

**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION**

GUIDANCE DOCUMENT

August 16, 2021

SUBJECT: Public Notice Policy for Certain Air Quality Tier I Permits

Section 1. Background

This guidance document addresses public notice requirements that will become effective on September 15, 2021 – the expected effective date of corresponding rules changes. These new requirements were adopted by the Environmental Quality Board on February 19, 2021, on the recommendation of the Air Quality Advisory Council. These new requirements are intended to bring Oklahoma Department of Environmental Quality's (DEQ's or Department's) practices in line with the public participation procedures promulgated by the U.S. Environmental Protection Agency (EPA) in 40 C.F.R. Part 51, Subpart I, and 40 C.F.R. Part 70.

While the Air Quality Division (AQD) has implemented public notice requirements for various permitting actions in accordance with state statutes and federal requirements, these new requirements were adopted solely to comply with federal rules. The Oklahoma Uniform Environmental Permitting Act (27A O.S. § 2-14-101 *et seq*), which governs DEQ's public participation, created three Tiers for categorizing environmental permits based on the expected level of impact and degree of public concern. Title 252, Chapter 4, Section 7, Subsection 2 of the Oklahoma Administrative Code (OAC 252:4-7-2) states the rationale behind the classification of permits into these categories:

The Uniform Environmental Permitting Act requires that DEQ licenses, permits, certificates, approvals and registrations fit into an application category, or Tier, established under the uniform environmental permitting rules. Tier I is the category for those things that are basically administrative decisions which can be made by a technical supervisor with no public participation except for the landowner. Tier II is the category for those permit applications that have some public participation (notice to the public, the opportunity for a public meeting and public comment), and the administrative decision is made by the Division Director. Tier III is the category for those permit applications that have extensive public participation (notice to the public, the opportunity for a public meeting and public comment, and the opportunity for an administrative evidentiary hearing), and the administrative decision is made by the Executive Director.

Applicants for Tier II and III permits are required to publish newspaper notices, while Tier I applicants are not. To meet federal requirements, beginning on September 15, 2021, some Tier I permits will undergo public review through a web-based noticing system maintained by the DEQ, even though those permitting actions are not required by Oklahoma statute to undergo noticing requirements. This guidance outlines the new procedures governing these noticing requirements.

Section 2. New Tier I Public Noticing Requirements

Three permitting types fall under these new Tier I public noticing requirements:

- (1) Individual minor facility construction permits,
- (2) Initial individual minor facility operating permits and some modified minor facility operating permits, and
- (3) Major source construction permits issued to authorize minor modifications to facilities operating under a major source (Title V) operating permit.

For facilities that already have operating permits, applicants for construction permits to authorize facility modifications will have the option to choose between *traditional* and *enhanced* New Source Review (NSR) processes. The *enhanced* process front-loads the noticing for both the construction permit and the subsequent modification to the operating permit into one notice. The *traditional* process requires two notices: one for the construction permit and another to modify the operating permit. Those options are described in more detail in a later section.

But first, the following section describes the basic operations of the new Tier I public review process.

2.1. The Tier I Public Review Process

The basic operations of the new Tier I public review process are presented in question-and-answer format below.

Who Will Post the Draft Tier I Permits for Public Review and Where Will They Be Posted?

After AQD staff has prepared a draft permit based on a Tier I application, AQD will post the draft permit with pertinent facility information on the Department's public review web page:

<https://www.deq.ok.gov/permits-for-public-review/>

The posting will identify the start and end dates for the 30-day public review period.

Who Will Provide Notification of Interested Parties?

The AQD will prepare and e-mail a notification to interested parties that a new draft permit has been made available for public review, using the public notice e-mail list maintained by the Division. The notification will provide the same information as the web posting.

How Does Someone Sign Up for E-Mail Notification?

Interested parties may register for e-mail notification by selecting the type(s) of notification requested and by applying via links on this page:

<https://www.deq.ok.gov/air-quality-division/sign-up-for-air-quality-notifications/>

Do the EPA or Tribal Governments Have a Separate Opportunity for Review?

