-8(c).
21 As for the changes in 100-13-8.1, if you recall,
22 this section was added to Subchapter 13 the last time it
23 was revised in order to comply with the new statute.
24 Today's proposed modifications in 13-8.1 are fairly
25 minimal and were made to match the 2021 statute.

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1 We hope that once these modifications are passed,
2 that Subchapter 13 will not only be in compliance with
3 the statute that will be effective this November, but
4 that the rule will also be clear that an air curtain
5 incinerator can be used for burning of allowed
6 materials, must be used in certain areas, and that
7 transportation of materials for the purpose of open
8 burning is restricted to certain conditions.
9 Notice of the proposed rule change was published in
10 the "Oklahoma Register" on September 15, 2021. The
11 notice requested written comments from the public and
12 other interested parties.
13 Only one comment was received as of October 15,
14 2021, and it was from Region 6. A copy of their
15 comments are in the folder in front of you.
16 Essentially, EPA is concerned with DEQ providing a
17 110(1) demonstration to ensure that the revisions are
18 still protective of the National Ambient Air Quality
19 Standards, or NAAQS.
20 DEQ does not feel that these changes will
21 jeopardize our attainment status and will be providing a
22 more comprehensive 110(1) demonstration in the State
23 Implementation Plan (SIP) submittal once the revised
24 rule is effective.
25 Staff requests that the Council recommend the

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1 DR. DELANO: I'll second.
2 CHAIR LODES: I have a motion and a second.
3 Please call roll.
4 MS. FIELDS: Mr. Caves.
5 MR. CAVES: Yes.
6 MS. FIELDS: Mr. Collins.
7 MR. COLLINS: Yes.
8 MS. FIELDS: Dr. Delano.
9 DR. DELANO: Yes.
10 MS. FIELDS: Mr. Elliot.
11 MR. ELLIOTT: Yes.
12 MS. FIELDS: Mr. Keele.
13 MR. KEELE: Yes.
14 MS. FIELDS: Mr. Landers.
15 MR. LANDERS: Yes.
16 MS. FIELDS: Mr. Privrat.
17 MR. PRIVRAT: Yes.
18 MS. FIELDS: Mr. Taylor.
19 MR. TAYLOR: Yes.
20 MS. FIELDS: Ms. Lodes.
21 CHAIR LODES: Yes.
22 MS. FIELDS: Motion passed.
23 MS. BOTCHLET-SMITH: The next item on today's
24 Agenda is Item 5D. This is Chapter 100, Air Pollution
25 Control, Subchapter 47, Control of Emissions from

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1 proposed rule changes to the Environmental Quality Board
2 for adoption as a permanent rule.
3 MS. BOTCHLET-SMITH: At this time we can take
4 comments from council.
5 Do we have any questions for Leon?
6 MR. KEELE: Yes, I have a question on
7 100-13-8(b)(1). Do we need "are or have been" or can it
8 be "have been"? Looks like we pulled language from
9 below up to that. Looks redundant unless I'm missing
10 something.
11 MS. MILLER: We pulled that from the statute.
12 It's directly from the statute. That's why it looks
13 like that.
14 MR. KEELE: Got it. Thank you.
15 MS. BOTCHLET-SMITH: Any other questions?
16 Any comments from the public?
17 Hearing none, one last chance for the council to
18 ask a question about this rule?
19 Again, hearing none. Laura.
20 CHAIR LODES: Staff has recommended that we
21 approve -- that the council approve the proposed changes
22 to Chapter 100, Subchapter 13, for Open Burning.
23 Do I have a motion?
24 MR. LANDERS: I'll make motion to approve.
25 CHAIR LODES: Do I have a second?

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1 Existing Municipal Solid Waste Landfills.
2 Mr. Malcolm Zachariah, Environmental Programs
3 Specialist from the Rules & Planning Section, will give
4 the staff presentation.
5 MR. ZACHARIAH: Thank you.
6 Madame Chair, members of the council, and ladies
7 and gentlemen, my name is Malcolm Zachariah,
8 Environmental Program Specialist with the Air Quality
9 Rules & Planning Section.
10 This summer, EPA recently finalized its federal
11 plan for implementing 2016 landfill gas regulations on
12 existing Oklahoma municipal solid waste landfills. DEQ
13 is now resuming our state rulemaking so we can revise
14 our state plan and replace the federal plan.
15 DEQ has prepared revisions to Chapter 100,
16 Subchapter 47, Control of Emissions from Existing
17 Municipal Solid Waste Landfills, to incorporate new
18 federal guidelines into state rules.
19 We have worked closely with our counterparts in the
20 Land Protection Division, and I presented a preview of
21 this work at the Solid Waste Management Advisory Council
22 meeting on September 9th.
23 We also appreciate the comments from council
24 members and stakeholders when we first proposed rule
25 changes in 2017.

