

**DEPARTMENT OF ENVIRONMENTAL QUALITY
SUMMARY OF COMMENTS AND STAFF RESPONSES FOR PROPOSED REVISIONS
TO
CHAPTER 100. AIR POLLUTION CONTROL RULES, SUBCHAPTERS 5, 7, and 8**

**COMMENTS RECEIVED PRIOR TO AND DURING THE *October 17, 2024*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

aohboard@outlook.com – Emailed comment (Subject: Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources) received on September 27, 2024.

- 1. COMMENT:** The commenter expressed concerns regarding the sources (both natural and manmade) and risks associated with greenhouse gases (GHGs) in the environment, as well the difficulties of their regulation and further complexities of carbon sequestration.

RESPONSE: The Department recognizes commenter’s concerns. However, DEQ staff notes that the comments did not object to or suggest any specific changes to the proposed rule language. Therefore, DEQ staff recommends no revisions to the proposal based on these comments.

Energy Transfer (lance.lodes@energytransfer.com)– Submitted as an email with an attachment received on October 7, 2024, from Mr. Lance Lodes, Director - Environmental.

- 2. COMMENT** (from the body of the email message from Lance Lodes): In our opinion, EPA has been clear that LPE for NSPS OOOOb storage vessels should not be the same as complying with NSPS OOOOb itself. This is based on our interpretation of what EPA says about LPE within their Response to Comments document.

RESPONSE: Thank you for sharing your comments and the link to the EPA Response to Comments document. The most important source for information regarding the minimum requirements that we would need to incorporate into our Permit by Rule (PBR) is the *Federal Register* (FR) notice for the Final Rule.¹ EPA explained why they were increasing the rigor of the criteria that would be required in state permits (and notably in PBRs) in the Preamble to the Final Rule (89 FR 16974) as shown in this excerpt:

As explained in the preamble to the November 2021 Proposal (86 FR 63201), from its years of experience of reviewing permits of legally and practicably enforceable limits, the EPA has long been aware that many owners and operators claim that storage vessels are not affected facilities under 40 CFR 60.5365(e) and 40 CFR 60.5365a(e) by alleging that the VOC emissions are less than 6 tpy. Since promulgation of NSPS OOOO in 2012, the EPA has expended extensive resources in enforcement actions nationwide to review permits, general permits, and permits-

¹ U.S Environmental Protection Agency (EPA), “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,” Final Rule, 89 FR 16820, March 8, 2024.

by-rule for storage vessels and found that, in nearly in all cases, across nearly 400 storage vessels, these permits or other requirements are not legally and practicably enforceable. In nationwide ongoing enforcement actions, the EPA continues to find permits or permits-by-rule that are not legally and practicably enforceable. The EPA has repeatedly expressed this concern in prior rulemaking actions. See, e.g., 83 FR 52085 and 85 FR 57425. The EPA believes that the new criteria being finalized in this action will help to ensure that storage tank batteries that rely on legally and practicably enforceable limits to claim nonapplicability of NSPS OOOOb or EG OOOOc indeed have potential emissions below the relevant applicability threshold(s).

In the Final Rule for the Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022 (NSPS OOOOb), EPA established several criteria that must be included for limits taken to avoid having storage tanks classified as a “storage vessel affected facility” under NSPS OOOOb. This description from the Preamble to the Final Rule identifies those criteria:

In this action, the EPA is finalizing the proposed criteria that must be met for a permit limit or other requirement to qualify as a legally and practicably enforceable limit for purposes of determining whether a tank battery is an affected facility or designated facility under NSPS OOOOb. A legally and practicably enforceable limit must include a quantitative production limit and quantitative operational limit(s) for the equipment, or quantitative operational limits for the equipment; an averaging time period for the production limit, if a production-based limit is used, that is equal to or less than 30 days; established parametric limits for the production and/or operational limit(s), and where a control device is used to achieve an operational limit, an initial compliance demonstration (i.e., performance test) for the control device that establishes the parametric limits; ongoing monitoring of the parametric limits that demonstrates continuous compliance with the production and/or operational limit(s); recordkeeping by the owner or operator that demonstrates continuous compliance with the limit(s) in; and periodic reporting that demonstrates continuous compliance.²

These criteria are codified in § 60.5365b(e)(2)(i) of NSPS OOOOb as follows:

(i) For purposes of determining the applicability of a storage vessel tank battery as an affected facility, a legally and practicably enforceable limit must include the elements provided in paragraphs (e)(2)(i)(A) through (F) of this section.

