

**REGULAR MEETING AGENDA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OKLAHOMA ENVIRONMENTAL QUALITY BOARD**

A Public Meeting:

Virtual EQB Meeting (All participating Board members will appear remotely via videoconference) 10:00 a.m., Friday, February 19, 2021

Videoconference and Teleconference Information:

Meeting Link (will open at 9:30 AM):

<https://us02web.zoom.us/j/84286670306?pwd=d3d4RSszQnI5cDVnNGJpbUNROW95dz09>

Meeting ID: 842 8667 0306    Passcode: 413870

Phone: +1 346-248-7799

For additional information please visit: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTQ=>, or call 405-698-6086 (Technical Assistance)

A copy of this notice and agenda has been posted in a prominent location at the offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, on February 16, 2021 at 4:30 p.m. A copy of this agenda is also available on the DEQ's website at <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTQ=>.

NOTICE: If the meeting host becomes disconnected during the meeting, DEQ will attempt for 15 minutes to re-start the meeting. Such an event would require all participants (Board members and members of the public) to log back into the meeting. If successful, the meeting would be restarted once a quorum is re-established. If unsuccessful, the meeting will be continued and reconvened in person in the DEQ Multipurpose Room at the offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, on February 26, 2021 at 10:00 a.m. If such a reconvened meeting becomes necessary, only matters appearing on this agenda will be discussed.

*Please turn off cell phones.*

1. **Call to Order** - Jimmy Kinder, Chair
2. **Announcements** – Jimmy Kinder, Chair

Announcements will include the notice above and the introduction of any new Board members or special meeting guests, as well as general housekeeping matters of interest to the Board. These announcements are for informational purposes only, and no action by the Board is required.

3. **Roll Call** – Quiana Fields, Secretary, Board & Councils

4. **Approval of Minutes** of the November 10, 2020 Regular Meeting
5. **Election of Officers** – Election of Chair and Vice-Chair for Calendar Year 2021
6. **Rulemaking – OAC 252:100 Air Pollution Control**

The Department is proposing to revoke and replace 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. The gist of these rule proposals and the underlying reason for the rulemaking is to incorporate the latest changes to EPA regulations, primarily those relating to the National Emission Standards for Hazardous Air Pollutants (“NESHAPs”) and New Source Performance Standards (“NSPS”).

- Presentation – Laura Lodes, Chair, Air Quality Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

7. **Rulemaking – OAC 252:110 Lead-Based Paint Management**

The Department is proposing to amend OAC 252:110, Lead-Based Paint Management, to update the incorporation by reference section; to add provisions to implement the military reciprocity statute (59 O.S. § 4100, *et seq.*, Military Service Occupation, Education, and Credentialing Act); to update clearance levels to parallel dust-lead hazard changes; to remove several outdated provisions; and to correct minor punctuation and grammar errors. The proposed updates to hazard standards and clearance levels are necessary to maintain EPA approval for Oklahoma’s Lead-Based Paint program. The gist of the proposed rulemaking is to update the rule in accordance with recent changes to the federal lead-based paint poisoning prevention requirements, and to provide reciprocity for active-duty military service members and their spouses.

- Presentation – Laura Lodes, Chair, Air Quality Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

8. **Rulemaking – OAC 252:4 Rules of Practice and Procedure**

The Department is proposing to amend the air quality portions of Chapter 4, Subchapter 7 to better align the Department’s permit issuance process and public participation procedures for minor facility and Part 70 source construction and operating permits with

the New Source Review (“NSR”) permit requirements and Title V operating permit requirements promulgated by the EPA in 40 C.F.R. Part 51, Subpart I, and 40 C.F.R. Part 70, respectively. The proposal would also provide for the Department's use of online notice for Tier I applications for certain permits. The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules are not less stringent than the federal rules require. This will assist the State’s efforts to obtain approval from EPA for relevant portions of Oklahoma's State Implementation Plan (“SIP”) and in ensuring that the Department retains approval of the State NSR permit program and the Title V operating permit program.

- Presentation – Laura Lodes, Chair, Air Quality Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

#### **9. Rulemaking – OAC 252:100 Air Pollution Control**

The Department is proposing to amend and update various sections in OAC 252:100, Subchapters 1, 7, and 8, to better align the Department’s construction and operating permit requirements and issuance processes for minor facilities and Part 70 sources with the NSR permit requirements and Title V operating permit requirements promulgated by the EPA in 40 C.F.R. Part 51, Subpart I, and 40 C.F.R. Part 70, respectively, and the guidance on Federally Enforceable State Operating Permits (“FESOPs”). The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules requiring public notice are not less stringent than the federal rules require. In addition, the formal adoption of the FESOP structure, the formal designation of the "enhanced" NSR procedure, and the new option to follow the “traditional” NSR procedure will ensure continued enforceability of permits issued by the Department while offsetting some new requirements with new alternatives to expedite the process of permit issuance. Changes made to the DEQ rules to bring them into alignment with federal requirements will remove an obstacle in obtaining approval from EPA for relevant portions of Oklahoma's SIP, which will help ensure that the Department retains approval of the state NSR permit program and the Title V operating permit program.

- Presentation – Laura Lodes, Chair, Air Quality Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

#### **10. Rulemaking – OAC 252:4 Rules of Practice and Procedure**

The Department is proposing to revoke and replace Appendix C, Permitting Process Summary, to Chapter 4 in order to ensure that entities with Air Quality permits are

directed to the specific regulatory citations for the public review process rather than following the general procedures outlined in the current version of Appendix C. The gist of the rulemaking and underlying reason for the proposed changes are to ensure that permit holders are aware of the changes to the public noticing provisions of Chapter 4 for Air Quality permits (as proposed in agenda item No. 8 above) through a notation in Appendix C.

- Presentation – Madison Miller, Attorney Supervisor for Air Quality, Office of General Counsel
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

#### **11. Rulemaking – OAC 252:205 Hazardous Waste Management**

The Department is proposing to update language in Chapter 205 to reflect the latest date of incorporation of EPA regulations. The gist of this rulemaking is to make DEQ's hazardous waste rules consistent with the federal regulations by incorporating by reference the regulations found in 40 C.F.R. Parts 124 and 260-279, revised as of July 1, 2020. One significant rule change found in the to be incorporated federal regulations is the addition of hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (“RCRA”) regulations. This change will provide a clear, protective system for managing discarded aerosol cans by easing regulatory burdens, promoting collection and recycling, and encouraging the development of programs to reduce the quantity of these wastes sent to municipal solid waste landfills or combustors. This rulemaking will ensure that Oklahoma's hazardous waste rules are at least equivalent to the federal rules, as required to maintain program Authorization.

- Presentation – Lee Grater, Chair, Hazardous Waste Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

#### **12. Rulemaking – OAC 252:517 Disposal of Coal Combustion Residuals from Electric Utilities**

The Department, in response to changes to 40 C.F.R. Part 257, Subpart D, is proposing to amend OAC 252:517 to change the classification of “clay-lined” CCR surface impoundments to “unlined,” revise certain closure deadlines for surface impoundments, provide alternative closure provisions, establish groundwater protection standards for four Appendix B constituents, add a summary requirement to the annual groundwater report, and make other non-substantive changes. The gist of this rulemaking is to



incorporate federal changes and ensure that the State CCR rules are at least as protective as the corresponding federal rules. This rulemaking is necessary to maintain EPA authorization of Oklahoma's CCR regulatory program.

- Presentation – Jeff Shepherd, Chair, Solid Waste Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

### **13. Rulemaking – OAC 252:606 Oklahoma Pollutant Discharge Elimination System Standards**

The Department is proposing to amend Chapter 606 to update certain dates of incorporation by reference of federal rules from July 1, 2018 to July 1, 2020. The federal regulation updates being incorporated are minor and are intended to modernize regulations, promote submission of complete permit applications, and clarify regulatory requirements to allow more timely development of National Pollutant Discharge Elimination System ("NPDES") permits that protect human health and the environment. This rulemaking is necessary to ensure Oklahoma retains responsibility for administering the NPDES program in Oklahoma.

- Presentation – Brian Duzan, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

### **14. Rulemaking – OAC 252:631 Public Water Supply Operation**

The Department is proposing to amend Chapter 631 to update certain dates of the incorporation by reference for federal regulations from January 1, 2017 to July 1, 2020. The federal regulation updates being incorporated allow and approve the use of about 100 alternative testing methods for contaminants listed at 40 C.F.R. Part 141. The Safe Drinking Water Act allows the EPA to approve the use of alternative testing methods through publication in the Federal Register. These updates are needed to ensure Oklahoma retains responsibility for administering Oklahoma's Public Water Supply Supervision Program and also to ensure Oklahoma is in compliance with DEQ's Primacy agreement with the EPA.

- Presentation – Brian Duzan, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

## **15. Rulemaking – OAC 252:690 Water Quality Standards Implementation**

The Department is proposing to amend Chapter 690 to update certain dates of the incorporation by reference for federal regulations from July 1, 2016, to July 1, 2020. One significant federal regulation update being incorporated by reference concerns EPA and the Department of the Army's redefining and clarifying the scope of "Waters of the United States" federally regulated under the Clean Water Act consistent with the Executive Order signed on February 28, 2017, entitled "The Navigable Waters Protection Rule: Definition of Waters of the United States". This implements the overall objective of the Clean Water Act and increases the predictability and consistency of Clean Water Act programs. This rulemaking is necessary to ensure Oklahoma retains responsibility for administering the NPDES program in Oklahoma.

- Presentation – Brian Duzan, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

## **16. Rulemaking – OAC 252:641 Individual and Small Public Onsite Sewage Treatment Systems**

The Department is proposing is to: (1) add or amend definitions relating to chambers, manufactured media systems, and Zone 1; (2) establish sizing reduction guidelines for Conventional Subsurface Absorption systems (including manufactured media systems); (3) amend aerobic system surface application area totals and establish sizing criteria for small public aerobic systems; and (4) address numbering issues for Appendices referenced in rule text.

- Presentation – Brian Duzan, Chair, Water Quality Management Advisory Council
- Questions and discussion by the Board
- Questions, comments and discussion by the public
- Discussion and possible action by the Board, which may include roll call vote(s) on permanent adoption

## **17. Executive Director's Report - Scott Thompson, Executive Director, DEQ**

Mr. Thompson's report may include significant agency accomplishments and activities since the last Board meeting, as well as information pertaining to budgetary and/or legislative matters. This report is for informational purposes only, and no action by the Board is required.

**18. Budget Update and Financial Overview (FY 2021) – Kathy Aebischer, DEQ Chief Financial Officer**

Ms. Aebischer's report will include an update and overview of DEQ's current budget for Fiscal Year 2021. This report is for informational purposes only. Although discussion may occur, no action by the Board is required.

**19. New Business –**

Under the Open Meeting Act, this agenda item is authorized only for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda.

**20. Next Meeting –**

The next regular meeting of the Environmental Quality Board is scheduled to be held on June 8, 2021, at 9:30 a.m., in the Multipurpose Room of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma 73101.

**21. Adjournment**

**Public Forum – Following Adjournment** – The Board meets several times a year at different locations across the State to hear the views and concerns of all Oklahomans about environmental issues. This opportunity is informal, and we invite you to follow the instructions provided during and at the conclusion of the Board meeting if you would like to speak during the forum. If necessary to accommodate the public, the Board Chair may make a determination to conduct the Forum prior to the Call to Order.

**Should you desire to attend but have a disability and need an accommodation, please notify the DEQ three days in advance at 405-702-7100. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.**

**DRAFT MINUTES  
ENVIRONMENTAL QUALITY BOARD  
NOVEMBER 10, 2020  
OKLAHOMA COMMONS BUILDING  
OKLAHOMA CITY, OKLAHOMA**

Official EQB Approved  
On February 19, 2021

**Notice of Public Meeting** – The Environmental Quality Board (Board) convened for a Regular Meeting at 10:00 a.m., at the Oklahoma Commons Building (formerly SandRidge Energy, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma. This meeting was held in accordance with 25 O.S. Section 311, with notice of the meeting given to the Secretary of State on October 11, 2018. The agenda was mailed to interested parties on October 16, 2019 and was posted at the DEQ and the facility on November 9, 2020. Mr. Jimmy Kinder, Chair, called the meeting to order. Mr. Kinder talked on safety precautions in case of an emergency and welcomed Secretary Ken Wagner to the meeting. Ms. Fields called roll and a quorum was confirmed.

**MEMBERS PRESENT**

Mark Barton  
John Easton  
Shannon Ferrell  
David Griesel  
Tracy Hammon  
Alexandria Kindrick  
Jan Kunze  
Tim Munson  
Mike Paque  
Jimmy Kinder

**DEQ STAFF PRESENT**

Scott Thompson, Executive Director  
Jimmy Givens, Deputy Executive Director  
Rob Singletary, General Counsel  
Michelle Wynn, Legislative Liaison  
Jennifer Boyle, Deputy General Counsel  
Nicholas Huber, Environmental Complaints & Local Services  
Mark Hildebrand, Environmental Complaints & Local Services  
Erin Hatfield, Office of External Affairs  
Kathy Aebischer, Administrative Services Division  
Trevor Hammons, Legal Services Division  
Quiana Fields, Board & Council Secretary

**MEMBERS ABSENT**

Ken Hirshey  
Steve Mason  
Billy Sims

**OTHERS PRESENT**

Jennifer Lewis, Office of the Attorney General  
Secretary Ken Wagner, Office of the Secretary of Energy & Environment  
Stephen Baldrige, Office of the Secretary of Energy & Environment  
Carly Cordell, Office of the Secretary of Energy & Environment  
Bud Ground, EFO  
Lindsey Troiani, Court Reporter

**Approval of Minutes** – Mr. Paque moved to approve the Minutes of the September 15, 2020 Regular (virtual) Meeting. Dr. Hammon made the second.

*transcript pages 6 - 7*

Mark Barton	Yes	Alexandria Kindrick	Yes
John Easton	Yes	Jan Kunze	Yes
Shannon Ferrell	Yes	Tim Munson	Yes
David Griesel	Yes	Mike Paque	Yes
Tracy Hammon	Yes	Jimmy Kinder	Yes

**Employee Disclosures** – Mr. Rob Singletary, General Counsel of the DEQ, stated the Environmental Quality Code requires DEQ employees involved in reviewing, issuing or enforcing permits to disclose financial interests they hold in entities regulated by the DEQ. The DEQ is required to submit these disclosures to the Board and make them part of the minutes. This year there are two employees that updated their disclosures: Cristi Andrews and Steve Reid.

*See transcript pages 7 - 8*

**Emergency Rulemaking – OAC 252:641** – Mr. Kinder called upon Mr. Brian Duzan, Chair of the Water Quality Management Advisory Council (WQMAC), to present the rule. Mr. Duzan stated that the Department is proposing emergency changes to Chapter 641 to amend and establish certain definitions; allow a reduction of the minimum size of subsurface absorption fields for individual on-site sewage treatment systems under certain conditions; establish sizing criteria for manufactured media systems and revise and combine the minimum spray area size for aerobic systems. These changes generally will result in a reduction of overall application areas. Following no questions or comments by the Board or the public, Mr. Kinder called for a motion. Dr. Ferrell moved to approve and Mr. Griesel made the second.

*transcript pages 9 - 12*

Mark Barton	Yes	Alexandria Kindrick	Yes
John Easton	Yes	Jan Kunze	Yes
Shannon Ferrell	Yes	Tim Munson	Yes
David Griesel	Yes	Mike Paque	Yes
Tracy Hammon	Yes	Jimmy Kinder	Yes

**Item #7 was moved after the Budget Update and Financial Overview**

*See transcript page 12*

**Executive Director’s Report** – Mr. Scott Thompson, Executive Director of the DEQ, discussed agency accomplishments and activities since the last Board meeting, as well as information pertaining to budgetary and/or legislative or related matters.

*transcript pages 12 - 25*

**Mr. Kinder called upon, Secretary Wagner to give an update on the Office of Secretary Environment and Energy.**

*transcript pages 25 - 31*

**Budget Update and Financial Overview (FY 2021)** – Mr. Kinder called upon Ms. Kathy Aebischer, Chief Financial Officer of the DEQ. Ms. Aebischer gave a presentation on the FY 2021 budget update.

*transcript pages 32 - 35*

**Consideration of and Action on the Annual Environmental Quality Report** – Mr. Kinder called upon Mr. Jimmy Givens, Deputy Executive Director of the DEQ. Mr. Givens gave a presentation on the Annual Environmental Quality Report which must be approved by the Board prior to its submission to the Governor, Speaker of the House and Senate President Pro Tempore by January 1. The purpose of this report is to outline DEQ’s annual funding needs for providing environmental services within its jurisdiction, reflect any new federal mandates and summarize DEQ-recommended statutory changes. The Environmental Quality Board is authorized to review, amend (as necessary) and approve the report. Following a question by the Board and none by the public, Dr. Ferrell made a motion to approve the Annual Environmental Quality Report and Mr. Munson made the second.

*transcript pages 36 - 48*

Mark Barton	Yes	Alexandria Kindrick	Yes
John Easton	Yes	Jan Kunze	Yes
Shannon Ferrell	Yes	Tim Munson	Yes
David Griesel	Yes	Mike Paque	Yes
Tracy Hammon	Yes	Jimmy Kinder	Yes

**Executive Session – Annual Performance Review of Executive Director** – Among the statutory duties of the Board are the responsibilities to appoint and set the compensation of the Executive Director and to assist the DEQ in conducting periodic reviews and planning activities related to the goals, objectives, priorities and policies of the DEQ. Mr. Kinder called for a motion to enter into executive session pursuant to 25 Oklahoma Statutes Section 307(B)(1). Mr. Griesel moved

to approve and Mr. Paque made the second. Ms. Kunze was designated as the scribe for executive session.

*See transcript 48 - 50*

Mark Barton	Yes	Alexandria Kindrick	Yes
John Easton	Yes	Jan Kunze	Yes
Shannon Ferrell	Yes	Tim Munson	Yes
David Griesel	Yes	Mike Paque	Yes
Tracy Hammon	Yes	Jimmy Kinder	Yes

In open session, Mr. Kinder called for a motion to reconvene the Regular Board meeting. Mr. Munson moved to approve and Mr. Paque made the second.

*See transcript pages 50 - 51*

Mark Barton	Yes	Alexandria Kindrick	Yes
John Easton	Yes	Jan Kunze	Yes
Shannon Ferrell	Yes	Tim Munson	Yes
David Griesel	Yes	Mike Paque	Yes
Tracy Hammon	Yes	Jimmy Kinder	Yes

Mr. Kinder called for a motion on a specific action taken due to the Executive Director's annual performance review. Mr. Griesel made a motion to increase the salary of the DEQ Executives Director by five percent. Mr. Munson made the second.

*See transcript pages 51 - 52*

Mark Barton	Yes	Alexandria Kindrick	Yes
John Easton	Yes	Jan Kunze	Yes
Shannon Ferrell	Yes	Tim Munson	Yes
David Griesel	Yes	Mike Paque	Yes
Tracy Hammon	Yes	Jimmy Kinder	Yes

**New Business – None**

**Next Meeting** – The next regular meeting is scheduled for February 19, 2021 in Oklahoma City, DEQ Multipurpose Room.

**Adjournment** – Mr. Kinder called for a motion to adjourn. Mr. Munson moved to adjourn and Mr. Paque made the second. Meeting adjourned at 12:30 p.m.

*transcript pages 54 - 55*

Mark Barton	Yes	Alexandria Kindrick	Yes
John Easton	Yes	Jan Kunze	Yes
Shannon Ferrell	Yes	Tim Munson	Yes
David Griesel	Yes	Mike Paque	Yes
Tracy Hammon	Yes	Jimmy Kinder	Yes

**The transcript and sign-in sheet become an official part of these Minutes.**

REGULAR MEETING  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OKLAHOMA ENVIRONMENTAL QUALITY BOARD  
TUESDAY, NOVEMBER 10TH, 2020  
OKLAHOMA CITY, OKLAHOMA

REPORTED BY: Lindsey Troiani, CSR

<p style="text-align: right;">Page 2</p> <p>1 BOARD MEMBERS PRESENT:</p> <p>2 James Kinder, Chair</p> <p>3 Tracy Hammon, Vice-Chair</p> <p>4 Perry Barton</p> <p>5 John Easton</p> <p>6 Shannon Ferrell</p> <p>7 David Griesel</p> <p>8 Alexandria Kindrick</p> <p>9 Jan L. Kunze</p> <p>10 Tim Munson</p> <p>11 Michel Paque</p> <p>12 BOARD MEMBERS ABSENT:</p> <p>13 Kenneth Hirshey</p> <p>14 Billy Sims</p> <p>15 Steve Mason</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 MR. KINDER: Well, good morning. Glad to see</p> <p>2 everyone here. This is a strange path and strange</p> <p>3 place. And I just want to make sure everybody had a</p> <p>4 chance to come in that needs to be here. So I'm going</p> <p>5 to call the meeting to order today. The November 10th,</p> <p>6 2020, regular meeting of the Environmental Quality</p> <p>7 Board has been called according to the Oklahoma</p> <p>8 Meetings Act, Section 311 of Title 25 of the Oklahoma</p> <p>9 Statutes. Notice was filed with the Secretary of State</p> <p>10 on October 16th, 2019. Agenda's were e-mailed to</p> <p>11 interested parties October 21st, 2020, and were posted</p> <p>12 at the DEQ and the former Sandridge building on</p> <p>13 November 9th, 2020.</p> <p>14 Only matters appearing on the posted agenda</p> <p>15 may be considered. After today's meeting is adjourned,</p> <p>16 there will be a public forum. If you would like to</p> <p>17 speak during the public forum, please sign up to do so</p> <p>18 at the table just outside the auditorium. I will then</p> <p>19 call on you when it's time to speak.</p> <p>20 I would like to mention that we are adhering</p> <p>21 to recommended safety precautions as related to the</p> <p>22 COVID-19 pandemic. Masks will be worn by everyone at</p> <p>23 all times and we ask that you keep a minimum of six</p> <p>24 feet between yourself and others. We have measured to</p> <p>25 ensure that all board members are approximately</p>
<p style="text-align: right;">Page 4</p> <p>1 distanced and for the public. We have marked off every</p> <p>2 other row and left three seats between each seat open.</p> <p>3 When we break for executive session, the</p> <p>4 board members will remain in the auditorium and the</p> <p>5 public may adjourn to the outdoor lobby or across the</p> <p>6 way to the bottom floor of the adjacent tower. During</p> <p>7 this time, we implore you to remain socially distanced</p> <p>8 and to wear your mask.</p> <p>9 Well, thank you, everyone, for being here.</p> <p>10 Thank the, Board, for being here. I'm glad to see</p> <p>11 everyone that can make it. I apologize for you all</p> <p>12 being polled so many times, but I wanted to make sure</p> <p>13 that we had a quorum when we showed up, and, hopefully,</p> <p>14 we will have.</p> <p>15 I will say that I have lived through the 70s,</p> <p>16 the 80s, the 90s, the decade the Aught's, the Teens,</p> <p>17 and now I can proudly proclaim I've lived through the</p> <p>18 months of 2020. We do live in interesting times. And</p> <p>19 so with that, thank you for being here.</p> <p>20 A couple of housekeeping chores. I'm told</p> <p>21 that the exits are at the back of the auditorium and so</p> <p>22 are the restrooms, and so if anyone needs to make</p> <p>23 yourselves available for that.</p> <p>24 Thank you, everyone, for being here. Thank</p> <p>25 you for wearing your masks. Things are kind of ramping</p>	<p style="text-align: right;">Page 5</p> <p>1 up. Thank you, Secretary Wagner for being here today.</p> <p>2 We're going to call on you in a little bit to add to</p> <p>3 the program if you don't mind. And it's always nice to</p> <p>4 have the Secretary here to give his input.</p> <p>5 With that, I think we'll have a roll call</p> <p>6 from Quiana.</p> <p>7 MS. FIELDS: Mr. Barton?</p> <p>8 MR. BARTON: Here.</p> <p>9 MS. FIELDS: Mr. Easton?</p> <p>10 MR. EASTON: Here.</p> <p>11 MS. FIELDS: Dr. Ferrell?</p> <p>12 DR. FERRELL: Here.</p> <p>13 MS. FIELDS: Mr. Griesel?</p> <p>14 MR. GRIESEL: Here.</p> <p>15 MS. FIELDS: Dr. Hammon?</p> <p>16 DR. HAMMON: Here.</p> <p>17 MS. FIELDS: Mr. Hirshey is absent.</p> <p>18 Ms. Kendrick?</p> <p>19 MS. KENDRICK: Here.</p> <p>20 MS. FIELDS: Ms. Kunze?</p> <p>21 MS. KUNZE: Here.</p> <p>22 MS. FIELDS: Mr. Mason is absent.</p> <p>23 Mr. Munson?</p> <p>24 MR. MUNSON: Here.</p> <p>25 MS. FIELDS: Mr. Paque?</p>