EPA and tribal authorities are included on the public notice e-mail list. For the Tier I permits discussed in this guidance document, the EPA, surrounding state air quality agencies, and tribal governments will have the same opportunity (same time period) for review and comment as the public. The exception is the 45-day EPA review period for some minor modifications to major source operating permits, a process that is discussed later.

How Long Is the Public Comment Period?

30 days.

Who Responds to Comments?

AQD staff will respond to comments received, summarize substantive comments, and reply as appropriate. AQD staff will provide the applicant with a copy of any comments received and may seek information and input from the applicant as appropriate.

2.2. Individual Minor Facility Construction Permits

Subchapter 7 of OAC 252:100 establishes the permitting rules for minor facilities. Minor facilities are those emission sources that are not required to obtain a major source operating permit¹.

Subchapter 7 authorizes a number of different permitting vehicles: permits by rule (PBRs), general permits (GPs), and individual facility permits. PBRs and GPs establish broad requirements applicable to facilities that fall into particular industry categories; facilities may register for coverage under an applicable PBR, or apply for authorizations to construct or operate under an applicable GP. Because PBRs and GPs undergo a public participation process prior to issuance, the new Tier I public noticing requirements discussed in this guidance are *not applicable* to PBR and GP registrations/authorizations².

An individual minor facility construction permit is, as would be expected, a permit issued to the owner/operator of a single facility that is not a major source of air pollutants. The process of review and issuance of permits authorizing new construction or modification of sources of air pollution is referred to as New Source Review (NSR). Minor NSR refers to the review and issuance of construction permits that do not require major NSR. Major NSR permits are either Prevention of Significant Deterioration (PSD) permits or Nonattainment NSR permits. All major NSR permits require either Tier II or III processing and are not discussed in this guidance.

¹ Major source operating permits are also referred to as Title V operating permits (referring to the area of Clean Air Act Amendments of 1990 that establishes the framework for these permits) or as Part 70 operating permits (referring to the language in Title 40 of the Code of Federal Regulations).

² As addressed in Appendix A: Scenarios, a facility with an existing Title V permit transitioning to minor or synthetic minor permit is required to undergo Tier II public review on the resulting permit or authorization in accordance with OAC 252:4-7-33(a)(2).

Construction permits for minor facilities (i.e., those which will not need Title V operating permits) are covered by this guidance. These permitting actions were not previously required to undergo public review; however, after September 15, 2021, draft versions of these permits will be made available for public review and comment.

2.3. Initial Individual Minor Facility Operating Permits – FESOPs

Individual operating permits may be issued for minor facilities if the applicant does not choose to obtain a PBR or GP. As discussed above, minor facilities are those that are not required to obtain major source operating permits.

Subchapter 7 of OAC 252:100 sets out the requirements for minor facility operating permits. Prior to the rule changes that will become operative on September 15, 2021, these permits have not been required to undergo public review. Beginning on September 15, 2021, that will change. A draft of an individual facility's initial operating permit will be posted on the web for public review and comment. On issuance, this permit will be considered to be a Federally Enforceable State Operating Permit or FESOP. Individual minor facility operating permits issued prior to that date are also considered to be "federally enforceable," and that policy will not change. However, *FESOP* is a term of art EPA has used when referring to a program established in a State Implementation Plan (SIP) that is approved by EPA and meets certain standards. All operating permits issued after September 15, 2021, under Subchapter 7 will be considered (and defined) to be FESOPs.

The initial FESOP for a facility must always undergo public review. A modification to a FESOP (except for certain administrative changes) will also be required to undergo public review unless the applicant requests that the construction permit (that authorized changes to the facility) be evaluated under the FESOP enhanced NSR process. That process is described next.

2.4. Enhanced or Traditional NSR Noticing Options

As mentioned previously, New Source Review (NSR) is the process the Department follows in evaluating an application for a construction permit. If a facility is already operating under a FESOP, the applicant may request that a construction permit that authorizes changes to the facility undergo a process called "FESOP enhanced NSR." Under that process, the public review process includes an evaluation of the modifications to the facility authorized by the construction permit, as well as a determination of procedural and compliance requirements under the FESOP program. Again, this process is only available for facilities already operating under a FESOP. Under the FESOP enhanced NSR process, the 30-day public review period of a draft construction permit is integrated with the review of the draft FESOP modification, and results in the issuance of a minor facility construction permit whose applicable FESOP implications have also been reviewed. Later, the requirements of the construction permit may be incorporated into a modified FESOP using the minor facility operating permit modification process, without further public or EPA review.