(A) A quantitative production limit and quantitative operational limit(s) for the equipment, or quantitative operational limits for the equipment;

(B) An averaging time period for the production limit in (e)(2)(i)(A) of this section, if a production-based limit is used, that is equal to or less than 30 days;

² 89 FR 16897.

(C) Established parametric limits for the production and/or operational limit(s) in paragraph (e)(2)(i)(A) of this section, and where a control device is used to achieve an operational limit, an initial compliance demonstration (i.e., performance test) for the control device that establishes the parametric limits;

(D) Ongoing monitoring of the parametric limits in (e)(2)(i)(C) of this section that demonstrates continuous compliance with the production and/or operational limit(s) in (e)(2)(i)(A) of this section;

(E) Recordkeeping by the owner or operator that demonstrates continuous compliance with the limit(s) in (e)(2)(i)(A) through (D) of this section;
and

(F) Periodic reporting that demonstrates continuous compliance.

In developing the PBR requirements for establishing LPE limits, the Department used the criteria referenced above as a roadmap for developing rule language. Where necessary, the Department referenced industry-standard and EPA-accepted approaches for fleshing out the methods for demonstrating compliance with these criteria. Commenters have implied that the actions that need to be taken to meet these criteria are so challenging that there is little benefit when compared to complying with applicable requirements for NSPS OOOOb for storage vessel affected facilities. The Department understands the predicament here, however, failing to meet these criteria would nullify the legal and practicable enforceability of the limits based on EPA's clearly articulated requirements.

The email from the commenter included a link to EPA's Response to Comment (RTC) document for the Final Rule.³ Below is language from that document in support of our interpretation of EPA's position.

Response i-9-8: The proposed criteria, which EPA is finalizing, are for evaluating whether a facility is subject to legally and practicably enforceable emission limits for new and modified facilities under new and modified sources under OOOOb and existing sources under OOOOc e.g. See 86 FR 63201 (the EPA is clarifying the term "legally and practicably enforceable limits" as it related to storage vessel affected facilities in the proposed NSPS OOOOb and EG OOOOc). These criteria will apply going forward, and will not be used to assess whether owners and operators correctly determined that their storage vessels are not subject to OOOO or OOOOa. As the EPA stated in our proposal and supplemental proposal, the enforcement record shows²² that the EPA must further specify what legally and practicably enforceable emissions limitation means in the oil and gas sector because we have found through enforcement actions that sources have relied on inadequate

³ EPA, Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Response to Public Comments on the November 2021 Proposed Rule and the December 2022 Supplemental Proposed Rule, November 2023, available online: <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-4009>.

limitations to support their status as exempt from the storage vessel provisions of the NSPS. However, the EPA disagrees with the comment that our action results in the need for all storage tank owners and operators to obtain site-specific permits. A permit-by-rule or general permit system that creates legally and practicably enforceable limits that meet the criteria would not require a site-specific permit. Further, no owner or operator is required under this provision to obtain any minor source permit. The owner or operator could instead comply with storage vessel requirements under OOOOb.

3.a COMMENT: [Referencing proposed revision in OAC 252:100-7-60.5(d)(1)(B).] Need to account for and address EPA certified control devices. OOOOb has different requirements (less stringent) if install/operate EPA certified control device.