<p style="text-align: right;">Page 6</p> <p>1 MR. PAQUE: Here.</p> <p>2 MS. FIELDS: Mr. Sims is absent. Mr. Kinder?</p> <p>3 MR. KINDER: Here.</p> <p>4 MS. FIELDS: We have a quorum.</p> <p>5 MR. KINDER: Thank you, Quiana. And like I</p> <p>6 said, thank you, Board, for being here so we can take</p> <p>7 care of some needed business. We have -- you know,</p> <p>8 been having some Zoom calls, and I note that there are</p> <p>9 limitations with the Zoom calls. And later on today,</p> <p>10 we're going to go into executive session, and it just</p> <p>11 makes it -- in-person makes this a little bit easier in</p> <p>12 person to go into executive session.</p> <p>13 So next on the agenda is we have approval of</p> <p>14 minutes that were sent out from our September 15th</p> <p>15 meeting. And so I'm open for a motion to approve those</p> <p>16 minutes as mailed.</p> <p>17 MR. PAQUE: So move.</p> <p>18 DR. HAMMON: Second.</p> <p>19 MR. KINDER: We've got a motion and second.</p> <p>20 Roll call, please?</p> <p>21 MS. FIELDS: Mr. Barton?</p> <p>22 MR. BARTON: Yes.</p> <p>23 MS. FIELDS: Mr. Easton?</p> <p>24 MR. EASTON: Yes.</p> <p>25 MS. FIELDS: Dr. Ferrell?</p>	<p style="text-align: right;">Page 7</p> <p>1 DR. FERRELL: Yes.</p> <p>2 MS. FIELDS: Mr. Griesel?</p> <p>3 MR. GRIESEL: Yes.</p> <p>4 MS. FIELDS: Dr. Hammon?</p> <p>5 DR. HAMMON: Yes.</p> <p>6 MS. FIELDS: Ms. Kendrick?</p> <p>7 MS. KENDRICK: Yes.</p> <p>8 MS. FIELDS: Ms. Kunze?</p> <p>9 MS. KUNZE: Yes.</p> <p>10 MS. FIELDS: Mr. Munson?</p> <p>11 MR. MUNSON: Yes.</p> <p>12 MS. FIELDS: Mr. Paque?</p> <p>13 MR. PAQUE: Yes.</p> <p>14 MS. FIELDS: Mr. Kinder?</p> <p>15 MR. KINDER: Yes.</p> <p>16 MS. FIELDS: Motion passed.</p> <p>17 MR. KINDER: Thank you, everyone. Next up on</p> <p>18 our agenda, Item No. 5, is Rob Singletary, our general</p> <p>19 counsel, will give a disclosure, I guess, a report.</p> <p>20 MR. SINGLETARY: Good afternoon, Mr. Chairman</p> <p>21 and members of the board -- or good morning I should</p> <p>22 say.</p> <p>23 Section 23.101(c) of the Environmental</p> <p>24 Quality Code requires all DEQ employees involved in the</p> <p>25 reviewing, issuing, and enforcing of permits to</p>
<p style="text-align: right;">Page 8</p> <p>1 disclose any financial interest that they hold in</p> <p>2 entities regulated by the agency. All DEQ employees</p> <p>3 are required to make initial disclosures when they</p> <p>4 begin working for the agency and to update those</p> <p>5 disclosures annually if there is a material change in</p> <p>6 their financial interest. We, the Agency, are then</p> <p>7 required by statute to annually submit these</p> <p>8 disclosures to the Board.</p> <p>9 This year, we have two employees that updated</p> <p>10 their disclosures. Cristi Andrews with the General</p> <p>11 Counsel's Office has indicated ownership of stock in</p> <p>12 Continental Resources Incorporated; and Steve Reid from</p> <p>13 the Water Quality Division has indicated ownership of</p> <p>14 stock of Oklahoma Gas and Electric. Neither of these</p> <p>15 employees are allowed to work on permits or enforcement</p> <p>16 matters related to the entities in which they have a</p> <p>17 financial interest and their supervisors have been</p> <p>18 informed.</p> <p>19 No other updates were received this year so</p> <p>20 all previous disclosures remain in effect. Thank you.</p> <p>21 MR. KINDER: Thank you very much. No action</p> <p>22 has to be taken, but we just need to have that</p> <p>23 disclosure. Thank you for taking care of that.</p> <p>24 Next is something that we've been kind of</p> <p>25 putting off, not for us, because we wanted to be sure</p>	<p style="text-align: right;">Page 9</p> <p>1 we did this emergency rule-making justice. Brian</p> <p>2 Duzan, thank you for coming here today. It looks like</p> <p>3 you guys have been busy for about a year now working on</p> <p>4 this.</p> <p>5 MR. DUZAN: Yes, we have. On September 22nd,</p> <p>6 2020, the Water Quality Advisory Council met and</p> <p>7 approved changes to OAC 252:641, individual and small</p> <p>8 public on-site sewage treatment systems. These changes</p> <p>9 were presented in compliance with the emergency</p> <p>10 rule-making process by environmental complaints and</p> <p>11 local services.</p> <p>12 This emergency action is due, in part, to</p> <p>13 House Bill 3461, which was presented to the 2020</p> <p>14 legislature; however, due to the health emergency of</p> <p>15 2020, the House Bill did not become a law.</p> <p>16 As we continue to evaluate many of the</p> <p>17 proposed changes, it became apparent that these</p> <p>18 amendments would address a perceived prejudice to the</p> <p>19 public interest as it relates to their ability to make</p> <p>20 use of their property. These proposed changes will</p> <p>21 allow Oklahomans more freedom in use of their property</p> <p>22 and continue to provide for the protection of human</p> <p>23 health and the environment.</p> <p>24 These changes being presented today for the</p> <p>25 board approval include a new definition of manufacture</p>

<p style="text-align: right;">Page 10</p> <p>1 media systems, the removal of the definition of 2 chamber, and the amendment to the definition of Zone 1. 3 Language is also being proposed that will establish an 4 optimum reduction in sizing for conventional subsurface 5 absorption systems for parts of the state and a sizing 6 equivalent for all manufactures' media systems. 7 The final proposed changes will include 8 sizing amendments for local treatment systems, the 9 establishment of small public aerobic system disbursal 10 sizing, and the update of the related appendices. 11 And so that's kind of what we're at and 12 if you have any questions, if you have any technical 13 questions, we have Nicholas Huber here from the DEQ. 14 So that's where we're at now. 15 MR. KINDER: Okay. Thank you very much. Any 16 questions by the board? I understand this is kind of 17 modeled off of Kansas, some of this stuff that we're 18 seeing today? 19 MR. DUZAN: Correct. And as I said, most of 20 this stuff has probably already been through the board 21 previous, and we'll be back, I think, in January for 22 permanent rule making. 23 MR. KINDER: No questions from the board? 24 Any questions or comments from the public? 25 (No response.)</p>	<p style="text-align: right;">Page 11</p> <p>1 MR. KINDER: Seeing none, I will have 2 possible action by the board. 3 MR. FERRELL: Motion to approve. 4 MR. GRIESEL: Second. 5 MR. KINDER: We've got a motion to approve 6 and a second. Okay. Quiana, roll call? 7 MS. FIELDS: Mr. Barton? 8 MR. BARTON: Yes. 9 MS. FIELDS: Mr. Easton? 10 MR. EASTON: Yes. 11 MS. FIELDS: Dr. Ferrell? 12 DR. FERRELL: Yes. 13 MS. FIELDS: Mr. Griesel? 14 MR. GRIESEL: Yes. 15 MS. FIELDS: Dr. Hammon? 16 DR. HAMMON: Yes. 17 MS. FIELDS: Ms. Kendrick? 18 MS. KENDRICK: Yes. 19 MS. FIELDS: Ms. Kunze? 20 MS. KUNZE: Yes. 21 MS. FIELDS: Mr. Munson? 22 MR. MUNSON: Yes. 23 MS. FIELDS: Mr. Paque? 24 MR. PAQUE: Yes. 25 MS. FIELDS: Mr. Kinder?</p>
<p style="text-align: right;">Page 12</p> <p>1 MR. KINDER: Yes. 2 MS. FIELDS: Motion passed. 3 MR. KINDER: Thank you. Okay. I've been 4 told that there is going to be a presentation -- a 5 video presentation and the screen's going to come down 6 from up above and we're going to have to come off the 7 stage and sit -- come down and sit in the gallery. And 8 so because of that, and we're going to have to do this 9 twice, so I'm going to try to do it once. So I'm going 10 to move Item 7 down to behind Kathy's financial report. 11 And that's just to make it easier for the 12 board so we won't be jumping up back and forth and down 13 the stage just to kind of be clear there. So if you're 14 following along, we're going to move No. 7 down to 15 below 9. 16 So with that, we'll just ask for the 17 executive report, Scott, and I'm going to turn it over 18 to you and you can give your report, please. 19 MR. THOMPSON: All right. Thank you. Well, 20 obviously, we continue to deal with COVID-19 impacts. 21 The central office and local offices remain mostly 22 closed outside certain people that really needed to be 23 there and get something directly. 24 But we've also granted extensions to a number 25 of licenses that were expiring and tried to work around</p>	<p style="text-align: right;">Page 13</p> <p>1 the fact that we couldn't get in-person training 2 anymore, at least for a while. And many of those 3 extensions are now expiring. 4 As you may be aware, one of the things that 5 happened recently is -- well, this year, of course, 6 that the legislature passed some statute that allowed 7 for a lot of cases of the Open Meetings Act to allow 8 virtual meetings and those are expiring this month. 9 So we still have some latitude through the 10 Governor's executive order, but you know, I don't 11 expect that to get changed much until maybe this 12 session and then we'll return more opportunities for 13 virtual meetings. There's still some capacity to do 14 that, but it's more complicated than when we did it the 15 last time. So that remains to be seen how exactly that 16 will shake out now. 17 You know, we're still processing drinking 18 water samples. Our lab is still operating. And there 19 was kind of a lull during the beginning of the 20 pandemic, but things are going strong now. And so I 21 think we have quite a few samples in and it's not as 22 easy to run shifts because of the sample load as it was 23 earlier. So we're just trying to deal with that and 24 that's one of our primary goals is to minimize the 25 exposure to workplace to laboratory folks but keep the</p>

<p style="text-align: right;">Page 14</p> <p>1 laboratory function in as long as possible as well as 2 possible.</p> <p>3       So we're still, I believe, in the 4 neighborhood about 80 percent or mostly working 5 remotely, but anybody can come into the office and get 6 anything they need. So they will come to the office to 7 make sure that they have adequate information resources 8 to get their job done. But roughly about 20 percent 9 are in the office routinely in the lab and finance and 10 a few other folks.</p> <p>11       So -- and given the state of the COVID 12 impacts right now, I don't see that changing. We do 13 not have a definite plan for when to, kind of, move 14 back to a normal workplace. We're just going to base 15 it on the way things are going.</p> <p>16       We are continuing to process permit 17 applications. I think water, in particular, is seeing 18 some improvement in permit timelines as long as our IT 19 stuff is functioning. And I think we're still 20 currently, this week, have a server that's been acting 21 up for several weeks and trying to get that switched 22 over to a different sever. So when that happens, I 23 think it will improve things, but to the degree we can, 24 I think the work is getting done pretty well.</p> <p>25       And ECLS continues to respond to complaints,</p>	<p style="text-align: right;">Page 15</p> <p>1 requests for services. You know, invoices and payments 2 are being processed still. We're still answering 3 records requests and we're handling that in an 4 appropriate manner and timely manner.</p> <p>5       And so for the pandemic response assistance, 6 we were asked to work with OSDH, OU, the OU Health 7 Science Center to identify and track any existence of 8 the COVID virus as it relates to water. So we have 9 contributed to those folks to help and track the 10 quantity, help identify hot spots where you might do 11 more intensive following-up testing.</p> <p>12       The testing is currently being done at OU in 13 Norman, the OU Health Science Center campus in 14 Anadarko, and also the City of OKC.</p> <p>15       The Department of Corrections has experienced 16 several outbreaks and so they recently sought the 17 assistance from OSDH who asked us for input onto that 18 to assist with monitoring COVID. And, you know, we 19 don't have necessarily all the equipment we would need 20 to run that specific test, but we run similar tests. 21 So our folks have kept up with how that testing is 22 being done so we can provide some assistance.</p> <p>23       Shellie Chard worked with the Water 24 Environment Federation folks to arrange for their chief 25 medical officer and the CDC to meet with the Oklahoma</p>
<p style="text-align: right;">Page 16</p> <p>1 team on this stuff. And CDC is looking for state 2 partners to assist with monitoring rural areas, travel 3 facilities, and areas designated as disadvantaged.</p> <p>4       So some of the other things that are going 5 on, we are still heavily engaged in national 6 organizations. And, you know, most of those meetings 7 are continuing virtually across the country. In fact, 8 in a way, it seems like there's more meetings than 9 perhaps during the normal year. So Secretary Wagner's 10 over there smirking because he gets to attend a bunch 11 of those meetings as well.</p> <p>12       And Shellie has been selected to serve on the 13 Board of Trustees for the Water Environment Federation, 14 which is great. They're a not-for-profit technical 15 and educational organization of 35,000 folks, 75 member 16 associates -- associations representing water quality 17 professionals around the world. They have been around 18 since 1928 working on public health and the 19 environment.</p> <p>20       And, you know, their mission is connect water 21 professionals; enrich the expertise of water 22 professionals; and to increase the awareness of the 23 impact and value of water. And I'm sure that most of 24 us here can relate to that. And they also provide a 25 platform for water sector innovation.</p>	<p style="text-align: right;">Page 17</p> <p>1       In the Land Division, Tom Bergman is the 2 president of the National Association SARA Title III 3 Program Officials. And that's an organization of State 4 and Tribal Emergency Response Commissions, the Local 5 Emergency Planning Commissions, federal agencies and 6 industries committed to the safe handling and storage 7 or hazardous materials.</p> <p>8       So Tom has done a great job in that program, 9 and he's been a national leader in that for many, many 10 years. Tom and another state person are on a beta 11 testing team for a lot of the software. And unlike 12 most government projects that involve programming 13 software, Tom and the other state representative, work 14 directly with NOAA and an EPA person. And whenever they 15 recommend changes to the programs so we could sort the 16 data a different way and we could do this, it can get 17 done in, like, three weeks.</p> <p>18       They can put the tests out there, test it, 19 and if it really works well or if they need to tweak 20 it, they can go fight over it in a very short period of 21 time without having to pay millions of dollars and take 22 a year or two. So that's just outstanding.</p> <p>23       And Tom -- I've heard a lot from local folks 24 about the service that Tom provides to both the local 25 government entities as well as industry in terms of</p>

<p style="text-align: right;">Page 18</p> <p>1 trying to work with SARA Title III.</p> <p>2 So in the lab, Kyle Welser is on the</p> <p>3 executive committee of NELAC, the Institute for</p> <p>4 Laboratory Accreditation System and the NELAP</p> <p>5 Accreditation Council.</p> <p>6 Chris Armstrong is a member of the American</p> <p>7 Public Health Laboratory. Jeff Armstrong -- that's a</p> <p>8 typo. I'm assuming it's Jeff Franklin, the assistant,</p> <p>9 of the lab is an affiliate member of the North American</p> <p>10 Waste Management Society.</p> <p>11 Jay Wright is our lead technical</p> <p>12 representative on Natural Resources Data Assessment</p> <p>13 Plans, which the separate area is the trustee for that.</p> <p>14 And so our folks contribute greatly to try and work on</p> <p>15 those issues. And most of our lab staff are members of</p> <p>16 one of those organizations.</p> <p>17 This last year, we instituted the Community</p> <p>18 Program where funding of local governments help</p> <p>19 revitalize old government buildings that contain lead</p> <p>20 paint or asbestos, most likely the armory projects.</p> <p>21 And so we're soliciting applications and those are</p> <p>22 currently being accepted. So we expect to make the</p> <p>23 next set of selections by July 1st of next year,</p> <p>24 assuming funding is still there.</p> <p>25 We had a major milestone where we celebrated</p>	<p style="text-align: right;">Page 19</p> <p>1 our 20th anniversary of becoming a Nuclear Regulatory</p> <p>2 Commission agreement state that gave us the authority</p> <p>3 to license and regulate most radioactive material use</p> <p>4 in Oklahoma in lieu of the NRC.</p> <p>5 Our program, again in 1966, when Governor</p> <p>6 Bellmon notified NRC of our intent to become a green</p> <p>7 state, but it took a number of years for us to actually</p> <p>8 achieve that status. And so I believe it was, you</p> <p>9 know, in 2000 that we were actually in a pretty good</p> <p>10 state.</p> <p>11 So, recently, we received a Reason 6 Data</p> <p>12 Quality award for excellence in recording as a result</p> <p>13 of water quality in the laboratory working diligently</p> <p>14 to ensure drinking water data recorded to EPA is of the</p> <p>15 highest quality. I think that's really important. You</p> <p>16 cannot make good decisions with bad data. It is really</p> <p>17 critical to get the best data that we can.</p> <p>18 Other things that have happened, we were part</p> <p>19 of the Strategic Alliance Agreement with the Office of</p> <p>20 the Secretary of Environment and Energy, the Oklahoma</p> <p>21 Water Resources Board, the Oklahoma Rural Water</p> <p>22 Association to get together and work to help Oklahoma's</p> <p>23 rural and small community water systems upgrade their</p> <p>24 aging infrastructure, to solve problems basically.</p> <p>25 That's the program that we have gone out and</p>
<p style="text-align: right;">Page 20</p> <p>1 got great return on investment for the legislature to</p> <p>2 solve leaks in systems, to the extent and in many cases</p> <p>3 they don't need to look for additional water supplies</p> <p>4 or new sources of water or spend great amount of money</p> <p>5 on a new treatment plant because they have adequate</p> <p>6 water and they have adequate treatment, they just</p> <p>7 didn't know how much of it they were losing. So that's</p> <p>8 really a great partnership with a lot of teamwork</p> <p>9 between those entities to do that.</p> <p>10 You know, in FY 2020, we had three systems go</p> <p>11 through the Long-Range Sustainability Program:</p> <p>12 Cherokee Rural Water District 7, Lincoln Rural Water</p> <p>13 District 4, and Dewar -- which if you know where Dewar</p> <p>14 is, it's just north of Henryetta, you don't feel like</p> <p>15 you've even left Henryetta.</p> <p>16 We conducted 32 water loss audits over the</p> <p>17 past year. That nets, like, two billion gallons per</p> <p>18 year in real loss and 130 million gallons per year in</p> <p>19 loss in accurate water meters, DAFT data management,</p> <p>20 etc.</p> <p>21 So the leak detection that was conducted at</p> <p>22 ten public water supply systems has resulted in those</p> <p>23 systems who actually repaired some of those resulting</p> <p>24 in a savings valued at about \$319,600-something. And</p> <p>25 if they didn't fix those, that would be an annualized</p>	<p style="text-align: right;">Page 21</p> <p>1 loss. So this really has an impact.</p> <p>2 We worked on 17 rate studies. And this is</p> <p>3 really important because rural water folks are out</p> <p>4 there teaching these systems, how to actually conduct</p> <p>5 the business of managing their system and planning and</p> <p>6 making sure that their rates are reasonable and that</p> <p>7 they're going to be able to afford and continue to</p> <p>8 maintain the system as opposed to episodically saying,</p> <p>9 oh, we're really behind the eight ball, so we better go</p> <p>10 get one for this one project. It's really going to</p> <p>11 help their system stay sustainable. And I've heard</p> <p>12 some of their discussions with systems and they're</p> <p>13 teaching those guys that they're a forever business.</p> <p>14 They never have a goal to get in what they have to do.</p> <p>15 They have to keep going. So it's important for them to</p> <p>16 really build in good management of their funding.</p> <p>17 So the public water supply systems operation</p> <p>18 improved by 36 percent in the participating systems.</p> <p>19 Seven systems moved from insolvency to physical</p> <p>20 sustainability and we awarded disadvantaged communities</p> <p>21 grants.</p> <p>22 Talking through the mask is kind of a</p> <p>23 challenge to me.</p> <p>24 So over \$1 million was used for</p> <p>25 sustainability improvements in assistance of public</p>

<p style="text-align: right;">Page 22</p> <p>1 water supplies most in need of health. That's 600,000  2 in federal funding and 409,000 in general revenue, so  3 in addition to the money that basically the rural water  4 health is getting from the legislature to expand that  5 program. Our water folks identified some additional  6 federal dollars that we could chase and increase the  7 assistance we could get through these systems.  8 The strategic alliance recognized the need to  9 create awareness for its programs and, you know, get  10 everybody to really work together for planning. We're  11 setting up a joint website I believe.  12 So I think that's a critical change. I don't  13 know of any other state agency in Oklahoma that's ever  14 done such an alliance. And so I think it's an alliance  15 agreement like that. And I think it's really paying  16 off well. We may do some additional things like that  17 in the future.  18 So one program not too many people are aware  19 of, we have a Clean Marina Program that encourages our  20 marinas that are sitting right on our lakes that are  21 very important, not just for the specs, but many of  22 them are water supplies.  23 So we're helping those guys go, you know,  24 address regulatory compliance to protect the lakes.  25 And there's a program from the U.S. Fish and Wildlife</p>	<p style="text-align: right;">Page 23</p> <p>1 Service, the Clean Vessel Act Grant Program and the  2 marinas can apply for grants to help upgrade some of  3 their infrastructure. The reimbursement of grants make  4 federal dollars cover 75 percent of the cost of the  5 approved projects.  6 And for FY 2020, three marinas will receive  7 over \$230,000 in federal funding to upgrade pump-out  8 stations and make other improvements. Two of them are  9 on Lake Tenkiller; one is on Grand Lake.  10 And, currently, we're accepting applications  11 -- or U.S. Fish and Wildlife is, for FY 2021 grants.  12 And six marinas have expressed interest. So we are  13 working with those folks and trying to publicize that  14 and that industry here, again, to get additional  15 resources committed.  16 We recently had an audit from the State  17 Auditor's Office. And some of the findings there are  18 that our divisional licensing process needs improvement  19 to ensure adequate controls are in place and can be  20 easily documented and communicated to include  21 validation of payment prior to licensing issuance,  22 monthly divisional reconciliation of license issuances  23 and payments received to create individual specific  24 license issuance policies and procedures to ensure  25 adequate system reports are in place to communicate</p>
<p style="text-align: right;">Page 24</p> <p>1 status and allow for reconciliation of finance and  2 divisional licensing systems.  3 And responses from divisional staff  4 communication is important and we need additional  5 communication between finance and individual staff.  6 So really part of the key to all of this is  7 that many of our divisions licensing systems are  8 outdated and unable to provide quality information or  9 communicate with the licensing activity, you know,  10 communicate that to management to provide quality  11 information for internal use.  12 So, basically, a lot of our systems are  13 outdated. And that's going to be a challenge because  14 of corrected, updated, new software purchased, etc.,  15 during this time when, you know, we have a lot of  16 financial uncertainty.  17 It's always a challenge anytime we need to  18 get that stuff done. So we'll do what we can to  19 improve those areas, but we may or may not be able to  20 achieve the additional IT fixes that are needed in the  21 short term, but we're going to strive for that.  22 And our agency end reports posted on the DEQ  23 website, you guys may want to take a look at that.  24 And, you know, our graphic artists put that together,  25 Jim Ward and Grant Thompson, and they've done a great</p>	<p style="text-align: right;">Page 25</p> <p>1 job of putting that together as always. So get online  2 and take a look at that when you have the opportunity.  3 Are there any questions?  4 MR. KINDER: Any questions for Scott?  5 (No response.)  6 MR. KINDER: I think this kind of dovetails  7 right into the report a little bit. I was going to ask  8 Secretary Wagner if he would come up and just kind of  9 give an update on what he's been doing the last couple  10 of days and how he's in a phase with the department.  11 SECRETARY WAGNER: Thank you members of the  12 board. It's great to see you all. And as usual, thank  13 you for your service during these tough times.  14 I would love to recognize somebody I consider  15 an integral part of the energy environment team,  16 Assistant Attorney General Jennifer Lewis. She is --  17 we're blessed to have her on our team. She supports us  18 in ways that are very helpful. So thank you, Jennifer.  19 So Scott gave a lengthy report, but I do want  20 to point out that the Water Environment Federation, the  21 WEF, is quite a big deal nationally. And I wasn't very  22 familiar with the organization until I was at EPA. And  23 I can tell you that in the water world, that's one of  24 the biggest, and if not, the most respected. And so  25 for Shellie to be on the board is quite a feather in</p>