Under traditional NSR, the construction permit undergoes public review. When the operating permit is subsequently modified to incorporate changes authorized by the construction permit, there is another 30-day public review period. Traditional NSR is the only option available for a

facility that does not already have a FESOP. Once a facility has a FESOP, the applicant may choose between *traditional* or *FESOP enhanced* NSR.

It should be noted that although individual minor facility operating permits issued prior to September 15, 2021, **are** considered *federally enforceable*, they are not officially *FESOPs*. A construction permit for a facility that is operating under an individual minor facility operating permit that was issued prior to September 15, 2021, will need to undergo traditional NSR, i.e., *both* the construction permit and the modified operating permit (issued as a FESOP) will need separate rounds of public review. After the FESOP has been issued, the owner/operator may elect to use the FESOP enhanced NSR process for future modifications.

2.5. Major Source Construction Permits Issued to Authorize Minor Modifications to Facilities Operating Under a Major Source (Title V) Operating Permit

Subchapter 8 of OAC 252:100 establishes rules governing facilities that have (or ultimately will be issued) Title V operating permits (also, as mentioned above, referred to as Part 70 operating permits). A facility already operating under a Title V permit may submit an application to authorize minor modifications to the facility as long as those modifications meet the requirements of the rule applicable to minor modifications [OAC 252:100-8-7.2(b)(1)]. Prior to September 15, 2021, the owner/operator could have made operational changes to the facility immediately on submission of a complete application – although the applicant assumed some risk, because it was possible that the project (on detailed evaluation) may not be eligible for classification as a minor modification. Under the rules that become affective on September 15, 2021, the owner/operator will be required to first obtain a Tier I construction permit before making those changes operational, unless the project is *de facto* exempt from the requirement for a construction permit as delineated in the applicable rule text [OAC 252:100-8-4(a)(1)(B)].

The public review process for the construction permit authorizing minor modifications to a facility operating under a Title V permit will be similar to the process described for individual minor facilities. The differences between the minor facility and major source public review processes, based on whether an applicant requests *enhanced* or *traditional* NSR, are discussed below.

2.6. Enhanced or Traditional NSR Noticing Options

If a facility is already operating under a Title V permit, the applicant may choose between *enhanced* or *traditional* NSR when a new construction permit is requested to authorize minor modifications to the facility. (This option is also available for construction permits authorizing significant modifications, but those permits are Tier II and are not addressed in this guidance.)

Under traditional NSR, the draft construction permit undergoes 30-day public review. The EPA surrounding states, and tribal authorities also have the opportunity to evaluate the construction permit during this 30-day review period. At the close of the 30-day comment period, the Department evaluates and responds to any comments received before issuing the permit. Later, when the Title V operating permit is modified to incorporate changes authorized by the construction permit, there is no public review (because the changes are considered to be minor), but the EPA is given a 45-day period to review the *proposed* modifications to the Title V permit.

Under the enhanced NSR process, the construction permit undergoes public and EPA review, but there is not a separate round of review of the modification to the Title V operating permit. Again, it should be noted that for minor modifications to Title V operating permits, there is no requirement for public review when the Title V permit *itself* is modified. The public review is only required upstream, when the construction permit (a.k.a., minor NSR permit) is under evaluation. For the enhanced NSR option, the 45-day EPA review period (associated with the Title V operating permit modification) may run concurrently with (if requested and if no public comments are received) or subsequent to the 30-day public review of the construction permit. To clarify, if the applicant requests concurrent review, the public comment period and the EPA review period start at the same time. The public comment period lasts 30 days. If, at the end of the public review period no public comments are received, the *draft* permit is considered to be the *proposed* permit for the purposes of EPA review. The EPA review continues for another 15 days. However, if a public comment is received during the public comment period, the Department must respond to the comment received, and then issue the official *proposed* permit for EPA review. (The proposed permit includes a summary of public comments received and the Department's responses.) Then, the clock is re-started and EPA is given 45 days to review the *proposed* permit.