RESPONSE: It is our understanding that EPA does not certify any control devices of the sort that would be used to control emissions from storage vessels. We understand that a number of manufacturers provide guarantees that their equipment (if operated in accordance with manufacturer's instructions) will provide a level of control that meets or exceeds EPA's requirements. In our rule language establishing methods of demonstrating compliance with the LPEs, we have allowed (where appropriate) an owner or operator to reference these manufacturer's guarantees as a method to demonstrate compliance with a particular requirement. One example is the requirement to demonstrate 95% combustion destruction efficiency. Compliance with this requirement may be demonstrated with a manufacturer's guarantee. Appropriate records must be retained to document that guarantee as well as any maintenance records or other information as required by the manufacturer to ensure that the control device is operated as specified by the manufacturer.

In addition, please see our response to Comment 2 (above) for a discussion of the approach we used to develop our Legally and Practicably Enforceable (LPE) limits on emissions from storage vessels based on the requirements EPA identified in the *Federal Register* notice.

3.b COMMENT: [Referencing proposed revision in OAC 252:100-7-60.5(d)(1)(B).] Also, nothing included in this PBR for air-assisted flares which are allowed under OOOOb.

RESPONSE: With regard to air-assisted and steam-assisted flares, the Department evaluated options for establishing requirements for those types of control devices in the PBR, but ultimately determined that air-assisted and steam-assisted flares have more complicated operational requirements which would be better governed through LPE limits (where requested) in a general permit or individual facility permit. Regarding the PBR's utility as a permitting vehicle, the Department believes that the PBR should focus on less complicated control devices that are used more widely in the industry for which the PBR was developed. The Department believes that air-assisted and steam-assisted flares are better addressed through more complicated permitting vehicles than a PBR therefore, no changes to the PBR rule language were made.

The Department notes that similar questions were raised during the development of the emergency rulemaking for additions to the Oil and Natural Gas Sector PBR in April of this year. In our response to Comment 9 (from the April 2024 RTC document), we noted that

Air-assisted flares, as a control option to demonstrate compliance with LPE limits, are not allowed under the new PBR. However, an air-assisted flare may be used under the PBR to control emissions from “storage vessel affected facilities” subject to the requirements of §60.5395b or to control emissions from other units subject to NSPS, Subpart OOOOb, as long as the operation of the air-assisted flare complies with the requirements of that subpart.⁴

4. **COMMENT:** [Referencing proposed revision in OAC 252:100-7-60.5(d)(1)(B)(ii)(III).] Enclosed combustion devices are not subject to 60.18 in OOOOb; therefore, this PBR should not include compliance requirements of 60.18 for enclosed combustion devices.

RESPONSE: The Department recognizes that enclosed combustion devices are widely used to control emissions from storage vessels and that the option to include enclosed combustion devices to demonstrate compliance with LPE limits is an important option for the Oil and Natural Gas Sector PBR. Due to the more rigorous requirements established by EPA, demonstrating compliance with LPE limits using 40 CFR § 60.18 appears preferable to establishing specific stack testing requirements (or other, state-specific requirements) for these devices. No changes were made to the rule language.

5. **COMMENT:** [Referencing proposed revision in OAC 252:100-7-60.5(d)(1)(C)(i)(III).] This [the requirement to perform an initial, and semiannually thereafter, determination of the net heating value (NHV) of gases combusted] is included in EPA’s Response to Petitioners as granting reconsideration and will potentially be removed for certain storage tanks and control devices. If DEQ were to codify this requirement in OAC it will remain applicable even if EPA removes requirement in future rule making.

Additionally, if you install/operate EPA certified control devices, only initial NHV sampling is required for now (not semi-annual). As currently written and not withstanding [Petition] for Reconsideration, this exceeds even OOOOb applicability requirements.

RESPONSE: Additional language has been added to OAC 252:100-7-60.5(d)(1)(C)(i)(III) that would remove this requirement if EPA removes, waives, or otherwise explicitly renders this requirement unnecessary.