<p style="text-align: right;">Page 26</p> <p>1 our cap here in Oklahoma. So I did want to recognize  2 that.</p> <p>3 And I think that's emblematic that the  4 Department of Environment Quality really does have  5 nations-leading division programs and things that are  6 going on here. And we take them for granted, but when  7 you see them nationally where we -- how we do things  8 and how we compare nationally, I think you all can be  9 very proud of how you help administer those programs as  10 the board and the governance of that.</p> <p>11 So what we're doing, I know a lot of tribal  12 relations right now that are going on behind the  13 scenes. I'm particularly gratified that the areas that  14 we are responsible for, you know, ensuring clean air,  15 clean land, and safe and viable drinking water are not  16 political issues. And that's the way this department,  17 this agency has approached that. That's the way that I  18 have approached that with Director Thompson.</p> <p>19 We've continued to foster those relationships  20 both at the, you know, agency personnel level and all  21 the way up to leadership. We recently met with the  22 Creeks and the Quapaw. The Quapaw was more about our  23 super-fun joint project up in Tar Creek, that little  24 project you've seen up there.</p> <p>25 But what we -- the message that you're</p>	<p style="text-align: right;">Page 27</p> <p>1 getting from us is that yes, we did invoke the  2 protections under the safety amendments to continue to  3 regulate non-tribal-owned land and non-tribal trust  4 land as though we did prior to the McGirt decision.</p> <p>5 And my message to them is that -- our message  6 to them is that never before has our cooperation and  7 their input been more valuable. And the way that I say  8 that and the way that I believe it to be true is that  9 if EPA sees a divided tribal and state government, and  10 local government for that matter, then they're going to  11 lose confidence in our ability to understand. And when  12 EPA loses confidence, they come in and impose their  13 will.</p> <p>14 And so these tribes are Oklahomans just like  15 all of us, and so if we can go in with a plan that  16 works for Oklahoma, then EPA is going to have greater  17 confidence in what we do. So we think it's more  18 important than ever to get their input. And I think  19 we're working on, kind of, semi-annual meetings with  20 the tribes, particularly the big five who McGirt tends  21 to be more relevant to.</p> <p>22 And so that's been received quite well. At  23 least, you know, I'm working on hunting and fishing  24 compacts with two of the tribes. Those discussions are  25 going well. We see more commonality than we see areas</p>
<p style="text-align: right;">Page 28</p> <p>1 where we clash. And so I think, you know, there's lots  2 to work on in our tribal and state relationship, but on  3 the environmental side of things, I think we've managed  4 to put politics for the most part behind us.</p> <p>5 And while publicly the tribes don't like that  6 the State invoked the safety protections, I think they  7 understand and they understand that we're not looking  8 to impose our will on their tribal lands, but we want  9 to provide certainty to systems like municipal drinking  10 water systems that may fall within historical  11 preservation boundaries like the city of Tulsa  12 municipal drinking water system or, you know, the  13 Delaware regional system that we so wonderfully got an  14 Aquarius award today, or we at least acknowledged that  15 with EPA today.</p> <p>16 So I think there are good things happening on  17 the tribal front. And Scott is a catalyst in that, so  18 thank you for that. And we're going to continue moving  19 forward in that.</p> <p>20 One of the projects that I love and is dear  21 to my heart is the lead in schools. Brandon Bowman and  22 Shellie and her division has led that effort. And  23 we're teed up to just make a difference here in the  24 state to go and identify all of the areas where  25 vulnerable populations, vulnerable children are exposed</p>	<p style="text-align: right;">Page 29</p> <p>1 to lead for all pathways and we can't get in the  2 schools because of COVID, so it's quite frustrating.</p> <p>3 So, you know, we had a thought that maybe we  4 could do some disinfection consulting at the schools  5 and then test for lead while we were there with CARES  6 money, but unfortunately, that hasn't materialized  7 because the CARES money has been pretty much all spoken  8 for. I'm still, you know, pitching away at that.</p> <p>9 Scott and his team have done a marvelous job.  10 I would be remiss to not recognize the Deputy Secretary  11 Carly Cordell and Stephen Baldridge, our Senior  12 Counsel, are here. They've been working with all the  13 agencies to improve just good government as far as  14 reducing permitting times and visual management, lean  15 management.</p> <p>16 DEQ is the model agency in the state as far  17 as I'm concerned on that. We don't get to tout that  18 because of COVID and people aren't convalescing  19 together, so those are some of the things.</p> <p>20 As far as where DEQ fits as far as, kind of,  21 state agencies being back, I would tell you that we're  22 probably in the upper third. There are some agencies  23 like Public Safety and DHS that, you know, they don't  24 have the capabilities to do as much remotely and so  25 there's a higher level of -- corrections and people</p>

<p style="text-align: right;">Page 30</p> <p>1 like that.</p> <p>2 So the agencies that have a lot of</p> <p>3 discretion, I think DEQ is doing a fine job. You all</p> <p>4 are managing through it. We're not seeing things</p> <p>5 really fall behind the wayside. We're not getting</p> <p>6 criticized by EPA for the work that's being done, which</p> <p>7 I think is important. So I'm pleased to report that I</p> <p>8 find that we're in the well-above average category for</p> <p>9 where we should be.</p> <p>10 Of course, I feel maybe a little inadequate</p> <p>11 talking to Tracy Hammon that Phillips is all the way</p> <p>12 back to work and state government is, you know, 20 to</p> <p>13 30 percent I think is probably the mean of what's going</p> <p>14 on. So we're, you know, managing through it.</p> <p>15 We're on COVID updates every day with the</p> <p>16 Governor. And, you know, I think it's important to</p> <p>17 note that when you look at statistics and people put</p> <p>18 numbers in the paper that they don't really paint the</p> <p>19 whole picture, which is that our state has been</p> <p>20 transacting business nearly in full since April. And</p> <p>21 we tend to be in kind of the middle, which is where we</p> <p>22 are for population. We kind of fit that category.</p> <p>23 So I'm proud of the fact that we're trying to</p> <p>24 protect our citizens and keep our economy running. I</p> <p>25 think there's a delicate balance, and I think we're</p>	<p style="text-align: right;">Page 31</p> <p>1 managing through that and DEQ's a big part of that.</p> <p>2 I would be happy to take any questions of</p> <p>3 things. That's kind of a rambling short. I wasn't</p> <p>4 really anticipating giving a post-mortem of the year.</p> <p>5 But I am every day thankful for our state employees</p> <p>6 that protect human health and the environment. And</p> <p>7 they do it willingly. They -- you know, I really have</p> <p>8 it better than all the other cabinet members.</p> <p>9 MR. KINDER: Thank you very much. Any</p> <p>10 questions? What a glowing report actually. Of course,</p> <p>11 it's something that I've been hearing also, so it's</p> <p>12 nice to hear it from someone else that things are on</p> <p>13 task and it's also great to hear that the staff filling</p> <p>14 national positions of leadership in their fields that</p> <p>15 they're in. It makes us feel good that Oklahoma is a</p> <p>16 top ten state.</p> <p>17 SECRETARY WAGNER: Yes. And I can tell you,</p> <p>18 I don't get called to the principal's office very</p> <p>19 often, which is, I think, a testament to the fact that</p> <p>20 our environmental quality is good and that our people</p> <p>21 take care of business. And I don't like getting called</p> <p>22 to the principal's office.</p> <p>23 MR. KINDER: Thank you very much.</p> <p>24 SECRETARY WAGNER: Thank you.</p> <p>25 MR. KINDER: I don't like taking phone calls</p>
<p style="text-align: right;">Page 32</p> <p>1 either, so that's good. So we're going to -- Kathy, I</p> <p>2 think we're going to have you come up and I think that</p> <p>3 we need to probably disperse to the first couple of</p> <p>4 rows. Is that correct? Okay. So make your way off to</p> <p>5 the seats below.</p> <p>6 MS. AEBISCHER: Good morning. Well, we</p> <p>7 finished the first quarter of this fiscal year, so I'm</p> <p>8 going to report on the status from that.</p> <p>9 I would just like to kind of give you some</p> <p>10 more background on the audit. We're considered a low</p> <p>11 risk agency just because of previous audits. And so we</p> <p>12 were supposed to get audited, like, three years ago.</p> <p>13 And then if you remember, the Department of Health went</p> <p>14 through some of their issues.</p> <p>15 So we finally got selected and they audited</p> <p>16 us for six years worth, so that's my whole tenure. But</p> <p>17 it was a really good audit. I'm proud of my staff.</p> <p>18 You should be proud of the financial management of the</p> <p>19 agency because they didn't find any instance of any</p> <p>20 issue, but they just felt that some of the divisional</p> <p>21 licensing systems need some more reporting and some</p> <p>22 things in it.</p> <p>23 So I just wanted to kind of highlight that,</p> <p>24 but I'm very proud of my staff because that was really</p> <p>25 the only finding we had.</p>	<p style="text-align: right;">Page 33</p> <p>1 Also, if you remember Director Thompson</p> <p>2 indicated that because of the current situation, pretty</p> <p>3 much all state agencies extended due dates for</p> <p>4 licenses, also did not charge any late fees. So we</p> <p>5 were kind of concerned of what the first quarter would</p> <p>6 look like. And, actually, I am pretty surprised and</p> <p>7 glad because we've really -- in total, the net, we're</p> <p>8 about 173,000 less if we compare it to last year, which</p> <p>9 I think with the situation we're in, I am very</p> <p>10 surprised.</p> <p>11 I also looked, we just closed October and</p> <p>12 we're continuing to gain on that and I think we're just</p> <p>13 a net 50,000. So very, very glad and kind of impressed</p> <p>14 that people are still paying and the revenues are still</p> <p>15 coming in. In some areas, we're actually getting more</p> <p>16 revenue than we have in previous years.</p> <p>17 So only -- the lab is 300,000 over what</p> <p>18 they've collected last year. And something about that,</p> <p>19 last year was the best year for our lab. So continuing</p> <p>20 to watch them, but surprisingly the revenue's coming</p> <p>21 in. And also as Director Scott indicated, they're at</p> <p>22 the office, they're working at about 80 percent trying</p> <p>23 to manage the workload and bringing in the revenue for</p> <p>24 their division.</p> <p>25 ECLS is also collecting more funds than if we</p>

<p style="text-align: right;">Page 34</p> <p>1 compare it to last year. Some of their funding sources 2 -- I don't know if it was because of the extra payments 3 we got in taxpayers if people are putting in septic 4 tanks or spending that money on that, but their revenue 5 is also more than compared to last year. 6 Our air is 300,000 less, but that's because 7 some of the agencies are paying later. They're taking 8 advantage and having to pay their payments a little bit 9 later. And as I looked at October, that's catching up. 10 So and then water, we have some funding 11 sources that are less than last year. So just kind of 12 with the economy watching what happens with that. 13 And land, they're about 200,000 less. But 14 when I was looking at that, it's a timing issue. We 15 had a delay from '19 that rolled into '20. So they 16 look like they're doing good too. 17 Our expenditures, if you look at our budget 18 of 103, the carryover of 285, if you remember last 19 fiscal year, the legislature gave DEQ additional funds 20 to purchase lab equipment. Part of that lab equipment, 21 we had some bid delays so it pushed the actual purchase 22 into this year, but that's moved. But that's what the 23 285,000 we just carried over those funds into this 24 year. 25 Expenditures have been a little bit slow just</p>	<p style="text-align: right;">Page 35</p> <p>1 because of the situation we're in, but everything looks 2 good. I don't see any issues. 3 And these are the expenditures based on 4 funding sources. Again, everything is going as 5 planned. A little bit behind, but it's due to the 6 situation that we're currently in with getting 7 contractors and getting our projects going. 8 So that's the results of the first quarter. 9 Anybody have any questions? 10 MR. KINDER: Any questions? 11 (No response.) 12 MR. KINDER: Okay. This is just for 13 informational purposes only, so it doesn't take any 14 board action. Thank you very much. It does -- Kathy, 15 you've got to feel good that anytime you have something 16 like COVID shows up and your budget that you put 17 together a year prior to actually kind of came together 18 and you made some of your -- actually did better than 19 you thought you were going to. And it's always great 20 because we had new rules this year. So it's good to 21 see that financially we got pretty close. Thank you 22 very much. 23 Next, we're going to have Jimmy Givens to 24 give us an Annual Environmental Quality report that 25 will require action. I think what I'll do is, Jimmy,</p>
<p style="text-align: right;">Page 36</p> <p>1 you get finished with your report, I'll ask the board 2 if they have any questions, and then we'll go up for 3 any possible action. 4 MR. GIVEN: Thank you, Mr. Chairman, members 5 of the board, and those in the audience. If you're not 6 familiar with the Environmental Quality Report, it is 7 required by statute that each year we, basically, take 8 a look ahead. We're trying to kind of predict what's 9 coming down the pike. 10 Every four to eight years that becomes a 11 little bit more difficult and we're in one of those 12 years. But I will say that even when we have a change 13 in administration, there is a certain impetus behind 14 what is already going on. It's kind of like a ship, 15 you can't turn it on a dime. So even some of the 16 things that we're talking about here, if they might 17 change to some degree, probably are not going to change 18 greatly over the course of the next few years. 19 Let me also mention that I will be brief. I 20 know this is a meeting where we don't want it to be 21 more protractive than necessary. I want to answer 22 whatever questions we have, but I will go through this 23 rather quickly. If there are any questions that are 24 such that you feel your approval of the report would be 25 dependent on answering them, we will certainly, even if</p>	<p style="text-align: right;">Page 37</p> <p>1 we have to take a recess for a minute and find out the 2 answer for you if it's more a matter of curiosity or 3 something we can cover later, we may tell you that 4 we'll have to get back to you on that if we don't know 5 the answer offhand. 6 By statute, there are three parts to the 7 Environment Quality Report, one is the budget request. 8 We really don't have to cover that again because you 9 approved that in September. Federal mandates looks at 10 what is coming along that we predict will have a fairly 11 major impact on DEQ and on environmental matters within 12 the state. And then legislative recommendations is 13 simply what we as DEQ are proposing to take to the 14 legislature as possible request bills. 15 As I mentioned, the budget request was 16 already approved in September and we are looking at 17 asking for \$8 million for FY22 which will begin on July 18 1st of calendar year 2021. That's about a million 19 dollars more than what -- or about 20 800-some-odd-thousand more than what we got this year, 21 mostly for trying to fill some positions that need to 22 be filled and is about the same as what we got two 23 fiscal years ago -- or I should say last fiscal year. 24 Federal mandates, what are we looking at the 25 EPA is working on or has worked on that we're now</p>



<p style="text-align: right;">Page 38</p> <p>1 responsible for. We divided it up by major divisions.  2 First of all, the air quality, you already probably  3 know about the Volkswagen Mitigation Trust. That is  4 part of the settlement with the federal government that  5 some funding goes to the states and we are receiving,  6 over the course of several years, about a little over  7 \$20 million.  8 The first round of that is going to  9 alternative fuels in school buses and for electric  10 charging infrastructure throughout the state. We're  11 well down the road on getting some of that work done.  12 The next round will be looking more at trucks  13 and buses and the work process is just getting started  14 on that.  15 Ozone is always something of interest in  16 Oklahoma. We, fortunately, have had a couple of pretty  17 good years now, a couple pretty good summers. So we  18 are sitting in good shape. As you well know, it only  19 takes one bad summer to throw us kind of off kilter,  20 but so far so good on ozone.  21 Regional haze, we have another report due in  22 July of 2021 about how we are progressing to make sure  23 that there's no visibility impairment or to take care  24 of any visibility impairment in the Wichita Mountains  25 area. That's the one class, one area in Oklahoma. We</p>	<p style="text-align: right;">Page 39</p> <p>1 expect to meet that reasonable progress goal submittal  2 end of summer of next year.  3 The ACE Rule, the Affordable Cleaning Energy  4 Rule replaced the Clean Power Plan. It is more inside  5 of the fence focused. We also have a submittal due on  6 it in the relatively near future in July of 2022 and we  7 believe we are on target to meet that. Whether there  8 will be any changes to this rule under the apparent new  9 administration, we do not know yet. We will have to  10 see if that will change anything about what we have to  11 do upon our state implementation plan submittal.  12 With respect to our Land Protection Division,  13 just a few things I want to mention. Many of you know  14 that we were the first state in the nation to get  15 approval for our coal combustion residual program  16 delegated from EPA. There have been some changes at  17 the EPA level, because of court rulings primarily. So  18 we're going to be coming back to you in the foreseeable  19 future probably for some rule changes to match what EPA  20 has done in that regard.  21 Superfund, boy, if you've been paying  22 attention at all in the environmental arena, you know  23 that the big deal right now is PFAS. And you will see  24 at least three different mentions in this update about  25 PFAS chemicals.</p>
<p style="text-align: right;">Page 40</p> <p>1 First that was mentioned here on your land  2 protection is, it will affect cleanups. EPA has some  3 screening levels and PRGs, Preliminary Remediation  4 Goals, that they've come out with. And that will  5 impact what we look at when we're trying to evaluate  6 cleanups in superfund sites or other sorts of  7 remediation sites. We don't know exactly how that will  8 play out, but that's something we are going to have to  9 take into account.  10 Likewise, toxic release inventory, there are  11 172 PFAS chemicals that have been added to that. We do  12 not yet know how many facilities in Oklahoma that will  13 affect, but we will be finding that out over the course  14 of the next several months.  15 And then I'll combine water quality, the lab,  16 and ECLS because so much of what you're talking about  17 here, while it's water quality driven, it affects all  18 three of these divisions.  19 First of all, the Effluent Limitation  20 Guidelines for Oil and Gas, E&amp;P, we will become -- DEQ  21 will become the permitting authority when Region 6  22 approves that delegation. We don't yet know when that  23 will happen. We're making progress on that, but we  24 will have to take into account those ELGs when we issue  25 discharge permits for oil and gas E&amp;P discharges.</p>	<p style="text-align: right;">Page 41</p> <p>1 Water Reuse Action Plan is not a mandate. It  2 is something, though, that is being working on at the  3 national level that we were heavily involved in. EPA  4 finalized their plan in February and I would say that  5 Oklahoma -- and this is one of those areas where we're  6 ahead of the curve because we were already working and  7 had already accomplished much on aquifer storage and  8 recover non-potable reuse, indirect potable reuse. All  9 of those have rules in place now will continue to  10 develop over time and we already had rules in place on  11 all of those.  12 Revised Lead and Copper Rule could literally  13 come out any day now. That is going to look at lines,  14 the corrosion of lines that produce higher lead  15 concentrations in drinking water. That will be  16 something that will impact several systems, maybe many  17 systems in our state probably. Not as bad as some  18 other states, but it is something that we will have to  19 implement as well.  20 Microbial and Disinfection Byproducts Rules,  21 these are a series of rules that EPA is looking at.  22 Again, we don't know exactly what will come out and we  23 don't know whether it will be effected by the election  24 or not. But we do know that they're looking especially  25 at disinfection byproducts more closely. I think it's</p>

<p style="text-align: right;">Page 42</p> <p>1 possible some additional byproducts would be added to  2 the list of things that are regulated. That remains to  3 be seen.</p> <p>4 The next couple of names I want to mention  5 are congressional actions, American's Water  6 Infrastructure Act, and I know that Secretary Wagner  7 already alluded to lead testing in schools and  8 daycares. This, again, is not mandatory but it is high  9 on the list of important things for us to be taking a  10 look at. As you can imagine, there is not more  11 critical place to be looking for lead than in schools  12 and daycares because younger kids are most impacted.</p> <p>13 We've done the pilot program, and as  14 Secretary Wagner mentioned, there will have to be more  15 funding to really go pull more on that. So we will be  16 looking for opportunities to get funding to really  17 implement that on a widespread scale.</p> <p>18 A couple of other things that I'm not going  19 to spend any time on, they relate primarily to smaller  20 water systems, asset management plans, risk and  21 resilience assessments. What they're trying to do is  22 make sure that these smaller systems have the capacity  23 both to maintain their infrastructure to do the  24 planning that's necessary to make sure that they know  25 what needs to be fixed and kept up to date and all that</p>	<p style="text-align: right;">Page 43</p> <p>1 sort of thing and how do they recover when something  2 bad happens.</p> <p>3 And this is something that they require a lot  4 of assistance with, understandably. So, again, this is  5 part of the AWIA that we will be spending quite a bit  6 of time working on.</p> <p>7 And Water Infrastructure Improvements for the  8 Nation Act, again, this is a congressional action that  9 provides some grants for us to assist smaller systems.  10 We're primarily focused on what's call TMF capacity,  11 Technical Managerial Financial. Again, how do we make  12 sure these systems know what they need to do and  13 they're keeping up with planning and their maintenance  14 and they technically know what is required of them.</p> <p>15 Again, back to PFAS, we talked about it  16 earlier with respect to land production. Now with  17 respect to water and some of the other divisions, we're  18 looking at it in terms of drinking water MCLs, for  19 example. Will there be drinking water MCLs  20 established?</p> <p>21 There's quite a bit of pressure on EPA to  22 work that in and it branches off into wastewater and  23 biosolvent application as well. As you can imagine,  24 that means that if these do happen, we will be coming  25 back to you in the coming years with more rule making</p>
<p style="text-align: right;">Page 44</p> <p>1 with respect to those particular things.</p> <p>2 And, finally, as far as my presentation  3 legislative recommendations, what we're looking for in  4 the 2021 legislative session, we only have one bill  5 that we are intending to go in proposing as a request  6 bill. As you well know if you've been around very  7 long, that doesn't mean that there won't be a host of  8 other bills that we will somehow have involvement in  9 because we're asked our opinion on them or because they  10 come up and we realize that we need to weigh in on it.</p> <p>11 But the only one that we're actually going to  12 the legislature that this one asks for is something  13 that, again, relates to PFAS. How do we ensure that we  14 minimize risk of disposal of PFAS chemicals in  15 Oklahoma?</p> <p>16 And one of the things that we think might be  17 necessary is legislation that emphasizes that the  18 agency has the authority and the responsibility to go  19 to whatever sites or facilities proposed in disposal of  20 PFAS waste and ensure that they have the capacity to do  21 that safely.</p> <p>22 So that really is all this bill is proposed  23 to do. We do not have language yet. We have until  24 early December to actually formally request the bill,  25 and then we will have until mid January to actually</p>	<p style="text-align: right;">Page 45</p> <p>1 come up with the exact language but these are the  2 concepts we're kicking around right now.</p> <p>3 So with that, let me stop and see if there  4 are any questions. I know we kind of went through that  5 quickly, but that's the gist of what we are asking you  6 to approve. It is simply an overview of what you have  7 in your packet in fuller form, and hopefully you had a  8 chance to look at that again.</p> <p>9 So, Mr. Chairman, I will turn it back to you.</p> <p>10 MR. KINDER: Sure. Got any questions from  11 the board?</p> <p>12 (No response.)</p> <p>13 MR. KINDER: You all are atypically quiet  14 behind the masks. I do have one question with the lead  15 mitigation program. Will there be any monies available  16 to the institutions when you do find a problem? The  17 schools and the daycares, is there any money for them  18 to correct in that program or is it just for discovery?</p> <p>19 MR. GIVENS: I'm going to give a preliminary  20 answer and then I'm going to ask Shellie Chard,  21 Director of Water Quality, to elaborate. I think the  22 answer is basically not yet.</p> <p>23 MS. CHARD: Okay. So, literally, that is the  24 \$64,000 question. We do not have any dedicated funds  25 from the federal government at this time that can go to</p>