If the applicant does not request concurrent review, the *draft* permit goes through a 30-day public comment period. Review by surrounding states and tribal authorities also occurs during this time. If comments are received, the Department summarizes and responds to them. Then, the Department prepares the *proposed* permit for EPA review and the EPA has 45 days to perform their review.

Under enhanced NSR, the review by the public, surrounding states, tribal authorities, and EPA happens only during the issuance process for the construction permit. When the Title V operating permit is later modified to incorporate changes authorized by the construction permit, no further public, surrounding state, tribal authority, or EPA review takes place.

Section 3. Application Forms and Processing

The application forms have been modified to allow the applicant to request *traditional* or *enhanced* NSR. If an applicant wishes to change this initial request, that will be allowed as long as the request is made before the draft permit is published on the web. To do so, the applicant should contact the permit writer.

For the Tier I permits discussed in this guidance the public noticing occurs on the web, and because the Department will perform this task, there are no additional requirements incumbent on the applicant.

Who Can I Contact for More Information?

For assistance, contact the Air Quality Division at (405) 702-4100 and ask to speak with a permit writer.

Oklahoma Department of Environmental Quality
Air Quality Division – Permitting Group
707 N. Robinson, Suite 4100
P.O. BOX 1677
Oklahoma City, Oklahoma 73101-1677



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These scenarios are presented as example cases; specific projects and circumstances may require different approaches. Please reach out to the permitting staff early in the process for assistance.

OAC 252:100-8 Scenarios

Issue: PSD minor facility with current Title V permit wants to add an emergency generator. Potential emissions from the project are less than 10 TPY of any regulated air pollutant.

Permitting Requirement: The potential emissions from the project are below the minimum threshold established in OAC 252:100-8-4(a)(1)(B)(iv) of 10 TPY and the project is not required to obtain a construction permit. To authorize installation of the new generator, the facility must file an application for a minor modification, as required in OAC 252:100-8-7.2(b)(1), to the current Title V permit and may commence construction upon submittal of a complete application. As stated in OAC 252:100-8-7.2(b)(1)(G) the permittee assumes the risk of losing any investment it makes toward implementing a modification prior to receiving a permit amendment authorizing the modification. The draft permit will be processed under Tier I. No public review is required. The draft permit will undergo the 45-day EPA review required under OAC 252:100-8-8.

Issue: A PSD minor facility with a current Title V permit wants to pursue a project for a change in the method of operation that results in a potential increase in emissions greater than 10 TPY but will still be a minor modification to the Title V operating permit as defined in OAC 252:100-8-7.2(b)(1).

Permitting Requirement: The potential emissions from the project are above the minimum threshold established in OAC 252:100-8-4(a)(1)(B)(iv) of 10 TPY and the project is required to obtain a Tier I construction permit.

Option 1: Facility chooses Enhanced NSR and undergoes 45-day EPA review at the same time as 30-day public comment period. No substantive comments are received. After concluding EPA review (with no comments from EPA), the construction permit is issued. Facility may now proceed with the change in the method of operation. The Title V permit is subsequently modified via administrative amendment provided no changes to construction permit conditions are requested.

Option 2: Facility chooses Traditional NSR and undergoes a 30-day public comment period. For the NSR permit, EPA has an opportunity to comment during the public comment period. No substantive comments are received. The Title V permit is subsequently modified and processed through Tier I and undergoes a 45-day EPA review process. As a minor modification, there is no public review of the Title V modification. Note that EPA has different opportunities for comment under the NSR program versus the Title V program.

Issue: New facility seeks a minor NSR (construction) permit for a new major source. (Note: a minor NSR permit, in this context, will still result in the construction of a facility which will, eventually, obtain a Title V operating permit. Minor NSR just means not PSD.)

Permitting Requirement: Because this will be a new facility, there is no existing Title V operating permit and, therefore, the applicant is not eligible for Enhanced NSR. All initial Title V operating permits must go through public review in accordance with OAC 252:4-7-33(b)(1)(C). The Subchapter 8 construction permit will be processed as Tier II with public notice in a newspaper. The subsequent initial Title V operating permit will also be required to be processed under Tier II.

Issue: An existing facility with a current Title V permit requests enforceable limits to become a synthetic minor source.