6. **COMMENT:** [Referencing proposed revision in OAC 252:100-7-60.5(d)(1)(C)(i)(V).] This [the requirement for the owner or operator of a facility that uses an enclosed combustion device to perform an initial, and semi-annually thereafter, demonstration that the actual heat content of the gases combusted are within the design value established by the manufacturer or within the range tested during a performance test] is duplicative of

⁴ Oklahoma DEQ, Summary of Comments and Staff Responses for Proposed Revisions to Chapter 100. Air Pollution Control Rules, Subchapter 7, Comments Received Prior to and During the April 24, 2024 Air Quality Advisory Council Meeting, April 23, 2024, available online: https://www.deq.ok.gov/wp-content/uploads/air-division/AQAC_2024_APR_SC7_COMM_RESP.pdf.

NHV above (III) and not even required by OOOOb. OOOOb does have requirements to maintain NHV of gas sent to control devices above a certain Btu/scf value depending on type of control device, but even applicable OOOOb control devices do not have to perform what is stated in this condition.

Additionally, first part says perform initial and semi-annually...performance tests, but last sentence says shall be determined by a generally accepted model or calculation methodology. This is confusing? Perform tests annually and semi-annually or use model? Recommendation would be to delete as it's not even required in OOOOb.

RESPONSE: For an enclosed combustion device, the determination of the net heating value of the gases (required in OAC 252:100-7-60.5(d)(1)(C)(i)(III)) would be compared with the design values established by the manufacturer (this comparison is required in OAC 252:100-7-60.5(d)(1)(C)(i)(V), the proposed revision in question). If the manufacturer does not guarantee a combustion destruction efficiency (and, as a result, there are no design values established for operating the enclosed combustion device in the manner specified by the manufacturer), the operator would be required to perform a stack test to verify that the control device is able to meet the required control efficiency. A semi-annual demonstration that the NHV falls within the range established during the performance test would satisfy the requirements of OAC 252:100-7-60.5(d)(1)(C)(i)(V).

Additional language has been added to OAC 252:100-7-60.5(d)(1)(C)(i)(V) to clarify that this requirement applies to the determination of the net heating value (NHV) to show that the NHV falls within the range specified by the manufacturer (or within the range established during a performance test) that is required initially and semi-annually thereafter. There is no requirement to conduct a performance test if the manufacturer guarantees the combustion destruction efficiency. If the manufacturer does *not* guarantee the combustion destruction efficiency, an initial performance test is required, but there is no requirement to conduct additional performance tests on a semi-annual schedule. Only the determination of NHV is required semi-annually.

- 7. COMMENT:** [Referencing proposed revision in OAC 252:100-7-60.5(d)(1)(D).] Is this guidance [the requirement to report exceedances of the LPE limits in accordance with DEQ guidance] the same as Subchapter 9 EE [excess emissions] reporting procedures? I've never seen "guidance" codified in OAC as that brings up a lot of issues. What guidance and when was referenced guidance issued? Guidance document as it was written when this condition was codified? What if this referenced guidance document changes in future? Is it still applicable then? How do we demonstrate compliance with "DEQ guidance"? Regardless, need specific citation for clarity and in order to demonstrate compliance.

RESPONSE: Yes, OAC 252:100-9 establishes requirements for reporting excess emissions. Additional guidance may be issued as needed to ensure the enforceability of the LPE limits. This guidance is not "codified" but would be used to clarify existing requirements in the rules. This is not unique to this rule proposal. See for example the AQD guidance on flash emissions calculations referenced in the existing Oil and Natural Gas Sector PBR rules (at OAC 252:100-7-60.5(c)(1)) and the reference to EPA guidance on

“Control of Volatile Organic Emissions from Solvent Metal Cleaning” in OAC 252:100-39-42.

8. **COMMENT:** [Referencing proposed revision in OAC 252:100-7-60.5(d)(1)(E)(iv).] Can we avoid having to do a monthly EI calculation by just maintaining compliance with the 12-month rolling throughput similarly to GP-OGF?