<p style="text-align: right;">Page 46</p> <p>1 the individual schools. There are some creative 2 financing that can be done. We do have approval from 3 EPA where a water utility would be able to obtain 4 funding and then use that money to assist the schools, 5 but it would be that water system. It has to be a 6 public water supply that applies for that funding. 7 We are hopeful that we may get some funding 8 in the next congress, you never know, as part of some 9 of the infrastructure funding that we've heard floated 10 out there. As an agency, we are kind of exploring 11 options including applying a philosophy that we used 12 several years ago that where we dedicate certain 13 penalty or fine money that's paid to the agency, that 14 that money be earmarked for schools replacing their 15 equipment. 16 Anything that is on the city or utility-owned 17 side, there is funding available for that. What's on 18 the school-owned side is where it gets a little more 19 complicated. But we do think we've identified a couple 20 of potential funding sources. 21 We do have a work group formed with the 22 Secretary's office, Department of Education, Department 23 of Human Services, the state PTA organization working 24 on funding and having a partner to make the most of the 25 money that we do have.</p>	<p style="text-align: right;">Page 47</p> <p>1 SECRETARY WAGNER: I would add too that I've 2 talked to, preliminarily, some philanthropic 3 organizations that showed interest. And so I think 4 that's -- you know, anytime you're talking about the 5 most vulnerable populations, young children, I think 6 there's opportunity for philanthropy to help. So it's 7 really a cobbling together. But identifying the 8 problem will, I think, help bring light to it and the 9 need for funding. 10 MR. KINDER: Thank you very much. Opened up 11 a can of worms it sounds like. Any questions from the 12 public? 13 (No response.) 14 MR. KINDER: If not, I'll just ask the board 15 to go back to your stations and we'll take it from 16 there. 17 Okay. The annual Environmental Quality 18 Report does take action from the board so I'll be open 19 to any action. 20 MR. FERRELL: Mr. Chairman, I move to approve 21 the report. 22 MR. MUNSON: Second. 23 MR. KINDER: I got a motion and second. 24 Quiana roll call, please? 25 MS. FIELDS: Mr. Barton?</p>
<p style="text-align: right;">Page 48</p> <p>1 MR. BARTON: Yes. 2 MS. FIELDS: Mr. Easton? 3 MR. EASTON: Yes. 4 MS. FIELDS: Dr. Ferrell? 5 DR. FERRELL: Yes. 6 MS. FIELDS: Mr. Griesel? 7 MR. GRIESEL: Yes. 8 MS. FIELDS: Dr. Hammon? 9 DR. HAMMON: Yes. 10 MS. FIELDS: Ms. Kendrick? 11 MS. KENDRICK: Yes. 12 MS. FIELDS: Ms. Kunze? 13 MS. KUNZE: Yes. 14 MS. FIELDS: Mr. Munson? 15 MR. MUNSON: Yes. 16 MS. FIELDS: Mr. Paque? 17 MR. PAQUE: Yes. 18 MS. FIELDS: Mr. Kinder? 19 MR. KINDER: Yes. 20 MS. FIELDS: Motion passed. 21 MR. KINDER: All right. Thank you. I 22 believe the next item that we have is the executive 23 session, Item No. 10. So for that to go into executive 24 session, I need a motion. 25 MR. GRIESEL: So move.</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. PAQUE: Second. 2 MR. KINDER: I've got a motion and second. 3 UNKNOWN SPEAKER: Mr. Chairman, do we want to 4 take a short break before we go into executive session? 5 MR. KINDER: Yeah. That's what I thought we 6 might do that. 7 MS. LEWIS: Excuse me, Mr. Chairman, could we 8 also designate someone to take the notes before we take 9 a break for the executive session? 10 MR. KINDER: Sure. We've got a volunteer, 11 Jan. Thank you, Jan. Okay. We have a motion and 12 second to go into executive session and we have Jan as 13 our secretary in the executive session. So a roll call 14 vote, please? 15 MS. FIELDS: Mr. Barton? 16 MR. BARTON: Yes. 17 MS. FIELDS: Mr. Easton? 18 MR. EASTON: Yes. 19 MS. FIELDS: Dr. Ferrell? 20 DR. FERRELL: Yes. 21 MS. FIELDS: Mr. Griesel? 22 MR. GRIESEL: Yes. 23 MS. FIELDS: Dr. Hammon? 24 DR. HAMMON: Yes. 25 MS. FIELDS: Ms. Kendrick?</p>

<p style="text-align: right;">Page 50</p> <p>1 MS. KENDRICK: Yes.</p> <p>2 MS. FIELDS: Ms. Kunze?</p> <p>3 MS. KUNZE: Yes.</p> <p>4 MS. FIELDS: Mr. Munson?</p> <p>5 MR. MUNSON: Yes.</p> <p>6 MS. FIELDS: Mr. Pague?</p> <p>7 MR. PAQUE: Yes.</p> <p>8 MS. FIELDS: Mr. Kinder?</p> <p>9 MR. KINDER: Yes.</p> <p>10 MS. FIELDS: Motion passed.</p> <p>11 MR. KINDER: Okay. We're going to take about</p> <p>12 a ten-minute break in case anyone needs to go outside</p> <p>13 for a bit. I'll ask Secretary Wagner to stick around</p> <p>14 for the board executive session. We'll meet back right</p> <p>15 where we are and we'll ask the public to go out in the</p> <p>16 foyer.</p> <p>17 (At 11:19 a.m. the Board recessed for</p> <p>18 executive session, returning at 12:20 p.m.)</p> <p>19 MR. KINDER: Okay. I would entertain a</p> <p>20 motion to come out of executive session?</p> <p>21 MR. MUNSON: So move.</p> <p>22 MR. PAQUE: Second.</p> <p>23 MR. KINDER: We have a motion and second.</p> <p>24 Quiana, roll call, please?</p> <p>25 MS. FIELDS: Mr. Barton?</p>	<p style="text-align: right;">Page 51</p> <p>1 MR. BARTON: Yes.</p> <p>2 MS. FIELDS: Mr. Easton?</p> <p>3 MR. EASTON: Yes.</p> <p>4 MS. FIELDS: Dr. Ferrell?</p> <p>5 DR. FERRELL: Yes.</p> <p>6 MS. FIELDS: Mr. Griesel?</p> <p>7 MR. GRIESEL: Yes.</p> <p>8 MS. FIELDS: Dr. Hammon?</p> <p>9 DR. HAMMON: Yes.</p> <p>10 MS. FIELDS: Ms. Kendrick?</p> <p>11 MS. KENDRICK: Yes.</p> <p>12 MS. FIELDS: Ms. Kunze?</p> <p>13 MS. KUNZE: Yes.</p> <p>14 MS. FIELDS: Mr. Munson?</p> <p>15 MR. MUNSON: Yes.</p> <p>16 MS. FIELDS: Mr. Pague?</p> <p>17 MR. PAQUE: Yes.</p> <p>18 MS. FIELDS: Mr. Kinder?</p> <p>19 MR. KINDER: Yes.</p> <p>20 MS. FIELDS: Motion passed.</p> <p>21 MR. KINDER: Thank you. And now I'll</p> <p>22 consider any action that the Board would take because</p> <p>23 of the performance review?</p> <p>24 MR. GRIESEL: I would like to motion to</p> <p>25 increase Executive Director Thompson's salary by five</p>
<p style="text-align: right;">Page 52</p> <p>1 percent.</p> <p>2 MR. MUNSON: Second.</p> <p>3 MR. KINDER: We have a motion and second.</p> <p>4 Quiana, please?</p> <p>5 MS. FIELDS: Mr. Barton?</p> <p>6 MR. BARTON: Yes.</p> <p>7 MS. FIELDS: Mr. Easton?</p> <p>8 MR. EASTON: Yes.</p> <p>9 MS. FIELDS: Dr. Ferrell?</p> <p>10 DR. FERRELL: Yes.</p> <p>11 MS. FIELDS: Mr. Griesel?</p> <p>12 MR. GRIESEL: Yes.</p> <p>13 MS. FIELDS: Dr. Hammon?</p> <p>14 DR. HAMMON: Yes.</p> <p>15 MS. FIELDS: Ms. Kendrick?</p> <p>16 MS. KENDRICK: Yes.</p> <p>17 MS. FIELDS: Ms. Kunze?</p> <p>18 MS. KUNZE: Yes.</p> <p>19 MS. FIELDS: Mr. Munson?</p> <p>20 MR. MUNSON: Yes.</p> <p>21 MS. FIELDS: Mr. Pague?</p> <p>22 MR. PAQUE: Yes.</p> <p>23 MS. FIELDS: Mr. Kinder?</p> <p>24 MR. KINDER: Yes.</p> <p>25 MS. FIELDS: Motion passed.</p>	<p style="text-align: right;">Page 53</p> <p>1 MR. KINDER: Thank you. Scott, I'll just say</p> <p>2 and to the staff that we're just highly satisfied with</p> <p>3 what you've been doing. Some of the things that I</p> <p>4 wrote down as I was listening to you is your</p> <p>5 flexibility in COVID and the flexibility you built into</p> <p>6 the department to be able to pivot on something that no</p> <p>7 one ever knew how to pivot on. The fact that you --</p> <p>8 your staff and you yourself are highly regarded in</p> <p>9 national circles also bodes well for the department.</p> <p>10 The other thing that some of us old timers</p> <p>11 have been on here for a while, the financial</p> <p>12 transparency that we've got, I think someone said that</p> <p>13 we went from being overwhelmed with the information</p> <p>14 that Kathy and you have been able to give to us and the</p> <p>15 transparency that you have in management that I don't</p> <p>16 feel like -- we don't feel like there's anything going</p> <p>17 on that's not supposed to be going on. We just think</p> <p>18 that you very much have a steady keel going forward</p> <p>19 with the department.</p> <p>20 We encourage you to keep on doing what you're</p> <p>21 doing. Don't be discouraged and we just applaud you</p> <p>22 for that, so thank you.</p> <p>23 MR. THOMPSON: Thank you. I appreciate it.</p> <p>24 MR. KINDER: So we come to any new business.</p> <p>25 Anything that's on the agenda for new business -- or</p>

<p style="text-align: right;">Page 54</p> <p>1 that wasn't on the agenda? Excuse me.</p> <p>2 (No response.)</p> <p>3 MR. KINDER: Not seeing any new business, our</p> <p>4 next meeting is February 19th of 2021 here in Oklahoma</p> <p>5 City, hopefully without the masks. We will just pray</p> <p>6 for that. And that's all that I have except for</p> <p>7 adjournment. So I guess I will open for motion to</p> <p>8 adjourn.</p> <p>9 MR. MUNSON: So moved.</p> <p>10 MR. PAQUE: Second.</p> <p>11 MR. KINDER: We got a motion and second to</p> <p>12 adjourn. Let's vote. Quiana?</p> <p>13 MS. FIELDS: Mr. Barton?</p> <p>14 MR. BARTON: Yes.</p> <p>15 MS. FIELDS: Mr. Easton?</p> <p>16 MR. EASTON: Yes.</p> <p>17 MS. FIELDS: Dr. Ferrell?</p> <p>18 DR. FERRELL: Yes.</p> <p>19 MS. FIELDS: Mr. Griesel?</p> <p>20 MR. GRIESEL: Yes.</p> <p>21 MS. FIELDS: Dr. Hammon?</p> <p>22 DR. HAMMON: Yes.</p> <p>23 MS. FIELDS: Ms. Kendrick?</p> <p>24 MS. KENDRICK: Yes.</p> <p>25 MS. FIELDS: Ms. Kunze?</p>	<p style="text-align: right;">Page 55</p> <p>1 MS. KUNZE: Yes.</p> <p>2 MS. FIELDS: Mr. Munson?</p> <p>3 MR. MUNSON: Yes.</p> <p>4 MS. FIELDS: Mr. Paque?</p> <p>5 MR. PAQUE: Yes.</p> <p>6 MS. FIELDS: Mr. Kinder?</p> <p>7 MR. KINDER: Yes.</p> <p>8 MS. FIELDS: Motion passed.</p> <p>9 MR. KINDER: Okay. We stand adjourned. At</p> <p>10 this time, we are open for public forum and this is the</p> <p>11 opportunity. I'm seeing a no. No one is signed up. I</p> <p>12 don't see anyone. Is there anyone who wants to speak</p> <p>13 here today?</p> <p>14 (No response.)</p> <p>15 MR. KINDER: I do not see anyone, so thank</p> <p>16 you very much. Thank you everyone for coming. Be</p> <p>17 safe. Good luck. And we'll see you, if not</p> <p>18 beforehand, hopefully we'll see you in February.</p> <p>19 (The meeting is concluded at 12:24 p.m.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 56</p> <p>1 CERTIFICATE</p> <p>2 STATE OF OKLAHOMA )</p> <p>3 ) SS:</p> <p>4 COUNTY OF OKLAHOMA )</p> <p>5 I, LINDSEY TROIANI, Certified Shorthand</p> <p>6 Reporter within and for the State of Oklahoma, do</p> <p>7 hereby certify that meeting was by me taken in</p> <p>8 shorthand and thereafter transcribed; and that I am not</p> <p>9 a party nor relative of any of said parties or</p> <p>10 otherwise interested in the event of said meeting.</p> <p>11 IN WITNESS WHEREOF, I have hereunto set me</p> <p>12 hand and seal this December 30th, 2020.</p> <p>13</p> <p>14 _____</p> <p>15 Lindsey Troiani, CSR</p> <p>16 No. 1956</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	



# ENVIRONMENTAL QUALITY BOARD

Attendance Record

**November 10, 2020**

Oklahoma City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Travis Hammons  
Quana Fields

DEQ travon.hammons@dep.ok.gov

Kathy Aebischer

DEQ

Erin Hatfield

DEQ

Alexie Kindrick

EAB

John Easton

EAB

Mike Paque

EQB

David K. Griesel

EQB

Brian Dugan

GUT

Shelly R. Chard

WQD-DEQ

Bad Ground

EFO

Rob Singler

DEQ

Jan L. Kunze

EQ

W. Kuli

DEQ

Ken Wagner

OSEP

Carly Cordell

DEE

Shannon L. Ferrell

EQB

Stephen Ballinger

OSEP

Mark Bartley

EQB

Jennifer Lutz

OAG

Tim Munson

DEQ

Nicholas Huber

DEQ

TYLER FIXLEY - LAGOON WATER MIN STREAM TYLER.FIXLEY@LAGOONWATER.CO

Tracy Hammon

EQB

Mark Hildebrand

ECLS-DEQ

Jimmy Givens

DEQ

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 2. Incorporation By Reference

252:100-2-3 [AMENDED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

August 24, 2020

**COMMENT PERIOD:**

September 15, 2020 through October 21, 2020

**PUBLIC HEARING:**

October 21, 2020, Air Quality Advisory Council

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

Date of 40 C.F.R. provisions incorporated by reference in OAC 252:100-2-3 and in Appendix Q is changed to "as they existed on June 30, 2020."

**Incorporating rules.**

252:100-2-3

Appendix Q. Incorporation By Reference

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

**GIST/ANALYSIS:**

The Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations. 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. The gist of these rules and the underlying reason for the rulemaking is to incorporate the latest changes to EPA regulations, primarily those relating to the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS).

**CONTACT PERSON:**

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) and 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**SUBCHAPTER 2. INCORPORATION BY REFERENCE**

**252:100-2-3. Incorporation by reference**

Except as provided under this section, the provisions of 40 CFR listed in Appendix Q are hereby incorporated by reference as they existed on ~~June 30, 2019~~June 30, 2020.

- (1) **Inclusion of 40 CFR citations and definitions.** When a provision of 40 CFR is incorporated by reference, all citations contained therein are also incorporated by reference.
- (2) **Inconsistencies or duplications of requirements or incorporation dates.**
  - (A) In the event that there are inconsistencies or duplications between the requirements of this Chapter and the requirements of those provisions incorporated by reference in Appendix Q or elsewhere in this Chapter, the more stringent requirements shall apply.
  - (B) In the event that a specific date of incorporation is indicated in Appendix Q or a subchapter of this Chapter, the specified date of incorporation shall apply.
- (3) **Terminology related to 40 CFR.** For purposes of interfacing with 40 CFR and unless the context clearly indicates otherwise, the following terms apply.
  - (A) "Administrator" is synonymous with "Executive Director."
  - (B) "U. S. Environmental Protection Agency" or "EPA" is synonymous with "Department of Environmental Quality" or "DEQ."



**APPENDIX Q. INCORPORATION BY REFERENCE [REVOKED]**

**APPENDIX Q. INCORPORATION BY REFERENCE [NEW]**

Except as provided under OAC 252:100-2-3, the following provisions of Title 40 of the Code of Federal Regulations are hereby incorporated by reference as they existed on June 30, 2020, unless otherwise noted.

<b>PART</b>	<b>SUBPART</b>	<b>DESCRIPTION</b>
50	n/a	Appendix B to Part 50 - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method)
50	n/a	Appendix J to Part 50 - Reference Method for the Determination of Particulate Matter as PM <sub>10</sub> in the Atmosphere
51	A	Table 1 to Appendix A only of Subpart A—Emission Thresholds by Pollutant for Treatment as Point Source Under 40 CFR 51.30
51	F	Paragraph 51.100(s)(1) only of Subpart F, Procedural Requirements
51	n/a	Appendix P to Part 51 - Minimum Emission Monitoring Requirements
51	n/a	Appendix W to Part 51 – Guideline on Air Quality Models
58	n/a	Appendix A to Part 58 - Quality Assurance Requirements for Monitors used in Evaluations of National Ambient Air Quality Standards
58	n/a	Appendix B to Part 58 – Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring
60	A	General Provisions [Except 60.4, 60.9, 60.10 and 60.16]
60	D	Standards of Performance for Fossil-Fuel-Fired Steam Generators
60	Da	Standards of Performance for Electric Utility Steam Generating Units
60	Db	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

PART	SUBPART	DESCRIPTION
60	Dc	Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units
60	E	Standards of Performance for Incinerators
60	Ea	Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994
60	Eb	Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996
60	Ec	Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996
60	F	Standards of Performance for Portland Cement Plants
60	G	Standards of Performance for Nitric Acid Plants
60	Ga	Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011
60	H	Standards of Performance for Sulfuric Acid Plants
60	I	Standards of Performance for Hot Mix Asphalt Facilities
60	J	Standards of Performance for Petroleum Refineries
60	Ja	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007
60	K	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978
60	Ka	Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984
60	Kb	Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for

PART	SUBPART	DESCRIPTION
		Which Construction, Reconstruction, or Modification Commenced After July 23, 1984
60	L	Standards of Performance for Secondary Lead Smelters
60	M	Standards of Performance for Secondary Brass and Bronze Production Plants
60	N	Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973
60	Na	Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983
60	O	Standards of Performance for Sewage Treatment Plants
60	P	Standards of Performance for Primary Copper Smelters
60	Q	Standards of Performance for Primary Zinc Smelters
60	R	Standards of Performance for Primary Lead Smelters
60	S	Standards of Performance for Primary Aluminum Reduction Plants
60	T	Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants
60	U	Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants
60	V	Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants
60	W	Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants
60	X	Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
60	Y	Standards of Performance for Coal Preparation and Processing Plants
60	Z	Standards of Performance for Ferroalloy Production Facilities
60	AA	Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983

PART	SUBPART	DESCRIPTION
60	AAa	Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983
60	BB	Standards of Performance for Kraft Pulp Mills
60	BBa	Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013
60	CC	Standards of Performance for Glass Manufacturing Plants
60	DD	Standards of Performance for Grain Elevators
60	EE	Standards of Performance for Surface Coating of Metal Furniture
60	GG	Standards of Performance for Stationary Gas Turbines
60	HH	Standards of Performance for Lime Manufacturing Plants
60	KK	Standards of Performance for Lead-Acid Battery Manufacturing Plants
60	LL	Standards of Performance for Metallic Mineral Processing Plants
60	MM	Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations
60	NN	Standards of Performance for Phosphate Rock Plants
60	PP	Standards of Performance for Ammonium Sulfate Manufacture
60	QQ	Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing
60	RR	Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations
60	SS	Standards of Performance for Industrial Surface Coating: Large Appliances
60	TT	Standards of Performance for Metal Coil Surface Coating
60	UU	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture
60	VV	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which

PART	SUBPART	DESCRIPTION
		Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or Before November 7, 2006
60	VVa	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	WW	Standards of Performance for the Beverage Can Surface Coating Industry
60	XX	Standards of Performance for Bulk Gasoline Terminals
60	BBB	Standards of Performance for the Rubber Tire Manufacturing Industry
60	DDD	Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry
60	FFF	Standards of Performance for Flexible Vinyl and Urethane Coating and Printing
60	GGG	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006
60	GGGa	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006
60	HHH	Standards of Performance for Synthetic Fiber Production Facilities
60	III	Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes
60	JJJ	Standards of Performance for Petroleum Dry Cleaners
60	KKK	Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants
60	LLL	Standards of Performance for SO <sub>2</sub> Emissions From Onshore Natural Gas Processing: SO <sub>2</sub> Emissions

PART	SUBPART	DESCRIPTION
60	NNN	Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations
60	OOO	Standards of Performance for Nonmetallic Mineral Processing Plants
60	PPP	Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants
60	QQQ	Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems
60	RRR	Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes
60	SSS	Standards of Performance for Magnetic Tape Coating Facilities
60	TTT	Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
60	UUU	Standards of Performance for Calciners and Dryers in Mineral Industries
60	VVV	Standards of Performance for Polymeric Coating of Supporting Substrates Facilities
60	WWW	Standards of Performance for Municipal Solid Waste Landfills
60	XXX	Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014
60	AAAA	Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001
60	CCCC	New Source Performance Standards for Commercial/Industrial Solid Waste Incinerators constructed after November 30, 1999
60	DDDD	Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units, Model Rule only, Sections 60.2575 through 60.2875, including Tables 1 through 9
60	EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9,

PART	SUBPART	DESCRIPTION
		2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006
60	III	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines
60	JJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines
60	KKKK	Standards of Performance for Stationary Combustion Turbines
60	LLLL	Standards of Performance for New Sewage Sludge Incineration Units
60	OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015
60	OOOOa	Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced after September 18, 2015
60	TTTT	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units
60	n/a	Appendix A to Part 60 - Test Methods
60	n/a	Appendix B to Part 60 - Performance Specifications
61	A	General Provisions
61	C	National Emission Standard for Beryllium
61	D	National Emission Standard for Beryllium Rocket Motor Firing
61	E	National Emission Standard for Mercury
61	F	National Emission Standard for Vinyl Chloride
61	J	National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene
61	L	National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants
61	M	National Emission Standard for Asbestos
61	N	National Emission Standard for Inorganic Arsenic Emissions From Glass Manufacturing Plants

PART	SUBPART	DESCRIPTION
61	O	National Emission Standard for Inorganic Arsenic Emissions From Primary Copper Smelters
61	P	National Emission Standard for Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities
61	V	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)
61	Y	National Emission Standard for Benzene Emissions From Benzene Storage Vessels
61	BB	National Emission Standard for Benzene Emissions From Benzene Transfer Operations
61	FF	National Emission Standard for Benzene Waste Operations
63	A	General Provisions
63	B	Sections 63.41, 63.43 and 63.44 only of Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)
63	F	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry
63	G	National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
63	H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
63	I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
63	J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
63	L	National Emission Standards for Coke Oven Batteries
63	M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities



PART	SUBPART	DESCRIPTION
63	N	National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
63	O	Ethylene Oxide Emissions Standards for Sterilization Facilities
63	Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
63	R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
63	S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
63	T	National Emission Standards for Halogenated Solvent Cleaning
63	U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
63	W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
63	X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
63	Y	National Emission Standards for Marine Tank Vessel Loading Operations
63	AA	National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants
63	BB	National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants
63	CC	National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries
63	DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
63	EE	National Emission Standards for Magnetic Tape Manufacturing Operations
63	GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities

PART	SUBPART	DESCRIPTION
63	HH	National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities
63	II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
63	JJ	National Emission Standards for Wood Furniture Manufacturing Operations
63	KK	National Emission Standards for the Printing and Publishing Industry
63	LL	National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants
63	MM	National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
63	NN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing at Area Sources
63	OO	National Emission Standards for Tanks - Level 1
63	PP	National Emission Standards for Containers
63	QQ	National Emission Standards for Surface Impoundments
63	RR	National Emission Standards for Individual Drain Systems
63	SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
63	TT	National Emission Standards for Equipment Leaks – Control Level 1
63	UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
63	VV	National Emission Standards for Oil-Water Separators and Organic-Water Separators
63	WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2

PART	SUBPART	DESCRIPTION
63	XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
63	YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
63	CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants
63	DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
63	EEE	National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
63	GGG	National Emission Standards for Pharmaceuticals Production
63	HHH	National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities
63	III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
63	JJJ	National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
63	LLL	National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry
63	MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
63	NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
63	OOO	National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins
63	PPP	National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production
63	QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting

PART	SUBPART	DESCRIPTION
63	RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production
63	TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting
63	UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units
63	VVV	National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works
63	XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
63	AAAA	National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills
63	CCCC	National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
63	DDDD	National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products
63	EEEE	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
63	FFFF	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
63	HHHH	National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
63	IIII	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
63	JJJJ	National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating
63	KKKK	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans
63	MMMM	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products

PART	SUBPART	DESCRIPTION
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances
63	OOOO	National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
63	QQQQ	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture
63	SSSS	National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations
63	UUUU	National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing
63	VVVV	National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing
63	WWWW	National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production
63	XXXX	National Emissions Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing
63	YYYY	National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines
63	ZZZZ	National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines
63	AAAAA	National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants
63	BBBBB	National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

<b>PART</b>	<b>SUBPART</b>	<b>DESCRIPTION</b>
63	DDDDD	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters
63	EEEE	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries
63	FFFF	National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
63	GGGG	National Emission Standards for Hazardous Air Pollutants: Site Remediation
63	HHHH	National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
63	IIII	National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants
63	JJJJ	National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
63	KKKK	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing
63	LLLL	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
63	MMMM	National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
63	NNNN	National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production
63	PPPP	National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Standards
63	QQQQ	National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
63	RRRR	National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing
63	SSSS	National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing
63	TTTT	National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining

PART	SUBPART	DESCRIPTION
63	UUUUU	National Emission Standards for Hazardous Air Pollutants: Coal and Oil-fired Electric Utility Steam Generating Units
63	WWWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers
63	YYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities
63	ZZZZZ	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
63	BBBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
63	CCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities
63	DDDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
63	EEEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
63	FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
63	GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium
63	HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
63	JJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
63	LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
63	MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
63	NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds

PART	SUBPART	DESCRIPTION
63	OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
63	PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources
63	QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources
63	RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
63	SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
63	TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
63	VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
63	WWWWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
63	XXXXXX	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories
63	YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
63	ZZZZZZ	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
63	AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
63	BBBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
63	CCCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
63	DDDDDDD	National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing



PART	SUBPART	DESCRIPTION
63	EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
63	HHHHHHH	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
64	n/a (All Sections)	Compliance Assurance Monitoring (CAM)
72	All Subparts	Permits Regulation (for Acid Rain Sources)
98	A	Table A-1 only to Subpart A of Part 98 – Global Warming Potentials
241	n/a	Solid Wastes Used as Fuels or Ingredients in Combustion Units

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

Before the Air Quality Advisory Council on October 21, 2020  
Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 2. Incorporation By Reference

252:100-2-3. [AMENDED]

APPENDIX Q. Incorporation By Reference [REVOKED]

APPENDIX Q. Incorporation By Reference [NEW]

**DESCRIPTION:** The Department is proposing to update OAC 252:100, Appendix Q, Incorporation By Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations, primarily those relating to the National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 C.F.R. Parts 61 and 63, and New Source Performance Standards (NSPS) in 40 C.F.R. Part 60. No new standards are to be added this year, but several standards have been amended and updated. 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. The gist of this rule change and the underlying reason for the rulemaking is to incorporate changes the EPA has made to its regulations and ensure that the state's rules are up to date.