Permitting Requirement: The facility is required to apply for a significant modification to the existing Title V permit under Tier II procedures and submit associated fees. Whether the applicant seeks coverage under an individual permit under Subchapter 7 or a general permit, the draft permit or authorization will continue to be processed under Tier II and the applicant must publish an opportunity for public review as per OAC 252:4-7-33(a)(2). This Tier II public review – for the authorization to operate under the general permit – will be in addition to the Tier II public review that was undertaken when the general permit was adopted.

Issue: Facility with a current Title V operating permit removes equipment and, no longer having the potential to be a major source, requests a permit modification to become a “true” minor facility.

Permitting Requirement: The facility is required to apply for a permit under Tier II procedures as required by OAC 252:4-7-33(a)(2). Even if the facility will be a true minor, the Title V permit authorizes emissions at major source levels and the company must undergo Tier II procedures to cancel that authority. After the Tier II public review, the facility may choose to operate under (and be issued) an individual Federally Enforceable State Operating Permit (FESOP), a General Permit (GP), or a Permit by Rule (PBR) as appropriate. This Tier II public review – for the authorization to operate under the general permit or PBR – will be in addition to the public review that was undertaken when the general permit or PBR was adopted.

Issue: Existing facility under a Subchapter 7 operating permit seeks to add an emission unit to become a major source.

Permitting Requirement: The facility is required to apply for a Tier II construction permit under OAC 252:4-7-33(a)(1). The applicant will not be eligible for Enhanced NSR. The subsequent initial Title V permit will be required to be processed under Tier II.

Issue: An existing facility seeks an operating permit modification with “as built” changes from the previously issued NSR construction permit.

Permitting Requirement: This issue must be addressed case-by-case. Under OAC 252:4-7-32(b)(2)(A)(i) and (ii) an as built change from a Tier I, II, or III construction permit may be incorporated in the operating permit provided the TV permit conditions do not differ from the construction permit conditions in any way considered significant under 252:100-8-7.2(b)(2) or the change does not require a construction permit under 100-8-4(a)(1). Otherwise, the change may

necessitate a modification to the construction permit. Please contact a permit writer to discuss the particular situation.

OAC 252:100-7 Scenarios

Issue: A new facility seeks an individual construction permit.

Permitting Requirement: The application will be processed as a Tier I minor NSR permit requiring a 30-day public/EPA comment period via the DEQ website. The subsequent FESOP will be processed under Tier I (with publication on the web) as well. The Enhanced FESOP process is not available to facilities seeking an initial permit per the definition of the FESOP Enhanced NSR Process in OAC 252:100-7.

Issue: An existing facility seeks to remove control equipment but remain a minor source.

Permitting Requirement: This type of scenario can be very complicated and we encourage you to consult with DEQ staff as necessary. Presuming the control equipment was required in a permit condition, the modification requires a minor NSR permit to authorize construction, modification, or change in the method of operation of a new or existing stationary source where a construction permit is required by OAC 252:100-7-15(a)(2). If a construction permit is not triggered under Subchapter 7, the modification may be made to an existing FESOP and processed under Tier I.

Option 1: The facility is currently operating under a FESOP, if a construction permit is required the construction permit and subsequent operating permits may be processed under the Enhanced FESOP Process, where public and EPA review opportunities in the Tier I minor NSR construction permit are relied upon in issuance of the eventual operating permit and no further public review is required for the operating permit.

Option 2: The facility is currently operating under a FESOP and a construction permit is not triggered under OAC 252:100-7-15(a)(2). The FESOP may be modified to remove the requirement for the control. This permit action will be processed as a Tier I permit with public and EPA review.

Option 3: The facility is not operating under a FESOP. Both the minor NSR permit, if required per OAC 252:100-7-15(a)(2), and the eventual operating permit are required to be processed under Tier I with public and EPA review opportunities. If a construction permit is not required, the modification can be incorporated as an “as built” change to the operating permit, which is processed as a Tier I permit with public and EPA review.

Issue: An existing facility under an individual operating permit, wants to add an emission unit with potential emissions less than 5 tons per year and not subject to an NSPS or NESHAP standard.