RESPONSE: No, this will not be acceptable as a method of demonstrating compliance with the LPE limits on storage vessels under the Oil and Natural Gas Sector PBR. In addition, the Department is in the process of removing this as a compliance option for the Oil and Gas General Permit. EPA has been explicit in stating that emissions calculations are required to demonstrate compliance with LPE limits. The Department believes that there are number of methods for simplifying this demonstration in a manner that would be acceptable, but exclusive reliance on a throughput limit will not work in this context. No changes have been made to the proposed rule language.

The Department notes that similar questions were raised during the development of the emergency rulemaking for additions to the Oil and Natural Gas Sector PBR in April of this year. In our response to Comment 12 (from the April 2024 RTC document), we noted that

The EPA rule establishes certain minimum requirements to demonstrate continuous compliance with the LPE limits. Due to the generic nature of the PBR, establishing a quantitative production limit as the *exclusive* method of demonstrating continuous compliance and creating such a limit in advance of construction would be problematic. Therefore, DEQ believes that an individual facility permit is a more appropriate vehicle for establishing such a limit, due to the complicated, facility-specific conditions that allow a throughput limit (on its own) to demonstrate compliance with an emission limit. Due to the more generic nature of a PBR, a cap on emissions (with compliance demonstrated through monthly and 12-month total calculations of emissions to show compliance with the cap) is required when demonstrating compliance with a tons per year emission limit, per long-standing EPA guidance. To demonstrate continuous compliance with the cap, monthly throughput quantities need to be recorded *and* emissions (both monthly and 12-month rolling totals) need to be calculated. This is the same policy currently used for the Oil & Gas General Permit. If necessary, DEQ will issue guidance to update, clarify, or modify the policies described in this Response to Comments document. No revision to the rule proposal has been made based on the requested change.

9. **COMMENT:** [Referencing proposed revision in OAC 252:100-7-60.5(d)(1)(E)(vii).] This [the requirement to maintain records including equipment specifications, manuals, and/or maintenance records, as appropriate] needs to be removed. What does this have to do with LPE? Also, not required by OOOOb.

RESPONSE: Where an owner or operator relies on manufacturer’s guarantees in lieu of a stack test (performance test) or other procedure, equipment specifications, manuals, and/or maintenance records (as appropriate) will be required. The records required would be established by the manufacturer to ensure compliance with the manufacturer’s performance

warranty. If the owner or operator performs a stack test to demonstrate the control efficiency of an enclosed combustion device, retention of those records would be sufficient. These records can be maintained in an electronic format. No changes have been made to the proposed rule language.

Continental Resources (Brett.Eaton@clr.com) – Submitted comments included in the body of an email received on October 14, 2024, from Mr. Brett Eaton, Senior Environmental Specialist.

10. **COMMENT:** [Referencing language in OAC 252:100-7-60.5(d)(1)(C)] [C]can we change this paragraph to read "The emissions reduction associated with the options(s) selected under (B) shall only be included in emissions calculations to shown in (1) above when meeting the requirements listed in 60.5417b for control devices."

RESPONSE: The Department thanks the commenter for providing feedback on the proposed rule language. In response to the concerns raised, the Department notes that the requirements in 40 CFR 60.5417b are the continuous monitoring requirements for control devices established in NSPS OOOOb. The requirements in OAC 252:100-7-60.5(d)(1)(C) represent both initial and periodic and/or continuous monitoring requirements used to demonstrate compliance with the Legally and Practicably Enforceable (LPE) limits on storage vessel emissions requested under the PBR to *exempt* the storage vessels from being classified as “storage vessel affected facilities” under NSPS OOOOb. As was discussed in our response to Comment 2 above. EPA established more rigorous requirements for LPEs than were previously required to exempt storage vessels from the applicable requirements of NSPS OOOO and OOOOa. In § 60.5365b(e)(2)(i)(D) of NSPS OOOOb, EPA established requirements that LPE limits include “[o]ngoing monitoring of the parametric limits in (e)(2)(i)(C) of this section that demonstrates continuous compliance with the production and/or operational limit(s) in (e)(2)(i)(A) of this section.” In effect, whether the owner or operator accepts LPE limits on storage vessels or whether the units are subject to control requirements under NSPS OOOOb, there is a requirement for a demonstration of initial and continuous compliance with the parameters used to ensure that emissions are either below the limits of the LPEs or to ensure compliance with NSPS OOOOb.