**CLASSES OF PERSONS AFFECTED:** The classes of persons affected are the owners and operators of facilities that are subject to the regulations incorporated by reference.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** The classes of persons who will bear costs are the owners and operators of facilities that are subject to the regulations incorporated by reference. However, no additional costs are expected to be incurred by these persons because the facilities are already subject to the federal regulations that will be incorporated by reference.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The Department has not received any information on cost impacts as of this date.

**CLASSES OF PERSONS BENEFITTED:** The citizens of Oklahoma and owners and operators of the facilities subject to these regulations will benefit by the assurance that the most current regulations available are in place to protect public health and welfare. The owners and operators will benefit from consistency in state and federal rules.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** There should be no new economic impacts on affected classes of persons subject to this rule.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The Department anticipates no economic impact on political subdivisions.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** The Department anticipates no adverse effect on small business.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** The Department is not proposing any fee changes in this rule.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** The Department anticipates there will be no significant increased costs associated with the implementation and enforcement of these proposed amendments. The Department will benefit from the proposal because it will allow state implementation and enforcement of these federal requirements.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** There are none. No other agencies will be implementing or enforcing these regulations.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Fees and federal grants will continue to be used to implement and enforce these regulations.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The Department expects no net loss or gain in revenues from these amendments.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** None is required. The Department will be responsible for all aspects of implementation and enforcement of these regulations.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** The proposed changes will allow the Department to implement and enforce the federal regulations rather than the EPA, which generally results in lower compliance costs for those affected.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** The Department has determined that there are no less costly or nonregulatory or less intrusive methods of achieving the purpose of the proposed rule.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The proposed changes will have a positive effect on public health, safety, and the environment by updating the existing standards that were established to protect public health and welfare.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed changes will have a positive effect on public health, safety,

and the environment by updating the existing standards that were established to protect public health and welfare.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:**

If the proposed changes are not implemented, the updated standards will be enforced by the federal government rather than the State.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):**

There will be no new quantitative impact on business entities since the proposed changes will align state standards with the current federal standards. The owners and/or operators of businesses subject to federal standards will benefit from consistent state and federal standards.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** September 15, 2020

**MODIFIED ON:** October 21, 2020

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL  
SUBCHAPTER 2. INCORPORATION BY REFERENCE  
APPENDIX Q. INCORPORATION BY REFERENCE**

**EXECUTIVE SUMMARY:**

The Department is proposing to update OAC 252:100, Appendix Q, Incorporation by Reference, to incorporate the latest changes to U.S. Environmental Protection Agency (EPA) regulations.

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.

**DIFFERENCES FROM ANALOGOUS FEDERAL RULES:**

Federal rules will be incorporated by reference with no changes.

**ENVIRONMENTAL BENEFIT STATEMENT:**

These rules are not more stringent than corresponding federal rules; therefore, an Environmental Benefit Statement is not required.

**SUMMARY OF COMMENTS AND RESPONSES:**

No comments were received relating to this rule proposal.

THE AIR QUALITY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title: OAC 252:100

**OAC 252:100-2. Incorporation By Reference [AMENDED]**

**Appendix Q. Incorporation By Reference [REVOKED]**

**Appendix Q. Incorporation By Reference [NEW]**

On October 21, 2020, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

  X   permanent [take effect after legislative review]

       emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,



Chair or Designee:

Date Signed: 10-22-2020

	VOTING TO APPROVE	VOTING AGAINST	ABSTAIN	ABSENT
Matt Caves	✓			
Gary Collins	✓			
Robert Delano	✓			
Gregory Elliott	✓			
Garry Keele II	✓			
Steve Landers	✓			
John Privrat	✓			
Jeffrey Taylor	✓			
Laura Lodes	✓			

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 110. LEAD-BASED PAINT MANAGEMENT**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Definitions

252:110-3-1 [AMENDED]

Subchapter 5. Incorporation by Reference

252:110-5-1 [AMENDED]

Subchapter 9. Additional Accreditation Requirements

252:110-9-1.1 [AMENDED]

Subchapter 11. Additional LBP Certification Requirements

252:110-11-3 [AMENDED]

252:110-11-7.1 [NEW]

Subchapter 13. Additional Work Practice Standards

252:110-13-5 [AMENDED]

252:110-13-7 [NEW]

Subchapter 15. Additional Renovation, Repair, and Painting (RRP) Requirements

252:110-15-3 [AMENDED]

252:110-15-3.1 [NEW]

252:110-15-4 [AMENDED]

252:110-15-5 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.

Oklahoma Lead-based Paint Management Act; 27A O.S. §§ 2-12-101 and 2-12-201.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

April 24, 2020

August 24, 2020

**COMMENT PERIOD:**

May 15, 2020 through June 17, 2020

September 15, 2020 through October 21, 2020

**PUBLIC HEARING:**

June 17, 2020, Air Quality Advisory Council

October 21, 2020, Air Quality Advisory Council

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

Date of 40 CFR Part 745 incorporation by reference in OAC 252:110-5-1 is changed to "as they exist on January 6, 2020."

**Incorporating rules.**

252:110-5-1

**Availability:**

The standards are on file at the Department of Environmental Quality (Department or DEQ), 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

**GIST/ANALYSIS:**

The Department is proposing to amend OAC 252:110, Lead-Based Paint Management, to update the incorporation by reference section; to add provisions to implement the military reciprocity statute (59 O.S. § 4100, *et seq.*, Military Service Occupation, Education, and Credentialing Act); to update clearance levels to parallel dust-lead hazard changes; to remove several outdated provisions; and to correct minor punctuation and grammar errors. The proposed updates to hazard standards and clearance levels are necessary to maintain EPA approval for Oklahoma's Lead-Based Paint program. The gist of the proposed rulemaking is to update the rule in accordance with recent changes to the federal lead-based paint poisoning prevention requirements, and to provide reciprocity for active-duty military service members and their spouses.

**CONTACT PERSON:**

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) and 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**SUBCHAPTER 3. DEFINITIONS**

**252:110-3-1. Definitions**

In addition to the definitions contained in OAC 252:110-5-1(1) and the Oklahoma Lead-based Paint Management Act, 27A O.S., Sec. 2-12-101 *et seq.*, the following words and terms, when used in this Chapter shall have the following meaning, unless otherwise indicated.

"**Act**" means the Oklahoma Lead-based Paint Management Act, 27A O.S., § 2-12-101 *et seq.*, and subsequent amendments.

"**Authorization**" means a certification, accreditation or approval granted by the Department.

"**Business day**" means Monday through Friday, 8:00 a.m. to 4:30 p.m., with the exception of State holidays.



**"Exam"** means a third party test, administered by the Department when required for LBP certification.

**"Hazard evaluator"** [See **"Lead-based Paint hazard evaluator"**, 27A O.S. § 2-12-102(17).] For the purposes of this chapter, the term "hazard evaluator" is synonymous with the term "risk assessor."

**"HUD procedures"** means the Housing and Urban Development's *Guidelines for the Evaluation and Control of Lead-based Paint Hazards in Housing* (~~June 1995 and revised in October 1997~~) (2012 Edition).

**"Instructor"** means any person who receives compensation from an accredited LBP training program for teaching all or a portion of a LBP training course.

**"LBP"** means Lead-based Paint.

**"LBP Contractor"** means an individual or firm certified by the Department as an inspector, risk assessor, abatement worker, project designer, supervisor, or firm.

**"OAC"** means the Oklahoma Administrative Code.

**"Quality assurance plan"** means a written description of quality assurance activities that will ensure the generation of data that are scientifically valid, defensible and of known and acceptable limits of precision and accuracy.

**"Training provider"** means any organization or entity accredited under OAC 252:110, Lead-based Paint Management.

**"XRF instrument"** or **"x-ray fluorescence spectroscopy instrument"** means an instrument using radiation from a source to stimulate radiation emission which can be analyzed to determine the presence of certain substances, including lead.

## SUBCHAPTER 5. INCORPORATION BY REFERENCE

### 252:110-5-1. Incorporation by reference

The following Sections of 40 CFR Part 745, as they exist on ~~August 8, 2011~~ January 6, 2020, are, unless otherwise specified, incorporated by reference in their entirety:

(1) Section 745.223. Definitions, except the definitions of ~~"Interim certification,"~~ "Business day," "Interim certification," and "Training provider."

(2) Section 745.225. Accreditation of training programs: target housing and child-occupied facilities, except for the following, which are excluded:

(A) Section 745.225(a)(2), which refers to application dates.

(B) Section 745.225(a)(3), which refers to accreditation deadlines.

(C) Section 745.225(b)(3), which refers to accredited training courses.

(D) Section 745.225(c)(8)(iv), which refers to interim certification.

(E) Section 745.225(c)(13)(vi), which refers to course notification means of submittal.

(F) ~~(D)~~ Section 745.225(c)(14)(iii), which refers to course notification means of submittal.

(G) ~~(E)~~ Section 745.225(e)(5), which refers to training programs offering only refresher training courses.

(H) ~~(G)~~ Section 745.225(f)(1), which refers to timelines for renewal accreditation of training programs.

(I) ~~(H)~~ Section 745.225(f)(2), which refers to renewal accreditation deadlines.

(3) Section 745.226. Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities, except for the following, which are excluded:

(A) Section 745.226(a)(2), which refers to application dates.

- (B) Section 745.226(a)(5)<sub>2</sub> which refers to enforcement dates.
- (C) Section 745.226(b)(4)<sub>2</sub> which refers to interim certification.
- (D) Section 745.226(c)(3)<sub>2</sub> which refers to interim certification.
- (E) Section 745.226(d)<sub>2</sub> which refers to certification based on prior training.
- (F) Section 745.226(e)<sub>2</sub> which refers to re-certification.
- (G) Section 745.226(f)<sub>2</sub> which refers to certification of firms.
- (4) Section 745.227. Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities, except for the following, which are excluded:
  - (A) Section 745.227(a)(1)<sub>2</sub> which refers to performance dates.
  - (B) Section 745.227(e)(4)(vii)<sub>2</sub> which refers to abatement notification means of submittal.
  - (C) Section 745.227(e)(8)(viii)<sub>2</sub> which refers to clearance levels in dust.
- (5) Section 745.233. Lead-based paint activities requirements.
- (6) Section 745.61. Scope and applicability.
- (7) Section 745.63. Definitions.
- (8) Section 745.65. Lead-based paint hazards.
- (9) Section 745.82. Applicability.
- (10) Section 745.83. Definitions.
- (11) Section 745.84. Information distribution requirements.
- (12) Section 745.85. Work practice standards.
- (13) Section 745.86. Recordkeeping and reporting requirements.
- (14) Section 745.87. Enforcement and inspections.
- (15) Section 745.88. Recognized test kits.
- (16) Section 745.89. Firm certification.
- (17) Section 745.90. Renovator certification and dust sampling technician certification.
- (18) Section 745.91. Suspending, revoking, or modifying an individual's or firm's certification.

## **SUBCHAPTER 9. ADDITIONAL ACCREDITATION REQUIREMENTS**

### **252:110-9-1.1. Course ~~Content~~ content and completion certificate**

**(a) Content.** In addition to the training requirements contained in OAC 252:110-5-1, all training courses and the corresponding refreshers must contain hands-on training activities and review of OAC 252:110, Oklahoma Lead-Based Paint Management.

**(b) Certification documentation.** For all initial courses, the course completion certificate shall include an expiration date of six (6) months from date of course completion for application purposes.

## **SUBCHAPTER 11. ADDITIONAL LBP CERTIFICATION REQUIREMENTS**

### **252:110-11-3. Training requirements for initial certification**

**(a) ~~Approved courses.~~** For purposes of certification, any LBP training hours taken after the date that Department-accredited LBP training was offered, must be from approved courses conducted by a Department-accredited LBP training program unless the training is waived by the Department pursuant to 252:110-11-7.

**(b) ~~Prior training.~~** ~~Individuals seeking LBP inspector or risk assessor certification who received LBP training between October 1, 1990 and November 1, 1996 and individuals seeking LBP worker, supervisor or project designer certification who received LBP training between October~~

~~1, 1990 and the date of availability of Department accredited LBP training courses, must perform the following for their training to be considered:~~

- ~~(1) Demonstrate that the applicant has successfully completed LBP training in the discipline for which certification is sought which meets the requirements of 252:110-5-1(2);~~
- ~~(2) Demonstrate that the applicant meets or exceeds education and experience requirements established in 252:110-5-1(3);~~
- ~~(3) Submit an application as established in 110-5-1(3) and an affidavit established in 252:110-11-2;~~
- ~~(4) Remit all applicable fees established in this Chapter;~~
- ~~(5) Successfully complete a Department accredited refresher training course for the discipline for which certification is sought; and~~
- ~~(6) Successfully pass the appropriate Department certification exam as established in 252:110-11-4.~~

#### **252:110-11-7.1. LBP Contractor certification for military personnel and military spouses**

**(a) Submission of application.** Every active duty military personnel and their spouse who is certified as a LBP Contractor in another state or territory of the United States, upon receiving orders for military transfer or honorable discharge to the State of Oklahoma, may in advance of actual transfer or discharge submit a completed application to the Department to request a reciprocal certification for their currently held valid certification from another state or territory, so such person may upon entering Oklahoma be authorized to continue their occupation as a certified LBP Contractor without delay.

**(b) Certification of individual.** The Department shall, upon receipt of an active duty military application submitted as authorized in subsection (a) of this section, and presentation of satisfactory evidence of equivalent training and certification from another state or territory, accept the certification and apply all its training in the manner most favorable toward satisfying the qualifications for issuance of the requested certification in Oklahoma, and shall issue the requested Oklahoma LBP Contractor certification within 30 days provided the certification from the other state is found to be in good standing and reasonably equivalent to the requirements of this state.

**(c) Certification timeline.** The reciprocal LBP Contractor certification issued pursuant to this section shall be valid for a minimum of one (1) year unless the person is notified by the Department that there is cause for a denial of the application or that certain documentation required by the Department is lacking or unavailable. In such case, a temporary certificate shall be issued to allow the person time to obtain the necessary requirements while continuing to be eligible to work as a LBP Contractor in Oklahoma. Any such applicant receiving a notice of denial of full certification shall have the right to appeal the denial determination as provided in the Administrative Procedures Act or to obtain and submit the documentation required to complete the full LBP Contractor certification requirements in Oklahoma.

**(d) Application fee.** The Department shall waive the initial application fee for active duty military personnel and their spouse and shall further waive the application fees for the first year of issuance of the reciprocal certification.

### **SUBCHAPTER 13. ADDITIONAL WORK PRACTICE STANDARDS**

#### **252:110-13-5. Testing methodologies**

(a) **Quality control.** Testing for the presence of LBP shall be conducted by documented methodologies using quality control procedures. Procedures for sample collection, transfer, and testing shall be performed according to applicable HUD and EPA procedures and guidelines.

(b) **Types of detection/testing methods.** Acceptable methodologies include, but are not limited to:

(1) **Laboratory analysis.** Only laboratories recognized by the United States Environmental Protection Agency may conduct laboratory analyses on soil, dust and paint film required by this Chapter. Each sample must be accompanied by a chain of custody document.

(2) **X-ray fluorescence spectroscopy (XRF).** XRF instruments may be used for on-site lead detection. If inconclusive or questionable results are obtained from XRF testing, testing of paint chip samples by a qualified laboratory shall be conducted. This paragraph shall not be construed as to relieve the user of any duty to comply with other applicable requirements; ~~including but not limited to the licensing requirements of OAC 252:410-19, X-ray Fluorescence Instruments Used for Lead-based Paint Detection.~~

### **252:110-13-7. Clearance levels**

The clearance levels for lead in dust are 10 µg/ft<sup>2</sup> for floors and 100 µg/ft<sup>2</sup> for interior window sills and troughs.

## **SUBCHAPTER 15. ADDITIONAL RENOVATION, REPAIR, AND PAINTING (RRP) REQUIREMENTS**

### **252:110-15-3. Accreditation of training programs**

(a) **Application.** An application for approval and recognition shall be made in the same form and manner as an application for accreditation as provided by OAC 252:110, Subchapter 9 with the exception of RRP accreditation fees listed in OAC 252:110-15-6(c).

~~(b) **Providers accredited by EPA.** Upon EPA delegation approval, a provider accredited by EPA must present credentials to the Department and receive recognition and approval by the Department as an accredited renovation training provider prior to offering or conducting a renovation training course in Oklahoma. Once their current accreditation has expired, training providers must apply for initial accreditation by the Department as provided in OAC 252:110-15-3(a).~~

~~(c) **Fees.** Nonrefundable fees are payable at the time an application or other notice associated with a fee is filed with the Department. Training programs previously accredited by EPA will be allowed an initial fee waiver by the Department until expiration of their current accreditation.~~

~~(d) **Frequency of renewal.** Training program accreditation must be renewed one (1) year from the date of issuance and every year thereafter.~~

### **252:110-15-3.1. Course content**

In addition to the training requirements contained in OAC 252:110-5-1, all training courses and the corresponding refreshers must contain hands-on training activities and review of OAC 252:110, Oklahoma Lead-Based Paint Management.

### **252:110-15-4. Renovator certification requirements**

(a) **Certifications.** Certification is required for all individuals who perform or offer to perform renovation services in target housing and child-occupied facilities. Every renovation firm that is certified pursuant to OAC 252:110-15-5 is required to have at least one (1) certified renovator. As

set forth in 40 CFR Section 745.90 and incorporated by reference in 252:110-5-1(17), a certified renovator must be on site during certain times and is responsible for supervising and training other individuals on the work site. Certification is obtained through the Department accredited training provider.

~~(b) **Other state or EPA individual certification.** Any individual renovator who holds a current and valid certification issued by EPA or another state must obtain certification from the Department upon expiration of their current certification. Renovators who have not previously been certified must be certified by the Department accredited training course within six (6) months of EPA delegation approval.~~

~~(b) (e) **Certification documentation.** Upon initial authorization, a A course completion certificate will be issued to the holder by the accredited training facility. Those holding certificates shall carry the certificates as proof of current certification.~~

~~(c) (d) **Frequency of renewal.** Renovator certification must be renewed five (5) years from the date of issuance through successful completion of an accredited refresher training course, and every five (5) years thereafter. Certifications not renewed within 30 days will be considered expired. If the individual does not complete a refresher course by 30 days after expiration, the individual must re-take the initial course to become certified again.~~

~~(d) (e) **Failure to become certified.** No person shall advertise or otherwise present themselves as a certified renovator or perform or offer to perform renovation services in target housing and child-occupied facilities prior to becoming certified as such by the Department.~~

~~(e) (d) **Waiting period for reapplication after certification has been revoked.** A renovator whose certification has been revoked must wait one (1) year from the date of revocation to make reapplication for certification.~~

**(f) Military personnel and military spouse reciprocity.**

(1) **Submission of application.** Every active duty military personnel and their spouse who is a certified renovator in another state or territory of the United States, upon receiving orders for military transfer or honorable discharge to the State of Oklahoma, may in advance of actual transfer or discharge submit a completed application to the Department to request a reciprocal certification for their currently held valid certification from another state or territory, so such person may upon entering Oklahoma be authorized to continue their occupation as a certified renovator without delay.

(2) **Certification timeline.** Active duty military personnel and their spouses acting as the certified renovator shall also successfully complete the initial renovator certification course through the Department accredited training provider five (5) years after the issuance date of the certificate they held at the time of their transfer or discharge to the State of Oklahoma.

## **252:110-15-5. Certification of firms conducting renovation services**

~~(a) **Firm certifications.** Upon EPA delegation approval, firm certification is Renovation firms are required for any company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; federal, State, Tribal, or local government agency; or nonprofit organization that offers to become certified prior to performing or offering to perform renovation services.~~

~~(b) **Other state or EPA firm certification.** Any renovation firm that holds a current and valid certification issued by EPA or another state must obtain certification from the Department within six (6) months of EPA delegation approval.~~

~~(e) **Applications.** Applications for firm certification are available from the Department upon request and will be accepted in approved formats.~~

~~(c) (d)~~ **Fees.** Nonrefundable fees are payable at the time an application or other notice associated with a fee is filed with the Department. ~~Firms previously certified by EPA will be allowed an initial fee waiver by the Department until expiration of their current certification.~~

~~(d) (e)~~ **Certification documentation.** Upon firm application approval, a firm certificate will be issued by the Department.

~~(e) (f)~~ **Records maintenance.** The firm shall maintain all records pursuant to the requirements established in this Chapter.

~~(f) (g)~~ **Frequency of renewal.** Firm certification must be renewed five (5) years from the date of issuance, and every five (5) years thereafter. Certifications not renewed within 30 days will be considered expired.

~~(g) (h)~~ **Failure to certify a firm.** No firm shall advertise or otherwise present itself as a certified renovation firm or perform or offer to perform renovation services in target housing and child-occupied facilities prior to becoming certified as such by the Department.

~~(h) (i)~~ **Waiting period for reapplication after certification has been revoked.** A firm whose certification has been revoked must wait one (1) year from the date of revocation to make reapplication for certification.

~~(i)~~ **Military personnel and military spouse reciprocity.** As stated in (a) of this section, firms must register with the Department prior to performing or offering to perform renovation services. Military personnel and their spouses applying as a certified renovation firm are exempt from fees associated with firm certification for five (5) years after the issuance date of the certificate they held at the time of their transfer or honorable discharge to the State of Oklahoma.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 110. LEAD-BASED PAINT MANAGEMENT**

Before the Air Quality Advisory Council on June 22, 2020 and October 21, 2020  
Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 3. Definitions

252:110-3-1 [AMENDED]

Subchapter 5. Incorporation by Reference

252:110-5-1 [AMENDED]

Subchapter 9. Additional Accreditation Requirements

252:110-9-1.1 [AMENDED]

Subchapter 11. Additional LBP Certification Requirements

252:110-11-3 [AMENDED]

252:110-11-7.1 [NEW]

Subchapter 13. Additional Work Practice Standards

252:110-13-5 [AMENDED]

252:110-13-7 [NEW]

Subchapter 15. Additional Renovation, Repair, and Painting (RRP) Requirements

252:110-15-3 [AMENDED]

252:110-15-3.1 [NEW]

252:110-15-4 [AMENDED]

252:110-15-5 [AMENDED]

**DESCRIPTION:** The Department of Environmental Quality (Department or DEQ) is proposing to amend Oklahoma Administrative Code (OAC) 252:110, Lead-Based Paint Management, to update the incorporation by reference section (which includes EPA's new dust-lead hazard standards), to add provisions to implement the military reciprocity statute (59 O.S., Section 4100, *et seq.*, Military Service Occupation, Education, and Credentialing Act), to update clearance levels to parallel federal dust-lead hazard standards and clearance levels changes, to remove several outdated provisions, to clarify language in several provisions, and to correct minor punctuation and grammar errors. The gist of the proposed rulemaking is to update the rule in accordance with recent changes to the federal lead-based paint (LBP) poisoning prevention requirements, and to provide reciprocity for active-duty military service members and their spouses.