Permitting Requirement: Presuming the modification does not trigger a minor NSR permit per OAC 252:100-7-15(a)(2), the applicant may choose to modify an existing FESOP, which must be then processed under Tier I.

Issue: Existing source requests to switch from a general permit to an individual operating permit.

Permitting Requirement: Because the terms and conditions of the new FESOP will be different from the underlying general permit, the new operating permit will be required to be processed as a Tier I permit with public and EPA review.

Issue: Similar to the preceding example, an existing source operating under an existing individual FESOP submits an NOI to construct under a general permit. After completing the modification the applicant submits an application to modify and return to an individual FESOP, Will the modified FESOP be required to undergo Tier I public review.

Permitting Requirement: Because the terms and conditions of the modified FESOP will be different from the underlying general permit relied upon for the notice of intent to construct, the modified operating permit will be required to be processed as a Tier I permit with public and EPA review.

Issue: A facility with a Subchapter 7 operating permit has not undergone the public review and re-issuance to formalize designation of the permit as a FESOP. The owner/operator intends to add an emission unit to the facility which – based on a review of OAC 252:100-7-15(a)(2) – triggers the requirement for a construction permit. What process should they follow?

Permitting Requirement: The facility will need to follow the traditional NSR process. First the construction permit will need to undergo Tier I public review on the web. Within 180 days of startup of the new emission unit, the facility will need to apply for a FESOP. That permit will also undergo Tier I public review on the web.

FESOP Transition Guidance

All permits issued on or after September 15, 2021, will be subject to the revised regulations in OAC 252:4 and 100. After the effective date, any active permit applications received prior to the effective date will be processed in compliance with the new public participation requirements.

The rule definition states, a “Federally Enforceable State Operating Permit or FESOP means an operating permit issued under OAC 252:100-7, including operating permits issued under the provisions of 252:4-7-33(a)(2).” The definition further states that “for the purposes of this subchapter, "FESOP" and "operating permit" are synonymous.” However, while federally enforceable, operating permits issued prior to the effective date of the rule and outside of the new public participation requirements, are not FESOPs. If an owner or operator wishes to move to a FESOP, the owner or operator will need to submit an application for a permit modification.

After adoption of the proposed rules, any new construction permit for a minor facility will go through Traditional NSR, which includes public participation requirements and the subsequent operating permit will be a FESOP.

If an owner or operator applies for a modification to an existing facility’s permit, the draft of the modified operating permit will undergo public review and will be issued as a FESOP.

Operating Permits Issued Prior to September 15, 2021

The owner or operator will not be required to transition an existing operating permit to a FESOP as defined unless a facility action triggers the need for new permitting actions.

Voluntary Transition to FESOP

An owner or operator wishing to transition to a FESOP will be required to submit an application for a modification to their existing operating permit. The permit will be updated with respect to any new rules or regulations. If no other physical or operational changes are requested, the applicant will not be required to re-evaluate and submit new emission estimations unless related to new applicable rules and regulations. All other forms and fees associated with a permit modification will be required. The modified operating permit will be processed under Tier I with the 30-day public and EPA review opportunities provided on the DEQ website.

General Permits

Facilities operating through authorizations under general permits will not be eligible for a “FESOP” until the general permit has been reissued after the rule effective date. AQD will continue to issue authorizations under the existing general permits until the general permits themselves are reissued. Requirements and guidance for transitioning from authorizations under existing general permits to new general permits will be provided with the permit in question.

Permit Applications Submitted Prior to September 15, 2021

AQD will take all reasonable measures to issue permits for administratively and technically complete applications received prior to the September 15, 2021 effective date. While AQD will continue to take all reasonable measures to issue permits for administratively and technically

complete applications, applicants should factor in the possibility of an additional 30 days of public review after a draft permit has been prepared for any applications received prior to the effective date of the rules.

Applicants are encouraged to contact and work with the permitting staff on any rush projects that may be adversely impacted by the additional 30-day period.

Time Sensitive Construction Permit Applications Submitted After September 15, 2021

Where an existing general permit is not available for the planned facility and an individual construction permit is required, the applicant must factor in the 30-day public comment period. At the applicant's risk, some preconstruction activity may begin in anticipation of the permit. The applicant should consult with AQD on what activities are allowed.

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