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1 I'll start with a background of the rules before
2 going into the federal plan and what are we doing now.
3 Section 111 of the Clean Air Act provides the
4 framework to set national standards for stationary
5 sources of air pollution, which are NSPS, New Source
6 Performance Standards.
7 Section 111(d) lets EPA also make emission
8 guidelines (EG) for existing unmodified sources, but
9 those guidelines are directed at the states to
10 implement. States have to submit a state plan or EPA
11 will issue a federal plan instead.
12 In 1996, EPA finalized its first EG and NSPS rules,
13 which are 40 CFR Part 60, Subparts CC and WWW. The
14 rules were based on the public health risk of landfill
15 gas, which is mostly methane and CO2 but also includes a
16 small fraction of non-methane organic compounds, NMOCs.
17 NMOCs include hazardous air pollutants (HAPs) and
18 volatile organic compounds (VOCs), which are precursors
19 to other air pollutants such as ozone. The 1996 rules
20 reduced the risk by requiring landfills of a large
21 enough design capacity to install gas collection and
22 control systems, (GCCS), when NMOC emissions reached 50
23 megagrams per year.
24 As part of the federal effort to reduce methane
25 emissions, in 2016 EPA finalized newer rules, EG Cf and

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1 deadlines for state plans and held off action on those
2 that were submitted.
3 Eventually, EPA was required to develop a Federal
4 Plan for over 40 states, including Oklahoma. After
5 another administration change in 2021 and a court
6 decision that vacated the extensions, EPA finalized the
7 federal plan.
8 The federal plan became -- incorporates EG Cf and
9 became effective June 21st. Again, it only affects
10 landfills that were operating after 1987, which is the
11 same as the old rules, and includes those that may have
12 modified before 2014.
13 All affected landfills were required to submit at
14 least an initial design capacity report and, if their
15 capacity was above 2.5 million megagrams and cubic
16 meters, an NMOC emissions report. There are some
17 reporting exemptions for landfills that closed or were
18 already controlling their emissions.
19 All landfills should fall into the following
20 categories. They are either new/modified and subject to
21 NSPS XXX or existing and subject to EG Cf.
22 Again, new or modified landfills, DEQ has already
23 incorporated NSPS XXX into our rules. We have seen
24 approximately five landfills that fall into this
25 category.

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1 NSPS XXX. EPA estimated 18 percent of U.S.
2 human-related methane emissions came from MSW landfills.
3 These new rules lowered the NMOC threshold from 50 to 34
4 megagrams per year for open landfills.
5 I know this is a bit confusing because we have two
6 pairs of federal rules with some overlaps. In general,
7 a landfill must follow the more stringent requirement.
8 EG Cf overlaps the older EG Cc and NSPS WWW, which was,
9 itself, revised to not overlap with NSPS XXX.
10 Because new landfills are rare, most landfills
11 become subject to an NSPS due to a modification. In
12 effect, all landfills must follow the lower 34 megagram
13 threshold to install a GCCS unless they closed before
14 September 27, 2017.
15 At the bottom you can see how the rules get
16 implemented, and our current work will be to replace the
17 federal plan by adding EG Cf requirements into
18 Chapter 100, Subchapter 47.
19 Okay. What has happened since 2016? DEQ has
20 incorporated NSPS XXX into the air quality rules and
21 began rulemaking to incorporate EG Cf into Chapter 100,
22 Subchapter 47.
23 However, due to comments we received, litigation,
24 and a change in EPA administration, we did not finalize
25 that. The slowdown continued as EPA proposed longer

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1 Existing landfills are those which have not
2 modified after 2014 and under EG Cf, which EPA's federal
3 plan is implementing.
4 The federal plan identified 31 Oklahoma landfills
5 that are affected, which are the ones who have received
6 a recent outreach letter from the Land Protection
7 Division to remind them of their federal obligations.
8 They will go back to state jurisdiction after DEQ
9 revises our rule and plan and EPA approves it.
10 The next two are subcategories of existing
11 landfills and also under the Federal Plan. Again,
12 closed landfills can keep using the older NMOC threshold
13 for running a GCCS.
14 The legacy controlled landfill subcategory is a new
15 addition to the federal plan for those which already
16 have a GCCS, have installed GCCS, and it exempts them
17 from many initial reports because they were already
18 controlling emissions.
19 What does this mean for all Oklahoma landfills?
20 There's not much change. Those in the existing category
21 must submit a design capacity report to EPA, which could
22 be the same report submitted to DEQ for the old rules.
23 For those over 2.5 million megagrams and
24 2.5 million cubic meters, the landfill was already
25 required to get a Title V air permit under the old

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1 rules.

2 The landfill was already required to test or

3 estimate NMOC emissions, now with an additional option

4 of surface monitoring.

5 And the landfill was already required to submit a

6 GCCS design plan and begin installation once its NMOC

7 emissions reached a specific threshold. The biggest

8 change is lowering of the threshold.