**CLASSES OF PERSONS AFFECTED:** Classes of persons affected by the proposed rule change are individuals and firms performing or offering to perform RRP activities for compensation in target housing and child-occupied facilities, as well as owners and occupants, especially children, of said housing and facilities. Training providers that seek accreditation to offer LBP activities and RRP training courses will also be affected. The proposed rule change would also affect contractors and firms conducting LBP activities in target housing and child-occupied facilities, as well as owners and occupants, especially children, of said housing and facilities. Military members and their spouses that wish to perform or offer to perform LBP activities or RRP activities following transfer or discharge to Oklahoma will also be affected. In addition, accredited laboratories conducting wipe sample analyses will be affected.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** LBP Contractors will bear the cost to conduct lead hazard screens, cleaning of abatement sites, and clearances. Property owners may incur increased costs if said costs are passed through by the contractors. It is not expected that RRP Certified Renovators will bear any additional costs.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The Department has received no information on cost impacts from private or public entities associated with the proposed rule.

**CLASSES OF PERSONS BENEFITTED:** Young children and families will experience the most benefit through protection from exposure to lead-based paint poisoning hazards. Military and their spouses will benefit from the proposed reciprocity provisions.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** The Department anticipates no significant economic impact as a result of the proposed changes. To reach the revised clearance levels, minimal costs may be incurred by contractors and firms that perform LBP activities for compensation. Property owners may incur increased costs if said costs are passed through by the contractors. Rule changes will cause a positive economic impact for those individuals affected by the military reciprocity amendment, as the amendment includes fee waivers for certain applications.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The Department anticipates no economic impact on political subdivisions as a result of this rule change.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** The Department anticipates minimal, if any, adverse effects on small businesses due to the potential for increased costs to the contractors that may or may not be passed on to property owners.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** No fee changes are included in the proposed amendments.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** The Department does not expect significant cost increases associated with implementing and enforcing the proposed revision to OAC 252:110. The Department and the citizens of Oklahoma will benefit from clarification of the requirements.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** There are none. No other agencies will be implementing or enforcing this rule.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Federal grants and fees will continue to be used as the sources of revenue to implement and enforce the rule.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The proposed revision should have little effect on net revenues for the Department and/or other agencies.



**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** Cooperation of political subdivisions will not be required to implement or enforce the rule.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** No measures were necessary to minimize compliance costs as the increase in compliance costs should be minimal.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** The Department has determined that there are no less costly or nonregulatory or less intrusive methods of achieving the purpose of the proposed rule.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The proposed rule should result in improved public health and safety for the citizens of Oklahoma, especially children. Updating state regulations to match current federal dust-lead hazard standards and lead clearance levels is intended to reduce the risk of exposure to LBP hazards.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** Lead-based paint can cause a wide array of negative effects on multiple organ systems, most notable are the effects of LBP in children under the age of six (6) years old who are still developing. The proposed rules would result in improved public health, safety, and protection of the environment by reducing the risk of exposure to LBP hazards by lowering the hazard standards and clearance levels.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** If certain provisions of the proposed rule are not implemented, the Department's delegation of the LBP program may be jeopardized. Those receiving grants through HUD's Office of Lead Hazard Control and Healthy Homes will still be required to meet the lower clearance levels, including those for window troughs. However, for those children in homes that do not have HUD-funded lead cleanup, the children may be adversely affected due to the possibility of LBP Contractors exacerbating lead dust hazards. This may also cause an enforcement loophole if DEQ dust-lead hazard standards and clearance levels are not aligned with federal requirements.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** There will be minimal, if any, quantitative impact on business entities, since the proposed changes will better align state regulations with the current federal standards, and prevent LBP abatement workers/supervisors from creating a dust-lead hazard. There will be a probable positive impact on the military and their spouses due to the reciprocity provisions.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** May 15, 2020  
**MODIFIED ON:** September 15, 2020, October 21, 2020, January 26, 2021

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 110. LEAD-BASED PAINT MANAGEMENT**

**ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT STATEMENT**

**MORE STRINGENT RULES: OAC 252:110-13-7.**

The proposed rulemaking is more stringent than its corresponding federal rule and current state rules in the following way:

The above-listed provision imposes more stringent dust-lead clearance levels for window troughs than are included in the corresponding federal rule, 40 C.F.R. § 745.227(e)(8)(viii). As part of a broader update to Chapter 110. Lead-Based Paint Management, the Department of Environmental Quality (DEQ) is seeking to update dust-lead clearance levels in order to match the U.S. Environmental Protection Agency's (EPA) new dust-lead hazard standards and clearance levels already required for grantees of the U.S. Department of Housing and Urban Development's (HUD) Office of Lead Hazard Control and Healthy Homes (OLHCHH) performing lead hazard control work.<sup>1</sup>

On January 7, 2021, EPA finalized proposed revisions to the dust-lead clearance levels that are included in 40 C.F.R. § 745.227(e)(8)(viii). 86 Fed. Reg. 983. Consistent with the proposal, EPA's action lowers the dust-lead clearance levels from 40 µg/ft<sup>2</sup> and 250 µg/ft<sup>2</sup> to 10 µg/ft<sup>2</sup> and 100 µg/ft<sup>2</sup> on floors and window sills, respectively. EPA did not revise the existing clearance level for window troughs of 400 µg/ft<sup>2</sup>. The final rule is effective March 8, 2021. DEQ's proposed OAC 252:110-13-7 adopts EPA's lower dust-lead clearance levels for floors and window sills, but also lowers dust-lead clearance levels for window troughs from 400 µg/ft<sup>2</sup> to 100 µg/ft<sup>2</sup>. Thus, DEQ's proposed dust-lead clearance level for window troughs is more stringent than the corresponding federal level.

When DEQ proposed the lower dust-lead clearance levels for floors, window sills, and troughs in the summer of 2020, EPA had not yet proposed to lower said dust-lead clearance levels. Therefore, DEQ prepared the background information below for the previous version of this EIEBS to explain the full history of the proposed clearance levels. However, during the course of DEQ's rulemaking, EPA proposed and finalized the lower dust-lead clearance levels for floors and window sills, but took no action on the clearance level for window troughs. DEQ has kept the background information in place below, because it may be helpful in understanding why DEQ has proposed to lower the dust-lead clearance levels for window troughs to match the clearance levels for window sills.

**BACKGROUND:**

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<sup>1</sup> See U.S. Department of Housing and Urban Development, Policy Guidance No. 2017-01 (Jan. 31, 2017) (copy available at <https://www.hud.gov/sites/documents/LEADDUSTCLEARANCE.PDF>) and HUD Office of Lead Hazard Control and Healthy Homes Fact Sheet on Revised Dust-Lead Action Levels for Risk Assessment and Clearance; Clearance of Porch Floors, Policy Guidance No. 2017-01 Rev. 1 (Feb. 17, 2017) (copy available at [https://www.hud.gov/sites/documents/FS\\_LHC\\_DUSTLEAD\\_POLICY.PDF](https://www.hud.gov/sites/documents/FS_LHC_DUSTLEAD_POLICY.PDF)).

On July 9, 2019, EPA lowered the dust-lead hazard standards from 40 µg/ft<sup>2</sup> and 250 µg/ft<sup>2</sup> to 10 µg/ft<sup>2</sup> and 100 µg/ft<sup>2</sup> on floors and window sills, respectively. 84 Fed. Reg. 32632 (Jul. 9, 2019). In this action, commonly referred to as the 2019 Dust-Lead Hazard Standard (DLHS) Rule, EPA left the dust-lead clearance levels unchanged at 40 µg/ft<sup>2</sup> and 250 µg/ft<sup>2</sup> on floors and window sills. *Id.* at 32634. There is not a dust-lead hazard standard for window troughs, and the existing clearance level for window troughs of 400 µg/ft<sup>2</sup> was not addressed or changed in the 2019 DLHS Rule.

The change in the dust-lead hazard standards was a result of a U.S. Court of Appeals decision. While the court ruling required EPA to lower the dust-lead hazard standards, it did not address the dust-lead clearance levels. *Community Voice v. United States EPA*, 878 F.3d 779, 788 (9<sup>th</sup> Cir. 2017). This is because the Petitioners requested only that the court order EPA to finalize a rule to update the dust-lead hazard standards. Subsequently, EPA lowered only the dust-lead hazard standards leaving the dust-lead clearance levels unchanged.

EPA based its new dust-lead hazard standards on a survey it conducted in 2015 of dust-lead clearance levels used by HUD's OLHCHH. EPA stated in the proposed DLHS Rule preamble:

The survey concluded that “a reduction in the federal clearance standard for floors from 40 µg/ft<sup>2</sup> to 10 µg/ft<sup>2</sup>, [and] a reduction in the federal clearance standard for windowsills from 250 µg/ft<sup>2</sup> to 100 µg/ft<sup>2</sup> . . . are all technically feasible using the methods currently employed by OLHCHH [Lead Hazard Control] LHC grantees to prepare for clearance.” 83 Fed. Reg. 30889, 30890 (Jul. 2, 2018).

Thus, EPA's survey concluded that HUD's dust-lead clearance levels of 10 µg/ft<sup>2</sup> for floors and 100 µg/ft<sup>2</sup> for window sills are technically feasible. *Id.* at 30890. In its recent rule change, EPA used HUD's dust-lead clearance levels in setting its new dust-lead hazard standards only. *Id.*

Subsequent to the Department's initial presentation of the referenced rule proposal to the Air Quality Advisory Council at its June 2020 meeting, EPA proposed to revise the dust-lead clearance levels that are included in 40 C.F.R. § 745.227(e)(8)(viii), following the approach used for its 2019 DLHS Rule. 85 Fed. Reg. 37810 (Jun. 24, 2020). EPA's proposed action would lower the dust-lead clearance levels from 40 µg/ft<sup>2</sup> and 250 µg/ft<sup>2</sup> to 10 µg/ft<sup>2</sup> and 100 µg/ft<sup>2</sup> on floors and window sills, respectively. EPA did not propose to revise the existing clearance level for window troughs of 400 µg/ft<sup>2</sup> at that time.

DEQ is now seeking to adopt EPA's revised dust-lead clearance levels, which are consistent with EPA's dust-lead hazard standards and HUD's dust-lead clearance levels that have been proven to be technically feasible. In addition, DEQ proposes to use the more stringent 100 µg/ft<sup>2</sup> clearance level for window troughs that HUD's OLHCHH requires of its grantees.

**RATIONALE:** The reason for the more stringent rules is as follows:

EPA has stated that any exposure to lead in dust would have adverse health effects. 66 Fed. Reg. 1205, 1213 (Jan. 5, 2001). EPA and HUD have stated that the dust-lead clearance level of 100 µg/ft<sup>2</sup> for window troughs is technically feasible. 83 Fed. Reg. 30889, 30890 (Jul. 2, 2018) and 85

Fed. Reg. 37810 (Jun. 24, 2020).<sup>2</sup> The current dust-lead clearance levels for window troughs are higher than the dust-lead hazard standards for other areas set forth in the 2019 DLHS Rule. Thus, a dust-lead hazard could remain even if an abatement meets the existing clearance levels. Additionally, leaving the clearance levels unchanged could possibly allow abatement projects to result in dust-lead levels that are higher than initial lead testing after abatement work is completed. The proposed dust-lead clearance level for window troughs would match the HUD dust-lead clearance levels for window troughs that currently apply to certain HUD grantees. This proposed rulemaking is intended to protect Oklahomans from harm by lowering the dust-lead clearance levels.

#### **ENVIRONMENTAL BENEFIT:**

The proposed rule should result in improved public health and safety for the citizens of Oklahoma, especially children. Updating state regulations to match federal dust-lead hazard standards and aligning dust-lead clearance levels with the updated dust-lead hazard standards is intended to reduce the risk of exposure to LBP hazards by preventing abatements from creating higher dust-lead levels.

Exposure to lead from lead-based paint can cause a wide array of negative effects on multiple organ systems. Most notable are the effects of lead-based paint in children under the age of six years old, who are still developing. The proposed rules would result in improved public health, safety, and protection of the environment by reducing the risk of exposure to lead-based paint hazards by lowering the hazard standards and clearance levels.

#### **ECONOMIC IMPACT:**

The Department anticipates no significant economic impact as a result of the proposed changes. To reach the revised clearance levels, minimal costs may be incurred by contractors and firms that perform lead-based paint abatement activities for compensation. Property owners may incur increased costs if said costs are passed through by the contractors.

Additionally, the State of Oklahoma may see a reduction of costs in the long term associated with illness and services for children exposed to lead dust.

#### **THIS ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT STATEMENT WAS**

**PREPARED ON:** May 27, 2020.

**MODIFIED ON:** September 15, 2020 and January 20, 2021.

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<sup>2</sup> See Footnote 1.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**CHAPTER 110. LEAD-BASED PAINT MANAGEMENT**  
**SUBCHAPTER 3. DEFINITIONS**  
**SUBCHAPTER 5. INCORPORATION BY REFERENCE**  
**SUBCHAPTER 9. ADDITIONAL ACCREDITATION REQUIREMENTS**  
**SUBCHAPTER 11. ADDITIONAL LBP CERTIFICATION REQUIREMENTS**  
**SUBCHAPTER 13. ADDITIONAL WORK PRACTICE STANDARDS**  
**SUBCHAPTER 15. ADDITIONAL RENOVATION, REPAIR, AND PAINTING (RRP)**  
**REQUIREMENTS**

**EXECUTIVE SUMMARY:**

The Department of Environmental Quality (Department or DEQ) is proposing to amend Oklahoma Administrative Code (OAC) 252:110, Lead-Based Paint Management, to update the incorporation by reference section, to add provisions to implement the military reciprocity statute (59 O.S. § 4100, *et seq.*, Military Service Occupation, Education, and Credentialing Act), to update clearance levels to parallel dust-lead hazard changes, to remove several outdated provisions, and to correct minor punctuation and grammar errors. The proposed updates to hazard standards and clearance levels are necessary to maintain EPA approval for Oklahoma's Lead-Based Paint (LBP) program. The gist of the proposed rulemaking is to update the rule in accordance with recent changes to the federal lead-based paint poisoning prevention requirements, and to provide reciprocity for active-duty military service members and their spouses.

**DIFFERENCES FROM ANALOGOUS FEDERAL RULES:**

Most of the federal LBP program rules have previously been incorporated by reference with some minor differences to the analogous federal rules, primarily related to administrative policies under state law and department procedures, or excluding outdated initial transition procedures. The proposal updates the reference date to incorporate revised federal LBP hazard standards and other changes. The proposal also includes dust-lead clearance levels that correspond to the new federal dust-lead hazard standards and clearance levels, and are analogous to requirements of the U.S. Department of Housing and Urban Development. The proposed clearance level for window troughs is, however, more stringent than EPA's existing dust-lead clearance level for window troughs, which was not revised. The Department has prepared a separate Environmental Impact/Environmental Benefit Statement discussing in more depth the rationale for the proposed clearance levels.

**ENVIRONMENTAL BENEFIT STATEMENT:**

An Economic Impact/Environmental Benefit Statement has been prepared as required for the proposed rule OAC 252:110-13-7, which includes the dust-lead clearance level for window troughs that is more stringent than the current corresponding federal rule.

**SUMMARY OF COMMENTS AND RESPONSES:**

No comments were received relating to this rule proposal.

THE AIR QUALITY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title: OAC 252:110

**OAC 252:110. Lead-Based Paint Management**

**Subchapter 3. Definitions [AMENDED]**

**Subchapter 5. Incorporation by Reference [AMENDED]**

**Subchapter 9. Additional Accreditation Requirements [AMENDED]**

**Subchapter 11. Additional LBP Certification Requirements [AMENDED]**

**Subchapter 13. Additional Work Practice Standards [AMENDED]**

**Subchapter 15. Additional Renovation, Repair, and Painting (RRP) Requirements [AMENDED]**

On October 21, 2020, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

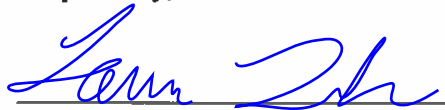
    X     permanent [take effect after legislative review]

           emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,

  
Chair or Designee:

Date Signed: 10-22-2020

	VOTING TO APPROVE	VOTING AGAINST	ABSTAIN	ABSENT
Matt Caves	✓			
Gary Collins	✓			
Robert Delano	✓			
Gregory Elliott	✓			
Garry Keele II	✓			
Steve Landers	✓			
John Privrat	✓			
Jeffrey Taylor	✓			
Laura Lodes	✓			

**DRAFT MINUTES  
AIR QUALITY ADVISORY COUNCIL  
October 21, 2020  
Department of Environmental Quality  
Oklahoma City, Oklahoma**

Official AQAC Approved  
at June 16, 2021 meeting

**Notice of Public Meeting** – The Air Quality Advisory Council (AQAC) convened for its Regular (Virtual) Meeting at 9:00 a.m. on October 21, 2020. Notice of the meeting was forwarded to the Office of Secretary of State on August 25, 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, please use the raise-hand function and the host will identify you. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

**MEMBERS PRESENT**

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

**DEQ STAFF PRESENT**

Kendal Stegmann  
Beverly Botchlet-Smith  
Cheryl Bradley  
Madison Miller  
Brooks Kirlin  
Melanie Foster  
Tom Richardson  
Nancy Pearce  
Quiana Fields

**MEMBERS ABSENT**

None

**Approval of Minutes** – Ms. Lodes called for a motion to approve the Minutes of the June 19, 2020 Regular Meeting. Mr. Taylor moved to approve and Mr. Keele made the second.

*See transcript pages 4 - 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		

Mr. Caves made a motion to approve the July 22, 2020 Special Meeting and Dr. Delano made the second.

*See transcript pages 5 - 6*

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 2021** – Ms. Lodes stated the proposed meeting scheduled dates are: January 20 in Oklahoma City, June 16 in Tulsa and October 20 in Oklahoma City. Following a brief discussion, Mr. Landers moved to approve the proposed dates and Mr. Keele made the second.

*See transcript pages 6 - 9*

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**

### **OAC 252:100-2. Incorporation By Reference [AMENDED]**

### **Appendix Q. Incorporation By Reference [REVOKED]**

### **Appendix Q. Incorporation By Reference [NEW]**

Ms. Nancy O'Brien, 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. Following a question by the Council and none by the public, Ms. Lodes called for a motion, Mr. Landers moved to approve and Dr. Delano made the second.

*See transcript pages 11 - 16*

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 110. Lead-Based Paint Management**

### **Subchapter 3. Definitions [AMENDED]**

### **Subchapter 5. Incorporation by Reference [AMENDED]**

### **Subchapter 9. Additional Accreditation Requirements [AMENDED]**

### **Subchapter 11. Additional LBP Certification Requirements [AMENDED]**

### **Subchapter 13. Additional Work Practice Standards [AMENDED]**

### **Subchapter 15. Additional Renovation, Repair, and Painting (RRP)**

### **Requirements [AMENDED]**

Mr. Brooks Kirlin, Professional Engineer of the AQD, stated the Department is proposing to amend OAC 252:110, Lead Based Paint Management, to update the incorporation by reference section (which includes EPA's new dust-lead hazard levels), to add provisions to implement the military reciprocity statute (59 O.S. §4100, *et seq.*, Military Service Occupation, Education and Credentialing Act), to update clearance levels to parallel federal dust-lead hazard changes, to clarify language in several provisions and to correct minor punctuation and grammar errors. The proposed updates to the dust hazard levels are necessary to maintain EPA approval for Oklahoma's Lead-Based Paint Program. Hearing questions and comments by the Council and staff and none by the public, Ms. Lodes called for a motion, Mr. Collins moved to approve and Mr. Taylor made the second.

*See transcript pages 16 – 33*

Matt Caves	Yes	Steve Landers	Yes
Gary Collins	Yes	John Privrat	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes



Gregory Elliott  
Garry Keele

Yes  
Yes

Laura Lodes

Yes

## **Chapter 4. Rules and Procedure**

### **Subchapter 7. Environmental Permit Process [AMENDED]**

Mr. Tom Richardson, Professional Engineer of the AQD, stated the Department is proposing to amend the air quality portions of Chapter 4, Subchapter 7 to better align the Department's issuance process and public participation procedures for Part 70 source construction and operating permits with the New Source Review permit requirements and Title V operating permit requirements. Mr. Richardson stated that the staff has recommended that the Council postpone their vote and discussion as well as from the public until after the Chapter 100 presentation. Mr. Collins moved that the Council postpone the discussion and vote on the proposed changes to Chapter 4 until after the discussion on Chapter 100. Mr. Elliott made the second.

*See transcript pages 33 - 62*

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. Lodes requested a brief recess before discussing Chapter 100. Mr. Caves made a motion to recess for 15 minutes and Mr. Taylor made the second.

*See transcript pages 62 - 63*

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. Lodes called the meeting back to order, whereupon Ms. Botchlet-Smith called upon Mr. Richardson to continue his presentation.

*See transcript page 64*

## **Chapter 100. Air Pollution Control**

### **Subchapter 1. Definitions [AMENDED]**

### **Subchapter 7. Permits for Minor Facilities [AMENDED]**

### **Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources [AMENDED]**

Mr. Richardson stated that the Department is proposing to amend definitions and permitting requirements in Subchapters 1, 7 and 8 to better align the Department's permit requirements and issuance process for construction and operating permits with the NSR permit requirements and Title V operation permit requirements and make other minor updates. Following a lengthy discussion by the Council and comments by the public, Ms. Madison Miller, Environmental Attorney, advised that when this meeting adjourns it adjourns to meet at 9:00 am on November 12, 2020, via zoom, with call-in information to be posted by DEQ at least 24 hours in advance. Mr. Collins moved to what Ms. Miller stated and Dr. Delano made the second.

*See transcript pages 64 - 174*

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		

Mr. Collins moved that the Council postpone the vote for Chapter 4 and 100 until the November 12 meeting and Mr. Elliot made the second.

*See transcript pages 175 - 177*

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 177*

**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 Dr. Delano made the second. The next scheduled regular continued meeting is on Thursday, November 12, 2020 via zoom. Meeting adjourned at 12:50 p.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 is an official part of these Minutes.**

I can't remember when they moved the National Brownfields Conference Did we check the Quality 10/21/2020

DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR QUALITY ADVISORY COUNCIL

AIR QUALITY ADVISORY COUNCIL MEETING

OCTOBER 21, 2020 - 9:00 A.M.