11. **COMMENT:** [Referencing language in OAC 252:100-7-60.5(d)(1)(C)] Remove the paragraphs for (c)(i) and (ii) with the associated change to (c).

RESPONSE: The requirements in OAC 252:100-7-60.5(d)(1)(C)(i) are used to ensure that flares and enclosed combustors demonstrate initial and periodic and/or continuous compliance with the LPE limits. The requirements in (C)(ii) are used to ensure that vapor recovery units (VRUs) demonstrate initial and periodic and/or continuous compliance with the LPE limits. Without these requirements the limits on emissions from storage vessels would not be considered by EPA to be legally and practicably enforceable.

12. **COMMENT:** I am concerned that if there are changes to this section in OOOOb that we would end up having different requirements and would like to keep our requirements as synergized with the NSPS as much as possible.

RESPONSE: The Department agrees that it is possible that EPA may make changes to OOOOb that would justify changes to the rules we have proposed to establish LPE limits under the Oil and Natural Gas Sector PBR. Depending on the specific changes made by EPA, the Department may suggest future changes to the rules which could be brought before the Air Quality Advisory Council in the future. In the interim, depending on the specific changes made, the Department has the authority to use enforcement discretion to waive some requirements and to issue guidance regarding changes in policies.

13. **COMMENT:** The requirement for a 6 min minimum doesn't meet the requirement for M22 inspections. There is no mention of the use of certified flares as not requiring initial testing. Testing of control devices twice a year is extremely unnecessary if following the monitoring requirements for the control device in 60.5417b and will add a heavy cost burden that would be unnecessary and in addition to what is required in OOOOb. Calculations during short downtimes for maintenance will create an excessive amount of time and resources and will provide the same information that the state would receive in an annual emissions inventory, therefore would also be duplicative. As you can see this whole section is problematic and would best be removed with the change to (c) indicating that you must follow the control device requirements under OOOOb.

RESPONSE: With regard to EPA Reference Method 22, the Department notes that Method 22 provides for the establishment of an observation period of sufficient length to meet the requirement for determining compliance with the emission standard in question. It is the Department's position that, for the purposes of establishing initial compliance with the LPE limits on storage vessels, a six-minute minimum is sufficient. With regard to the use of certified flares, the Department acknowledges that the language in OAC 252:100-7-60.5(d)(1)(C)(i)(III) and (V) appears confusing regarding the requirement to demonstrate initially and semi-annually thereafter that the net heating value (NHV) of the gases combusted is within the manufacturer's specifications or within the range demonstrated during a performance test if the control device was not tested and certified by the manufacturer to provide the combustion destruction efficiency required. The rule language has been amended to provide additional clarity.

With regard to equipment certified by the manufacturer to achieve the required combustion destruction efficiency, the Department does not require a performance test of that equipment, but only records required to demonstrate that the unit has received the manufacturer's guarantee and that the unit has been maintained and operated as required by the manufacturer.

If the owner or operator elects to use an enclosed combustion device that has not been guaranteed by the manufacturer to provide a sufficient combustion destruction efficiency, the owner or operator would be required to conduct an initial performance test. The semi-annual demonstration (thereafter) that the NHV of the gases combusted falls within the range established during the performance test would be sufficient. Additional performance tests (stack tests) would not be required.

With regard to recording downtime for maintenance (or other reasons), the Department notes that this is a requirement for demonstrating compliance with the LPE limits.

Please see additional discussion in the responses to Comments 2, 3a, 5, 6, and 10 (above) for additional discussion related to issues raised in this Comment.