9 Here's an example of the rule text. We are

10 proposing revisions to several sections in

11 Subchapter 47. Unlike our 2017 proposal, which often

12 copied large sections of the EG Cf text into the

13 subchapter, we have chosen to incorporate by reference

14 the emission guidelines into Subchapter 2 and Appendix Q

15 and point to the relevant sections in our rules.

16 We believe this addresses comments we've received

17 from the council and stakeholders and this mimics the

18 original rule text which had references to the old NSPS

19 WWW.

20 This example also shows how we added wording like

21 the legacy controlled landfill definition that was only

22 found in the Federal Plan.

23 We received formal comments from EPA Region 6 on

24 the rule change, which is included in your packet, and

25 any changes based on these comments will be presented at

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1 that we've been letting them know what they need to send

2 to EPA.

3 MR. LANDERS: But no formal comments.

4 MR. ZACHARIAH: No formal comments for this

5 rulemaking other than EPA.

6 MS. BOTCHLET-SMITH: Any other comments from

7 the council?

8 Do we have any questions from the public?

9 (No response.)

10 MS. BOTCHLET-SMITH: Hearing none, Laura.

11 CHAIR LODES: Staff has recommended that we

12 carry forward this rulemaking for Chapter 100,

13 Subchapter 47, to a future Air Quality Advisory Council

14 meeting.

15 Do I have a motion?

16 MR. CAVES: So moved.

17 CHAIR LODES: Do I have a second?

18 MR. LANDERS: Second.

19 CHAIR LODES: Would you please call roll.

20 MS. FIELDS: Mr. Caves.

21 MR. CAVES: Yes.

22 MS. FIELDS: Mr. Collins.

23 MR. COLLINS: Yes.

24 MS. FIELDS: Dr. Delano.

25 DR. DELANO: Yes.

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1 a future council meeting.

2 And, again, the first federal plan deadline was

3 September 20, 2021, and DEQ sent an outreach letter for

4 landfills listed in the Federal Plan to remind them of

5 their obligations.

6 We have been in contact with EPA Region 6 to see

7 what responses they are getting, and we will follow a

8 similar process for our state plan. Until we have a

9 state plan approved by EPA, existing landfills will need

10 to comply with the Federal Plan.

11 In conclusion, DEQ recommends the council postpone

12 its vote on Subchapter 47 to the council's next regular

13 business meeting.

14 I'm happy to any answer any questions. Thank you.

15 MS. BOTCHLET-SMITH: Do we have questions from

16 the council?

17 MR. LANDERS: Nothing other than have there

18 been any questions from the regulated community on this

19 at this point? Landfills?

20 MR. ZACHARIAH: Mostly just awareness and

21 letting them know what the Federal Plan is doing. Most

22 of those who have already -- would have been required to

23 get a permit have already done so because they had the

24 same requirements on the old rules.

25 So it's been mostly some of the smaller landfills

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1 MS. FIELDS: Mr. Elliot.

2 MR. ELLIOTT: Yes.

3 MS. FIELDS: Mr. Keele.

4 MR. KEELE: Yes.

5 MS. FIELDS: Mr. Landers.

6 MR. LANDERS: Yes.

7 MS. FIELDS: Mr. Privrat.

8 MR. PRIVRAT: Yes.

9 MS. FIELDS: Mr. Taylor.

10 MR. TAYLOR: Yes.

11 MS. FIELDS: Ms. Lodes.

12 CHAIR LODES: Yes.

13 MS. FIELDS: Motion passed.

14 MS. BOTCHLET-SMITH: That concludes the

15 hearing portion of today's meeting.

16 (Record ends at 10:17 a.m.)

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24

25

1 STATE OF OKLAHOMA)
2) SS:
3 COUNTY OF OKLAHOMA)
4

5 C E R T I F I C A T E

6 I, DEBRA GARVER, a certified shorthand reporter
7 within and for the State of Oklahoma, certify that the
8 foregoing transcription of the Department of
9 Environmental Quality Air Quality Advisory Council
10 Public Meeting, October 20, 2021, at 9:00 a.m., at the
11 Oklahoma Department of Environmental Quality, 707 North
12 Robinson, 1st floor, Multi-Purpose Room, in Oklahoma
13 City, Oklahoma, was taken by me in stenotype and
14 simultaneously transcribed by computer, and the
15 foregoing is a true and correct transcript of said
16 proceedings, and that I am not an attorney for or a
17 relative of any party, or otherwise interested in this
18 action.

19 Witness my hand and seal of office this 20th day of
20 October 2021.

21 

22 DEBRA GARVER, CSR, RPR
23 State of Oklahoma CSR# 1370
24 Certificate exp. 12/31/2021
25



AIR QUALITY ADVISORY COUNCIL

Attendance Record

October 20, 2021

Oklahoma City, Oklahoma

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AIR QUALITY ADVISORY COUNCIL
Attendance Record
October 20, 2021
Oklahoma City, Oklahoma

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Steve Landers	Geomir Pacific	
Malcolm Zachariah	DEQ	
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Yates Hixson	OGE	
ERIC POLLARD	ACOG	