VIRTUAL ZOOM MEETING

REPORTED BY: ELISE GRAYSON CRUCHON, CSR

<p>1 BOARD MEMBERS PRESENT</p> <p>2</p> <p>3 MS. LAURA LODES, CHAIRMAN</p> <p>4 MR. GARY COLLINS, VICE CHAIRMAN</p> <p>5 MR. MATT CAVES</p> <p>6 DR. ROBERT DELANO</p> <p>7 MR. GREGORY ELLIOTT</p> <p>8 MR. GARRY KEELE II</p> <p>9 MR. STEVE LANDERS</p> <p>10 MR. JOHN PRIVRAT</p> <p>11 MR. JEFFREY TAYLOR</p> <p>12</p> <p>13 Also Present</p> <p>14</p> <p>15 Ms. Quiana Fields, Secretary Director Board and</p> <p>16 Council</p> <p>17 Ms. Kendal Stegmann, Division Director</p> <p>18 Ms. Beverly Botchlet-Smith</p> <p>19 Ms. Madison Miller</p> <p>20 Ms. Melanie Foster</p> <p>21 Mr. Malcolm Zachariah</p> <p>22 Ms. Christina Hagens</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (Inaudible or indecipherable</p> <p>2 testimony may be due to interruptions in</p> <p>3 audio/video connection.)</p> <p>4 (Meeting called to order at</p> <p>5 9:05 a.m.)</p> <p>6 CHAIRMAN LODES: I think we're ready</p> <p>7 to call today's meeting of the Air Quality</p> <p>8 Advisory Council to order. Would you please</p> <p>9 call roll?</p> <p>10 MS. FIELDS: Mr. Caves?</p> <p>11 MR. CAVES: Here.</p> <p>12 MS. FIELDS: Mr. Collins?</p> <p>13 MR. COLLINS: Here.</p> <p>14 MS. FIELDS: Dr. Delano?</p> <p>15 DR. DELANO: Here.</p> <p>16 MS. FIELDS: Mr. Elliott?</p> <p>17 MR. ELLIOTT: Here.</p> <p>18 MS. FIELDS: Mr. Keele?</p> <p>19 MR. KEELE: Present.</p> <p>20 MS. FIELDS: Mr. Landers?</p> <p>21 MR. LANDERS: Present.</p> <p>22 MS. FIELDS: Mr. Privrat?</p> <p>23 MR. PRIVRAT: Present.</p> <p>24 MS. FIELDS: Mr. Taylor?</p> <p>25 MR. TAYLOR: Here.</p>
<p>1 MS. FIELDS: Ms. Lodes?</p> <p>2 CHAIRMAN LODES: Here.</p> <p>3 MS. FIELDS: We have a quorum.</p> <p>4 CHAIRMAN LODES: Thank you.</p> <p>5 The next item on today's Agenda is</p> <p>6 approval of the minutes from the June 17th,</p> <p>7 2020, regular meeting and the July 22nd, 2020,</p> <p>8 special meeting. We'll need to approve these</p> <p>9 minute packages individually.</p> <p>10 So do I have a motion or any</p> <p>11 questions on the minutes from the June 17th,</p> <p>12 2020, regular meeting?</p> <p>13 (No oral response.)</p> <p>14 CHAIRMAN LODES: Hearing no comments,</p> <p>15 do I have motion to approve the minutes from</p> <p>16 the June 17th, 2020, regular meeting?</p> <p>17 MR. TAYLOR: I'll make motion to</p> <p>18 approve the minutes from the June 17th regular</p> <p>19 meeting.</p> <p>20 MR. KEELE: Second.</p> <p>21 CHAIRMAN LODES: I have a motion and</p> <p>22 a second. Quiana, will you please call roll?</p> <p>23 MS. FIELDS: Mr. Caves?</p> <p>24 MR. CAVES: Yes.</p> <p>25 MS. FIELDS: Mr. Collins?</p>	<p>1 MR. COLLINS: Yes.</p> <p>2 MS. FIELDS: Mister -- I mean --</p> <p>3 excuse me. Dr. Delano?</p> <p>4 DR. DELANO: Yes.</p> <p>5 MS. FIELDS: Mr. Elliott?</p> <p>6 MR. ELLIOTT: Yes.</p> <p>7 MS. FIELDS: Mr. Keele?</p> <p>8 MR. KEELE: Yes.</p> <p>9 MS. FIELDS: Mr. Landers?</p> <p>10 MR. LANDERS: Yes.</p> <p>11 MS. FIELDS: Mr. Privrat?</p> <p>12 MR. PRIVRAT: Yes.</p> <p>13 MS. FIELDS: Mr. Taylor?</p> <p>14 MR. TAYLOR: Yes.</p> <p>15 MS. FIELDS: Ms. Lodes?</p> <p>16 CHAIRMAN LODES: Yes.</p> <p>17 MS. FIELDS: Motion passed.</p> <p>18 CHAIRMAN LODES: Thank you.</p> <p>19 MR. CAVES: Can I make a motion to</p> <p>20 approve the July 22nd, 2020 special meeting</p> <p>21 minutes?</p> <p>22 DR. DELANO: I second that.</p> <p>23 CHAIRMAN LODES: Thank you. I have a</p> <p>24 motion and a second. Quiana, will you please</p> <p>25 call roll?</p>

<p style="text-align: right;">Page 6</p> <p>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. Elliott? 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 CHAIRMAN LODES: Yes. 19 MS. FIELDS: Motion passed. 20 CHAIRMAN LODES: Thank you. The next 21 thing on today's Agenda is the meeting 22 schedule for calendar year 2021. The current 23 staff suggestions are Wednesday, January 20th, 24 2021, in Oklahoma City, Wednesday, June 16th, 25 2021, in Tulsa, and Wednesday October 20th,</p>	<p style="text-align: right;">Page 7</p> <p>1 2021, in Oklahoma City. 2 I haven't looked -- Do we know -- 3 that's not going to be a problem with EFO in 4 October, correct? Did y'all check that? 5 MS. FOSTER: I believe we did check 6 that and I don't believe it should conflict. 7 CHAIRMAN LODES: Okay. Seems like 8 that's the only one that we're ever trying to 9 make sure we worked it out. 10 Any questions or concerns regarding 11 the -- those proposed meetings schedule? 12 MR. KEELE: This is Garry Keele. By 13 chance, do we know -- I can't remember when 14 they moved the National Brownfields Conference 15 back in the fall. I think it's September. 16 Did we check against that one, too, because 17 that one will probably draw some people. 18 MS. FOSTER: This is Melanie. No, I 19 don't know that we did double-check that one. 20 Let me see if I can find that one real quick. 21 Erin, do you know that (inaudible) -- 22 MR. KEELE: I think that -- I can't 23 get to my calendar the way I'm on Zoom, so I 24 would check there, but I think it's September, 25 but maybe it doesn't matter enough for this</p>
<p style="text-align: right;">Page 8</p> <p>1 group to put that off. That will be a big 2 draw for a lot of people. 3 MR. ZACHARIAH: Looking -- It seems 4 it's September 27th through 30th, 2021, 5 MR. KEELE: Perfect. Thanks. 6 CHAIRMAN LODES: Is there any other 7 discussion on these proposed dates? 8 (No oral response.) 9 CHAIRMAN LODES: Hearing none. Do I 10 have a motion to approve these dates? 11 MR. LANDERS: I'll make a motion to 12 approve. 13 MR. KEELE: Second. 14 CHAIRMAN LODES: I have a motion and 15 a second. Call roll. 16 MS. FIELDS: Mr. Caves? 17 MR. CAVES: Yes. 18 MS. FIELDS: Mr. Collins? 19 MR. COLLINS: Yes. 20 MS. FIELDS: Dr. Delano? 21 DR. DELANO: Yes. 22 MS. FIELDS: Mr. Elliott? 23 MR. ELLIOTT: Yes. 24 MS. FIELDS: Mr. Keele? 25 MR. KEELE: Yes.</p>	<p style="text-align: right;">Page 9</p> <p>1 MS. FIELDS: Mr. Landers? 2 MR. LANDERS: Yes. 3 MS. FIELDS: Mr. Privrat? 4 MR. PRIVRAT: Yes. 5 MS. FIELDS: Mr. Taylor? 6 MR. TAYLOR: Yes. 7 MS. FIELDS: Ms. Lodes? 8 CHAIRMAN LODES: Yes. 9 MS. FIELDS: Motion passed. 10 CHAIRMAN LODES: Thank you. It is 11 now time to enter the Public Rulemaking 12 Hearing. Beverly. 13 MS. BOTCHLET-SMITH: Good morning. 14 I'm Beverly Botchlet-Smith. I'm the assistant 15 director of the Air Quality Division, and as 16 such I will act as the protocol officer for 17 today's hearings. The hearings will be 18 convened by the Air Quality Council in 19 compliance with the Oklahoma Administrative 20 Procedures Act and Title 40 of the Code of 21 Federal Regulations, Part 51, as well as the 22 authority of Title 27A of the Oklahoma 23 Statutes, Section 2-2-201 and Sections 2-5-101 24 through 2-5-117. 25 Notice of the October 21st, 2020,</p>

<p style="text-align: right;">Page 10</p> <p>1 virtual hearings were advertised in the 2 Oklahoma Register for the purpose of receiving 3 comments pertaining to the proposed OAC Title 4 252, Chapter 4, Chapter 100, and Chapter 110 5 rules as listed on the Agenda, and will be 6 entered into each record, along with the 7 Oklahoma Register filing. 8 Notice of the meeting was filed with 9 the Secretary of State on August 25th, 2020. 10 The Agenda and links to access the virtual 11 meeting were posted on the website at least 24 12 hours prior to the meeting pursuant to Title 13 25 of the Oklahoma Statutes, Section 311. 14 If you wish to make a statement when 15 it's time to make a public comment, please use 16 the raise-hand function found either at the 17 bottom of your screen or under the 18 participant's tab, depending on your device. 19 If you're attending this meeting by 20 calling in, then you will raise your hand by 21 pressing *9 on your keypad. 22 When it is your turn to speak, the 23 host will identify you by announcing your 24 displayed name or the last four digits of your 25 phone number, and then you will be unmuted.</p>	<p style="text-align: right;">Page 11</p> <p>1 You must first identify yourself by 2 stating your name and your affiliation, and 3 then you will have three minutes to make your 4 comment on the record. 5 When your time expires, you will be 6 notified and your line will be muted, as we 7 move on to the next person who is requesting 8 to speak. 9 So let's move on to what is marked as 10 Agenda item No. 5A on the Hearing Agenda, that 11 is Chapter 100, Air Pollution Control, OAC 12 252:100-2, Incorporation by Reference, and 13 Appendix Q, Incorporation by Reference. 14 Today the presentation for this will 15 be made by Nancy Pearce, who is an 16 Environmental Program Specialist with our 17 Rules and Planning Section. 18 Nancy. 19 MS. PEARCE: Good morning. Can you 20 hear me? 21 (Board members answer "yes" 22 collectively.) 23 MS. PEARCE: Madame Chair, Members of 24 the Council, Ladies and Gentlemen, I am Nancy 25 Pearce, Environmental Programs Specialist with</p>
<p style="text-align: right;">Page 12</p> <p>1 the Air Quality Division. The Department is 2 proposing to update language in Subchapter 2, 3 Incorporation by Reference to reflect the new 4 date of incorporation for Appendix Q. 5 In addition, the Department is 6 proposing to revoke the current Chapter 100, 7 Appendix Q, Incorporation by Reference and 8 adopt a New Appendix Q. This proposal is a 9 part of the annual update of Title 40, Code of 10 Federal Regulations, Incorporation by 11 Reference in Chapter 100. The Oklahoma rules 12 on rulemaking dictate the procedure for 13 amending a rule Appendix by revoking the old 14 and creating an entirely new Appendix. 15 The proposed changes to Appendix Q 16 reflect federal regulations, mostly New Source 17 Performance Standards or NSPS and National 18 Emissions Standards for hazardous air 19 pollutants, NESHAPs, which have been 20 implemented as of June 30th, 2020. 21 The update would incorporate any 22 amendments to standards currently listed in 23 Appendix Q. A list of standards currently, 24 included in Appendix Q, that have been 25 modified since July 1, 2019, was provided in</p>	<p style="text-align: right;">Page 13</p> <p>1 your packet. No new standards have been added 2 this year. 3 Notice was published in the Oklahoma 4 Register on September 15th, 2020, for these 5 proposed changes. The Notice requested 6 written comments from the public and other 7 interested parties. No comments have been 8 received as of today. Staff requests the 9 Council recommend this rulemaking to the 10 Environmental Quality Board for permanent 11 adoption. 12 Thank you. 13 MS. BOTCHLET-SMITH: At this time, 14 we'll take questions from the Council. 15 (No oral response.) 16 CHAIRMAN LODES: Do we have any 17 questions? 18 MR. KEELE: This is Garry Keele. I 19 mean, this is just the normal incorporation we 20 do year by year, correct? 21 MS. PEARCE: Yes, that's correct. 22 It's just to update the date basically so that 23 anything that has been passed or, you 24 know, modified in the past year is included. 25 MR. KEELE: Perfect. Thank you.</p>

<p style="text-align: right;">Page 14</p> <p>1 MS. PEARCE: You're welcome.</p> <p>2 MS. BOTCHLET-SMITH: Any other</p> <p>3 questions at this time?</p> <p>4 While you think a moment, I would</p> <p>5 like to mention to ensure the public's able to</p> <p>6 hear everything the Council, questions or</p> <p>7 discussions on this rule, they all will be</p> <p>8 made audibly and chat features in Zoom are not</p> <p>9 used.</p> <p>10 If we don't have any other questions</p> <p>11 from the Council at this time, we can move on</p> <p>12 to take questions from the public.</p> <p>13 Remember to let the Council know you</p> <p>14 would like to make a public comment, you must</p> <p>15 use the raise-hand function on your device or</p> <p>16 press *9 on your telephone keypad. The host</p> <p>17 will unmute your line when it's your turn to</p> <p>18 speak. You may also need to unmute yourself</p> <p>19 using the microphone icon or *6 on your</p> <p>20 keypad. Remember to state your name and your</p> <p>21 affiliation for the record before beginning</p> <p>22 your comment. You may also need to spell your</p> <p>23 name for the record.</p> <p>24 The host will proceed with calling on</p> <p>25 the first commenter. Do we have any comments</p>	<p style="text-align: right;">Page 15</p> <p>1 from the public?</p> <p>2 MS. HAGENS: We're currently not</p> <p>3 seeing any raised hands, but we will wait a</p> <p>4 few moments so people can navigate to that</p> <p>5 button.</p> <p>6 And as Beverly said, depending on</p> <p>7 your device, this feature will be found in</p> <p>8 possibly a different part of your screen, so</p> <p>9 either at the bottom under participants or at</p> <p>10 the top right, if you're on a tablet.</p> <p>11 (No response.)</p> <p>12 MS. HAGENS: Still not seeing any</p> <p>13 hands.</p> <p>14 CHAIRMAN LODES: The Agency has asked</p> <p>15 that we pass this proposed rulemaking. Do I</p> <p>16 have a motion?</p> <p>17 MR. LANDERS: I'll make a motion to</p> <p>18 approve.</p> <p>19 DR. DELANO: I'll second that.</p> <p>20 CHAIRMAN LODES: I have a motion and</p> <p>21 a second. Quiana will you please call roll?</p> <p>22 MS. FIELDS: Mr. Caves?</p> <p>23 MR. CAVES: Yes.</p> <p>24 MS. FIELDS: Mr. Collins?</p> <p>25 MR. COLLINS: Yes.</p>
<p style="text-align: right;">Page 16</p> <p>1 MS. FIELDS: Dr. Delano?</p> <p>2 DR. DELANO: Yes.</p> <p>3 MS. FIELDS: Mr. Elliott?</p> <p>4 MR. ELLIOTT: Yes.</p> <p>5 MS. FIELDS: Mr. Keele?</p> <p>6 MR. KEELE: Yes.</p> <p>7 MS. FIELDS: Mr. Landers?</p> <p>8 MR. LANDERS: Yes.</p> <p>9 MS. FIELDS: Mr. Privrat?</p> <p>10 MR. PRIVRAT: Yes.</p> <p>11 MS. FIELDS: Mr. Taylor?</p> <p>12 MR. TAYLOR: Yes.</p> <p>13 MS. FIELDS: Ms. Lodes?</p> <p>14 CHAIRMAN LODES: Yes.</p> <p>15 MS. FIELDS: Motion passed.</p> <p>16 MS. BOTCHLET-SMITH: The next item on</p> <p>17 today's Agenda is item 5B. This is Chapter</p> <p>18 110, Lead-Based Paint Management, and within</p> <p>19 that chapter, Subchapter 3, Definitions,</p> <p>20 Subchapter 5, Incorporation by Reference,</p> <p>21 Subchapter 9, Additional Accreditation</p> <p>22 Requirements, Subchapter 11, Additional</p> <p>23 Lead-Based Paint Certification Requirements,</p> <p>24 Subchapter 13, Additional Work Practice</p> <p>25 Standards, and Subchapter 15, Additional</p>	<p style="text-align: right;">Page 17</p> <p>1 Renovation, Repair, and Painting Requirements.</p> <p>2 The presentation will be done by Mr. Brooks</p> <p>3 Kirlin, Professional Engineer from the Rules</p> <p>4 and Planning Section.</p> <p>5 MR. ZACHARIAH: Brooks, you're muted.</p> <p>6 MR. KIRLIN: I'm not sure. Can you</p> <p>7 hear me? Let me change -- I need to -- Let me</p> <p>8 change equipment. I don't know what the deal</p> <p>9 is.</p> <p>10 CHAIRMAN LODES: Brooks, we can hear</p> <p>11 you.</p> <p>12 MR. KEELE: We can hear you, Brooks.</p> <p>13 MR. KIRLIN: You can hear me?</p> <p>14 CHAIRMAN LODES: We can hear you.</p> <p>15 MR. DELANO: We can hear you.</p> <p>16 MR. KIRLIN: Okay. Sorry. I have no</p> <p>17 idea what -- Let me try that again. Thank</p> <p>18 you, Bev.</p> <p>19 Good morning, Madame Chair, Members</p> <p>20 of the Council, Ladies and Gentlemen, as Bev</p> <p>21 mentioned, I am Brooks Kirlin an engineer with</p> <p>22 the Air Quality Rules and Planning Section.</p> <p>23 Next slide, please.</p> <p>24 The Department is proposing to amend</p> <p>25 several requirements in Chapter 110,</p>

<p style="text-align: right;">Page 18</p> <p>1 Lead-Based Paint Management, including the</p> <p>2 Renovation, Repair and Painting rule, or RRP</p> <p>3 Rule. We presented most of these proposed</p> <p>4 provisions at the June Council meeting. I</p> <p>5 will point out the few differences from that</p> <p>6 proposal, mostly eliminating outdated</p> <p>7 language, as we go through the rules.</p> <p>8 The Lead-Based Paint and RRP rules,</p> <p>9 which are federal programs delegated to the</p> <p>10 State, establish standards with accreditation,</p> <p>11 training, certification and recordkeeping</p> <p>12 requirements for persons performing Lead-Based</p> <p>13 Paint abatement projects and other renovations</p> <p>14 for compensation in housing built before 1978,</p> <p>15 referred to as target housing and</p> <p>16 child-occupied facilities.</p> <p>17 The Lead-Based Paint or LBP program</p> <p>18 is critical because there is no safe level of</p> <p>19 exposure to lead. And many of those who are</p> <p>20 most likely to be exposed are members of</p> <p>21 disadvantaged communities, and the most</p> <p>22 vulnerable to its effects young children</p> <p>23 living or being cared for in older housing or</p> <p>24 other facilities.</p> <p>25 Next slide, please. The two most</p>	<p style="text-align: right;">Page 19</p> <p>1 significant changes we're proposing are to</p> <p>2 update the dust-lead hazard and clearance</p> <p>3 levels. And to add provisions to implement</p> <p>4 Oklahoma's military reciprocity rule.</p> <p>5 We're also proposing to update the</p> <p>6 Incorporations by Reference section, to make</p> <p>7 various clarifications, updates and</p> <p>8 corrections to existing language, and remove</p> <p>9 several outdated provisions.</p> <p>10 At the risk of skipping around in the</p> <p>11 proposed rule, I'd like to cover the two</p> <p>12 significant changes first, and then go through</p> <p>13 the additional less significant changes in</p> <p>14 order.</p> <p>15 Next slide. The main impetus for</p> <p>16 this rule change is that the US Environmental</p> <p>17 Protection Agency lowered its dust-lead hazard</p> <p>18 levels in 40 CFR, Section 745.227(h) following</p> <p>19 a court decision. EPA requires DEQ, under our</p> <p>20 delegated obligations, to incorporate the</p> <p>21 hazard level changes into our rules by January</p> <p>22 6th, 2022. We would accomplish this change by</p> <p>23 updating the Incorporation by reference date</p> <p>24 in Section 252:110-5-1.</p> <p>25 The court decision did not address</p>
<p style="text-align: right;">Page 20</p> <p>1 clearance levels, and EPA had not, at the time</p> <p>2 of the June Council meeting, updated the</p> <p>3 clearance levels in 40 CFR, Section</p> <p>4 745.227(e). This could potentially lead to a</p> <p>5 situation where an abatement project in</p> <p>6 Oklahoma could remove the bulk of the old</p> <p>7 lead-based paint, but leave behind dust at</p> <p>8 levels that are harmful.</p> <p>9 The day after the June Council</p> <p>10 meeting, EPA announced a proposal to, in fact,</p> <p>11 lower the dust-lead clearance levels, which</p> <p>12 was published in the Federal Register on June</p> <p>13 24th. Therefore, we are proposing to add a</p> <p>14 new Section 110-13-7, which would specify LBP</p> <p>15 abatement project clearances -- clearance</p> <p>16 levels for lead in dust rather than leaving</p> <p>17 EPA's old clearance levels incorporated by</p> <p>18 reference. I might point out that, obviously,</p> <p>19 their levels are a proposal at this point and</p> <p>20 have -- will not take a -- will not go final</p> <p>21 until later.</p> <p>22 Next slide, please. The clearance</p> <p>23 levels we are proposing in the new Section</p> <p>24 110-13-7 are intended to parallel EPA's</p> <p>25 revised dust-lead hazard levels, their</p>	<p style="text-align: right;">Page 21</p> <p>1 proposed dust-lead clearance levels, and</p> <p>2 clearance levels already being used by the US</p> <p>3 Department of Housing and Urban Development's</p> <p>4 Office of Healthy Homes and Lead Hazard</p> <p>5 Control. Note the Department is proposing a</p> <p>6 clearance level for window troughs in line</p> <p>7 with HUD's clearance levels, since EPA did not</p> <p>8 propose a change. This is not a change from</p> <p>9 the June proposal.</p> <p>10 Because DEQ has determined that the</p> <p>11 dust-lead clearance levels included in the</p> <p>12 proposed Section 110-13-7 are more stringent</p> <p>13 than the clearance levels as they currently</p> <p>14 exist in the corresponding federal rule, we</p> <p>15 have prepared an Economic Impact and</p> <p>16 Environmental Benefit Statement, as required.</p> <p>17 A copy is included in your packet.</p> <p>18 Next slide, please. The second</p> <p>19 significant change we are proposing is to</p> <p>20 Subchapter 11, which would add a new Section</p> <p>21 110-11-7.1, to lay out the provisions</p> <p>22 implementing Oklahoma's military reciprocity</p> <p>23 bill called the Military Service Occupation,</p> <p>24 Education, and Credentialing Act.</p> <p>25 The new section provides that any</p>



<p style="text-align: right;">Page 22</p> <p>1 active duty military and/or their spouse who 2 are already certified by another state as an 3 LBP Contractor may request a reciprocal 4 certification from DEQ when they are 5 transferred or discharged from the military to 6 Oklahoma. This would allow them to continue 7 working as an LBP Contractor with no, or at 8 least fewer delays or fees. Similar 9 provisions have been added in the Subchapter 10 15 RRP requirements. There's no change -- 11 This is no change from the June proposal in 12 this section.</p> <p>13 Next slide, please. Now going a 14 little more quickly through additional, less 15 significant changes in order, I'll start back 16 on page 1 of the rule proposal, with updates 17 to a couple of definitions in Section 110-3-1. 18 No changes from June here. I realize that 19 several of the following slides are very busy, 20 but their main purpose is to help you navigate 21 through your copy of the proposals to the 22 changes as I mention them.</p> <p>23 Next slide, please. In Section 24 110-5-1, we are proposing to update the date 25 for the incorporation by reference of federal</p>	<p style="text-align: right;">Page 23</p> <p>1 requirements, excluding a few additional 2 provisions that are no longer appropriate or 3 relevant.</p> <p>4 Next slide. And adding a few 5 clarifying phrases, again, this is the same as 6 in the June proposal.</p> <p>7 Next slide, please. Now we do have a 8 tweak here. In June we proposed to add a new 9 Section 110-9-1.2 in Subchapter 9, to clarify 10 certification documentation requirements.</p> <p>11 Next slide, please. Following 12 further discussion, staff decided that the 13 change fit better as a subsection to existing 14 Section 9-1.1. We changed the plural 15 "certificates." The term certificates is 16 singular, "certificate," but, otherwise, the 17 wording is precisely the same as in June.</p> <p>18 Next slide, please. A couple of new 19 changes. We are eliminating some outdated 20 language in Subchapter 11, Section 11-3.</p> <p>21 Next slide. And in Subchapter 13, 22 Section 13-5.</p> <p>23 Next slide. Finally, for the RRP 24 requirements in Subchapter 15, we are 25 proposing to delete some outdated language in</p>
<p style="text-align: right;">Page 24</p> <p>1 Section 15-3. This is new from the June 2 Council meeting.</p> <p>3 Next slide, please. To add a new -- 4 I'm sorry. To add a new Section 15-3.1.</p> <p>5 Next slide. And to significantly 6 reword Sections 15-4.</p> <p>7 Next slide. And 15-5, to update and 8 clarify requirements.</p> <p>9 Next slide, please. As I previously 10 mentioned, we are adding language to implement 11 the military reciprocity provisions to the RRP 12 requirements in Subchapter 15, in Section 15-4 13 for individual renovators.</p> <p>14 Next slide, please. And Section 15 15-5, for those applying as a renovation firm.</p> <p>16 Next slide, please. Notice of the 17 proposed rule changes was published in the 18 Oklahoma Register on September 15, 2020, and 19 comments were requested from members of the 20 public. No comments on the proposal have been 21 received. This is the second time this 22 proposal has been presented to the Council for 23 consideration.</p> <p>24 We are requesting that the Council 25 recommend the rule as proposed to the</p>	<p style="text-align: right;">Page 25</p> <p>1 Environmental Quality Board for adoption as a 2 permanent rule. The Department believes it is 3 important to move a proposal forward since EPA 4 expects DEQ to update the hazard level changes 5 in our rules by July [sic] 6th, 2022.</p> <p>6 Last slide, please. Thank you.</p> <p>7 Any questions?</p> <p>8 MS. BOTCHLET-SMITH: Thank you 9 Brooks. Again, I'd like to remind you to 10 ensure the public is able to listen to the 11 Council's deliberation on this rule. All 12 questions from the Council will be made 13 audibly, and the chat features are not being 14 used. So, at this time, we would take 15 questions from the Council.</p> <p>16 MR. ZACHARIAH: Also, we'd like them 17 to identify, the Council member to identify 18 themselves. Thanks.</p> <p>19 MS. BOTCHLET-SMITH: Thank you, 20 Malcolm.</p> <p>21 MR. KEELE: Hey there, this is Garry 22 Keele. I do have a question. Brooks, if I 23 heard you correctly, on the clearance levels 24 it sounds like the proposed level in this rule 25 is more stringent than what's currently on the</p>

<p style="text-align: right;">Page 26</p> <p>1 books for EPA, but EPA has proposed or finally 2 proposed clearance levels that haven't gone 3 final yet; is that correct? 4 MR. KIRLIN: That's correct. Now, 5 they did not propose a change to the trough 6 levels, but we are proposing to lower those, 7 the trough levels to match -- actually go 8 along more with the HUD approach, 9 because it's -- it doesn't make -- we weren't 10 really sure of the logic behind not lowering 11 them to match the window sill levels. 12 MS. MILLER: And because it's tech -- 13 This is Madison Miller, DEQ legal. It's 14 technically feasible to meet those lower 15 clearance levels, so it makes sense to -- for 16 the troughs to be technically feasible as 17 well. 18 MR. KEELE: One last question. Has 19 the Agency, is there a plan to do outreach to 20 the developers and vendors that will be 21 subject of this rule? 22 I may have asked that before, but I 23 would suspect there will be confusion in that 24 community about this. 25 Thanks.</p>	<p style="text-align: right;">Page 27</p> <p>1 MR. KIRLIN: I'm not sure. I would 2 need to defer to one of our program people. 3 Is -- Dara or Heather would like to speak to 4 that? 5 MS. MILLER: This is Madison Miller 6 again. It's my understanding that we have 7 been doing some outreach, and that we have had 8 discussions with them. And bringing this to 9 the June Council was our -- was a way of, you 10 know, conducting some outreach by proposing it 11 to the public and, I think at that time, we 12 said we want feedback on this. So having said 13 that, I'll defer to Dara. 14 MS. SCHULTZ: Yes, this is Dara 15 Schultz with DEQ. I think part of the 16 question I missed. I think it was breaking 17 up. But was the question just, how or whether 18 we were going to notify the public of this. 19 MR. KEELE: No. This is Garry Keele 20 again. I'm sorry. Not so much notification. 21 I mean, these meetings count as public 22 notification in theory. The problem is, is 23 that people in that world, that work with this 24 rule, may not, unlike people that do normal 25 air permitting, may not be aware that these</p>
<p style="text-align: right;">Page 28</p> <p>1 kind of changes are being made. You're 2 talking about developers and people that 3 remediate, you know, lead-based paint or run 4 an O&amp;M plant. And I was just curious if there 5 was a, sort of a targeted outreach to that 6 group to know -- so they would know that these 7 changes have been made. 8 MS. SCHULTZ: Yes. Dara Schultz with 9 DEQ again. Yes, we do have some plans to do 10 that, but I'll defer to Heather on exactly the 11 plan. Heather. 12 MS. LERCH: Good morning, this is 13 Heather Lerch with DEQ. We have a very close 14 relationship with our training providers, and 15 this is a relatively small community of 16 stakeholders that we work with on a regular 17 basis. So these professionals are required 18 not only to take an initial class when they 19 begin work, but they also have to take 20 refresher courses. And by informing our 21 training provider, and maintaining good 22 communication with those people who teach the 23 classes, we ensure that these -- this -- the 24 changes to these rules are passed along in the 25 classes that they take each year.</p>	<p style="text-align: right;">Page 29</p> <p>1 So even if we don't -- and aren't 2 able to reach them through traditional 3 outreach means, which is something we haven't 4 discussed, and it would be a good thing for us 5 to discuss internally. But even if we don't 6 reach them for that means, at a minimum, they 7 would hear it in their classes. 8 MR. KEELE: Thank you. 9 MS. BOTCHLET-SMITH: Other questions 10 from the Council? 11 MR. PRIVRAT: This is John Privrat. 12 I have questions -- or two question on the 13 military reciprocity. First question, is my 14 understanding correct that this is just 15 matching state law? And, secondly, how many 16 people do we think would take advantage of 17 this opportunity? 18 MR. KIRLIN: Yes, this is intended to 19 match what's on the books and state law. And 20 I'm not sure that we've done a study or really 21 know how many would take advantage. 22 MR. PRIVRAT: Okay. Thank you. 23 MR. COLLINS: Yeah, this is Gary 24 Collins. Brooks, can you -- I know this was 25 discussed at the June meeting but can you just</p>

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<p>1 refresh us again, give us a summary of the 2 differences on the clearance levels between 3 the EPA rule? 4 MR. KIRLIN: Sure. Can we pull up 5 the -- There you go. Okay. So the lead-dust 6 levels, hazard levels are 10, 10 micrograms 7 per square foot, or 100 micrograms per square 8 foot for interior window sills. Previously, 9 they were 40 and 250, that's what they are 10 now. The dust-lead clearance levels, you can 11 see the existing ones are 40 micrograms per 12 square foot for floors, 250 micrograms per 13 square foot for interior window sills, and 14 100 -- 400 for window troughs. So their 15 proposal is 10 for floors, 100 for interior 16 window sills, and they would retain the 400. 17 But we're -- for the window troughs, I'm 18 sorry. And so we're adopting the first few 19 numbers and we're proposing the window troughs 20 be at the 100 that HUD has said is achievable 21 and that they've used. 22 MR. COLLINS: Okay. Hey, that's 23 great. Thank you. 24 MR. KIRLIN: Thank you, Malcolm. 25 MS. BOTCHLET-SMITH: Any other</p>	<p>1 questions from the Council? 2 (No oral response.) 3 MS. BOTCHLET-SMITH: We'd like to 4 give the public an opportunity to ask 5 questions at this time. 6 Please remember if you want to make a 7 public comment, You need to use the raise-hand 8 function on your computer or press *9 on your 9 telephone keypad, and the host will unmute 10 your line when it is your turn. 11 Do we have any requesting to speak? 12 MS. HAGENS: We currently don't have 13 anyone showing their hands raised, but we will 14 let everyone have a second and take a look at 15 that slide and troubleshoot if they're able to 16 get to that. 17 MS. BOTCHLET-SMITH: If you do wish 18 to comment, please remember you'll need to 19 state your name and affiliation for the record 20 before you begin your comment. And you may 21 need to spell your name. Any commenters? 22 (No response.) 23 MS. HAGENS: Still not seeing any 24 hands raised. 25 MS. BOTCHLET-SMITH: Council, do you</p>
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<p>1 have any final questions. 2 (No oral response.) 3 CHAIRMAN LODES: Hearing no final 4 questions, the DEQ has recommended -- staff 5 has recommended that we pass this rule as 6 proposed. Do I have a motion? 7 MR. COLLINS: Laura, this is Gary 8 Collins. I move that we approve the proposed 9 modifications to OAC 252:110, Lead-Based Paint 10 Management. 11 CHAIRMAN LODES: Thank you. Do I 12 have a second? 13 MR. TAYLOR: I'll second that. 14 CHAIRMAN LODES: Thank you. I have a 15 motion and a second. Quiana, will you please 16 call 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: (No oral response.) 23 MS. FIELDS: Dr. Delano? 24 DR. DELANO: Yes. 25 MS. FIELDS: Mr. Elliott?</p>	<p>1 MR. ELLIOTT: (No oral response.) 2 MS. FIELDS: Mr. Elliott? 3 MR. ELLIOTT: (No oral response.) 4 MS. FIELDS: We'll go back to him. 5 Mr. Keele? 6 MR. KEELE: Yes. 7 MS. FIELDS: Mr. Landers? 8 MR. LANDERS: Yes. 9 MS. FIELDS: Mr. Privrat? 10 MR. PRIVRAT: Yes. 11 MS. FIELDS: Mr. Taylor? 12 MR. TAYLOR: Yes. 13 MS. FIELDS: Mr. Elliott? 14 CHAIRMAN LODES: Gary, you need to 15 unmute yourself. 16 MS. FIELDS: Mr. Elliott? 17 MR. ELLIOTT: Yes. 18 MS. FIELDS: Ms. Lodes? 19 CHAIRMAN LODES: Yes. 20 MS. FIELDS: Motion passed. 21 CHAIRMAN LODES: Thank you. 22 MS. BOTCHLET-SMITH: The next item on 23 today's Agenda is item 5C. This is Chapter 4, 24 Rules of Practice and Procedure, Subchapter 7, 25 Environmental Permit Process, and Tom</p>

<p style="text-align: right;">Page 34</p> <p>1 Richardson is a Professional Engineer and our 2 Rules and Planning Staff, will give the staff 3 presentation. Tom. 4 MR. RICHARDSON: Good morning, Madame 5 Chair, Members of the Council, Ladies and 6 Gentlemen. Before I begin, I should ask if 7 you can hear me? 8 CHAIRMAN LODES: Yes, we can. 9 MR. RICHARDSON: Thank you. 10 I am Tom Richardson, an engineer in 11 the Air Quality Division's Rules in Planning 12 Section. My purpose today is to provide a 13 brief recap of our plans to amend our state 14 permitting rules to better bring them into 15 alignment with federal rules and statutes. In 16 addition, I will share updated draft rule 17 language targeted at addressing specific 18 issues identified by our colleagues at EPA 19 Region 6. 20 I would also note that many of our 21 most recent updates were based on input from 22 Oklahoma stakeholders who have shared their 23 thoughts and suggestions. 24 Today's presentation will briefly 25 revisit a number of the topics presented</p>	<p style="text-align: right;">Page 35</p> <p>1 during both the June and July Council meetings 2 before exploring a number of additional 3 proposed changes to our rules. 4 Next slide. Before we get into the 5 details of our proposal, I would like to 6 provide a brief recap of why we are 7 undertaking this effort. I will also discuss 8 some key elements added since the July Council 9 meeting and additional changes added, based on 10 stakeholder feedback, after the posting of the 11 proposed rule text for public comment. Then 12 we will move on to the specific changes we are 13 proposing. 14 Next slide. SIP Backlog and EPA 15 Collaboration. As we noted in June, EPA staff 16 members have been working their way through a 17 large number of State Implementation Plans, or 18 SIPs, that were submitted previously, but not 19 yet acted on. And, of course, our concern 20 again today is the backlog of Oklahoma SIP 21 submissions and changes already incorporated 22 into the Oklahoma Administrative Code. Our 23 goal is to address conflicts between our 24 current practices and the relevant federal 25 rules, and we have been working with EPA to</p>
<p style="text-align: right;">Page 36</p> <p>1 resolve those conflicts to ensure that our 2 permitting SIP is federally approvable. As we 3 did in June and July, we would like to 4 recognize our successful collaboration with 5 the EPA Region 6 staff, and Adina Wiley, in 6 particular. 7 Next slide. Summary of the Issues We 8 Need to Address. Our current PSD construction 9 permitting program has been reviewed and 10 approved. The remaining issues to address are 11 related to the incorporation of the conditions 12 of a major source construction permit into a 13 Title V operating permit for a facility that 14 does not yet have a Title V permit, a number 15 of issues related to minor New Source Review, 16 or NSR, including new permitting thresholds 17 for minor modifications to Title V operating 18 permits, the exemption of replacement units 19 from Subchapter 7 construction permit 20 requirements, and formal adoption of the term 21 FESOP or Federally Enforceable State Operating 22 Permit to characterize our minor source, 23 Subchapter 7, operating permit program. We 24 will also add definitions of New Source 25 Review, NSR, and NSR Permit to our definitions</p>	<p style="text-align: right;">Page 37</p> <p>1 in Subchapter 1. 2 Next slide. Major vs Minor NSR. 3 This slide was first presented in June. I 4 would like to return to it briefly to clarify 5 the distinction EPA draws between minor NSR 6 and major NSR and how that compares and 7 contrasts with our major, Subchapter 8, and 8 minor, Subchapter 7, permit classifications. 9 For EPA, major NSR includes 10 Prevention of Significant Deterioration, or 11 PSD, permits (for areas in attainment of the 12 National Ambient Air Quality Standards) and 13 nonattainment NSR for areas out of attainment. 14 Happily, Oklahoma has no nonattainment areas. 15 EPA considers any preconstruction 16 permit not issued under the PSD or 17 nonattainment NSR programs to be minor NSR. 18 As a result, all construction permits issued 19 for minor facilities, covered in Subchapter 7, 20 are minor NSR. In addition, most of the 21 Oklahoma DEQ construction permits issued to 22 major sources, Subchapter 8, are also 23 considered by EPA to represent minor NSR 24 permits. 25 As mentioned previously, EPA is</p>

<p style="text-align: right;">Page 38</p> <p>1 satisfied with our PSD, major NSR, permitting 2 program. But EPA has concerns about a number 3 of aspects of our minor NSR program. The most 4 significant issue is that federal rules 5 require that all minor NSR permits undergo a 6 30-day public review period. To meet this 7 requirement we will need to make a number of 8 changes to our program and to our rules. 9 Next slide. Major source 10 construction permits undergo Tier II public 11 review. This satisfies EPA's requirements and 12 does not require a change. 13 The next category is minor 14 modifications to Title V operating permits. 15 Under current DEQ policy, a Title V facility 16 owner/operator may, after submitting an 17 application for a minor modification, or minor 18 mod, that is administratively complete and 19 technically accurate, proceed with changes 20 authorized by the permit before the operating 21 permit is issued. The owner/operator assumes 22 a certain amount of risk, because the change 23 may not truly constitute a minor modification 24 and that determination is made by DEQ during 25 the technical review of the permit. However,</p>	<p style="text-align: right;">Page 39</p> <p>1 this mechanism and DEQ's commitment to 2 expedited administrative review, has allowed 3 facilities to proceed with minor changes with 4 very little delay. 5 Alas, EPA rules state that any 6 physical change or change in the method of 7 operation to a facility that results in a 8 change in emissions would require an NSR 9 permit, either major or minor, unless the 10 State has formally adopted an exemption for 11 some projects and incorporated that exemption 12 into the SIP. 13 We are proposing to establish such a 14 threshold for projects with potential emission 15 increases of no more than 10-tons per year of 16 any regulated air pollutant. Projects below 17 this threshold may proceed as minor 18 modifications without the need for a minor 19 NSR, construction permit. Projects that 20 exceed the threshold will require construction 21 permits with public review. 22 Subchapter 7 establishes our rules 23 for individual facility minor source 24 construction permits, the third category shown 25 on this slide. Currently, those permits may</p>
<p style="text-align: right;">Page 40</p> <p>1 be issued without public review. EPA 2 considers those permits to constitute minor 3 NSR and, therefore, subject to public review. 4 This will require a change in policy and a 5 change in our rules. However, to ease this 6 burden we are proposing to exempt installation 7 of replacement units from the requirement for 8 a Subchapter 7 construction permit. 9 GPs and PBRs are issued by DEQ after 10 undergoing public review. This is acceptable 11 to EPA and we will continue this practice. 12 Authorizations to construct and 13 operate under GPs and PBRs currently do not 14 require separate public review, because the 15 underlying permits have already undergone 16 public review. EPA does not object to this 17 process and we will continue. 18 Next slide. These changes to our 19 rules will require public review for a number 20 of permits which were previously exempt from 21 that requirement. The initial Title V permit, 22 which could previously be issued as an 23 administrative amendment, will now undergo 24 Tier II public review. The permit that is 25 issued when a facility accepts limits to</p>	<p style="text-align: right;">Page 41</p> <p>1 change the facility from a major source, Title 2 V permit, to a synthetic minor permit will 3 also be Tier II. This has been historic 4 practice in our program, but our rules will be 5 modified to make this policy explicit. The 6 other permitting actions newly required to 7 undergo public review will be considered Tier 8 I permits with web-based public noticing 9 requirements. 10 Next slide. Subchapter 7 Operating 11 Permits. The only operating permit program 12 explicitly established by EPA is the Title V 13 program. To bring our Subchapter 7 minor 14 facility operating permit fully into the SIP, 15 we are proposing to modify our program in 16 accordance with EPA's rules on establishing 17 Federally Enforceable State Operating Permits, 18 or FESOPs. EPA's program grafts the FESOP 19 program onto the rules established for minor 20 NSR. We will adopt this approach to ensure 21 that our program is SIP approvable. Somewhat 22 analogous to the requirement for the initial 23 Title V operating permit, an initial FESOP 24 would need to go through 30-day public review. 25 Next slide. Since sharing earlier</p>

<p style="text-align: right;">Page 42</p> <p>1 versions of our proposed changes, we have 2 received questions about the traditional NSR 3 process and the enhanced NSR process. And we 4 should note that enhanced NSR may be a new 5 term for our program, but it describes what we 6 have been doing for years.</p> <p>7 The key difference between the 8 processes is that, under enhanced NSR, EPA 9 integrates their review of the implications of 10 the NSR permit requirements, with a full 11 determination of procedural and compliance 12 requirements under the Part 70 source, Title 13 V, operating permit. The public notice must 14 specify that this is taking place because 15 incorporation of the requirements into the 16 Title V operating permit may be accomplished, 17 later, through an administrative amendment. 18 The enhanced NSR process includes a full 19 30-day public review and a 45-day EPA review.</p> <p>20 In contrast, under traditional NSR, 21 the 30-day public review process also 22 represents EPA's opportunity to review the 23 permit. EPA is not given a separate 24 opportunity to review the permit after 25 completion of the public review. However,</p>	<p style="text-align: right;">Page 43</p> <p>1 when the requirements of the NSR permit are 2 incorporated into the Title V permit, there is 3 another 30-day public and a 45-day EPA review.</p> <p>4 The next two slides are repeated from 5 the July special meeting. I will go through 6 these quickly to highlight these alternative 7 mechanisms.</p> <p>8 Next slide. This chart shows how the 9 process will work for permits issued under 10 Subchapter 8. Note that minor modifications 11 will require NSR permits if they exceed the 12 permitting threshold to be discussed later, 13 but, under traditional NSR there is not a 14 second round of public review when the minor 15 modification is incorporated into the Title V 16 operating permit.</p> <p>17 Next slide. Under Subchapter 7, 18 things are different. Instead of a Title V 19 operating permit, there is a FESOP. The 20 45-day EPA review does not get added on to the 21 operating permit public review. Instead, EPA 22 has the opportunity to review the permit along 23 with the public during the 30-day public 24 review period.</p> <p>25 Under both traditional NSR and under</p>
<p style="text-align: right;">Page 44</p> <p>1 FESOP enhanced NSR, the minor NSR permit, or 2 construction permit, undergoes a 30-day public 3 review period during which EPA is provided an 4 opportunity to comment. Under traditional 5 NSR, this process is repeated when the FESOP 6 is issued.</p> <p>7 Under FESOP enhanced NSR - which is 8 only available to a facility that already has 9 a FESOP - the public notice for the NSR permit 10 indicates that this will be the only 11 opportunity for public review. When the 12 operating permit is modified, under Subchapter 13 7 rules, the operating permit modification 14 will not undergo a second round of public or 15 EPA review.</p> <p>16 Next slide. The proposed changes to 17 the rules posted on September 15 include a 18 10-ton per year exemption threshold for 19 projects not subject to major NSR (PSD) or 20 which constitute significant modifications to 21 a Title V operating permit. Facility changes 22 involving exclusively trivial or insignificant 23 activities do not require submission of an 24 application for a modification to the Title V 25 operating permit.</p>	<p style="text-align: right;">Page 45</p> <p>1 For permits qualifying as minor 2 modifications to existing Title V operating 3 permits, those with project emissions less 4 than or equal to the threshold level may 5 proceed without a minor NSR, construction 6 permit. Projects exceeding the threshold will 7 need to wait on the issuance of the minor NSR 8 permit.</p> <p>9 To help clarify the method of 10 calculation to determine whether a project 11 exceeds the emission threshold, we have added 12 additional text pointing to the Tribal NSR 13 Rule. This proposed change to the rule text 14 was posted yesterday. Please note that we are 15 adopting the calculation approach, but not the 16 project emission thresholds or other aspects 17 of the rule. We believe the calculation 18 method described in the Tribal NSR Rule is 19 sound, but we expect to issue guidance to help 20 clarify areas where there may be confusion 21 about how we will implement these 22 requirements.</p> <p>23 Next slide. Yesterday, we posted an 24 outline and summary of the 110(L) 25 demonstration on the web. This is not the</p>

<p style="text-align: right;">Page 46</p> <p>1 formal 110(L) demonstration that we will 2 submit, along with our rule changes, when we 3 update our SIP. However, this outline and 4 summary shares the approach we plan to take to 5 justify the adoption of the 10-ton per year 6 threshold which will exempt some minor 7 modifications to Title V operating permits 8 from the requirement to go through NSR. 9 A draft of the formal 110(L) 10 demonstration will be made available for 11 public review and comment before it is 12 submitted to EPA along with our SIP updates. 13 Next slide. Based on feedback from 14 Oklahoma Stakeholders, we are proposing an 15 exemption from the requirement for a minor NSR 16 permit, Subchapter 7 construction permit, for 17 the replacement of any unit where there will 18 be no change in emission limits in the 19 existing permit. This should be of particular 20 assistance to owner/operators of compressor 21 stations due to the need to swap engines 22 routinely for maintenance or other reasons. 23 Next slide. To help illustrate how 24 projects will be permitted under our new 25 rules, I will present three different</p>	<p style="text-align: right;">Page 47</p> <p>1 permitting scenarios. Please note that actual 2 cases may be more complicated and we encourage 3 early contact with permitting staff to ensure 4 best outcomes. We are planning on issuing a 5 guidance document with an expanded list of 6 scenarios for assistance in evaluating 7 permitting requirements. 8 Next slide. The first scenario 9 involves a facility with a Title V operating 10 permit, but the facility is not a PSD major. 11 The permittee plans to add an emergency 12 generator and project emissions will be less 13 than the thresholds. The project does not 14 need a construction permit, or minor NSR 15 permit, but the permit will need to -- the 16 permittee, rather, will need to submit an 17 application for a minor modification. On 18 submission of the application, assuming it is 19 complete and proper, the permittee may install 20 and operate the engine. Permitting staff will 21 prepare a proposed version of the operating 22 permit modification and will submit it to EPA 23 for a 45-day review. There is no need for 24 public review. 25 Next slide. In the second scenario,</p>
<p style="text-align: right;">Page 48</p> <p>1 a facility with a Title V operating permit, 2 again not a PSD major, proposes a project 3 which will involve a change in the method of 4 operation which will result in project 5 emission increases greater than 10-tons per 6 year of at least one regulated air pollutant. 7 The project qualifies as a minor 8 modification. Because the project exceeds the 9 emission threshold, the permittee will need to 10 apply for a minor NSR, construction permit, 11 and will need to wait until the permit is 12 issued before instituting the change in the 13 method of operation. The permittee may pursue 14 either traditional or enhanced NSR. Under 15 enhanced NSR, the construction permit 16 undergoes a 30-day public and 45-day EPA 17 review. 18 Later, when the requirements are 19 incorporated into the Title V permit, that 20 change may be accomplished with an 21 administrative amendment. 22 Alternatively, if the permittee 23 chooses traditional NSR, the construction 24 permit has a 30-day combined public and EPA 25 review.</p>	<p style="text-align: right;">Page 49</p> <p>1 Later, when the requirements are 2 incorporated into the Title V permit, the 3 minor modification will undergo a 45-day EPA 4 review. No public review of the minor 5 modification of the operating permit is 6 required. 7 Next slide. In scenario three, the 8 applicant wants to construct a new facility 9 that will, eventually, need a Title V 10 operating permit. However, the facility will 11 not be a PSD major facility, so the 12 construction permit will be considered to be 13 minor NSR. Minor NSR just means not PSD. 14 This is a new facility - there is no 15 existing Title V operating permit - so the 16 permitting action is not eligible for enhanced 17 NSR. The Subchapter 8 construction permit, or 18 minor NSR permit, will be Tier II with public 19 notice in the newspaper. 20 After startup when the permittee 21 applies for the initial Title V operating 22 permit, that process will also be Tier II with 23 the public notice appearing in a newspaper. 24 Next slide. Outline and Summary of 25 Proposed Rule Changes - Chapter 4. The next</p>

<p style="text-align: right;">Page 50</p> <p>1 seven slides provide an outline and brief 2 summary of the proposed rule changes, broken 3 down by chapter and subchapter. I plan on 4 moving quickly through this outline, because I 5 will take more time when presenting the actual 6 textual changes to the rules.</p> <p>7 However, I would like to highlight a 8 few of the proposed changes to Chapter 4. As 9 we have already mentioned, the process of 10 enhanced NSR, a process that was our normal 11 procedure, is now limited to facilities that 12 already have Title V permits. This is current 13 policy. With the proposed changes, this 14 policy will be incorporated into our rules. 15 Under this policy the initial Title V 16 operating permit will undergo Tier II public 17 review.</p> <p>18 We are also selecting the web as our 19 consistent noticing procedure. Oklahoma 20 statute requires certain notices to be 21 published in the newspaper, but those 22 requirements will be considered supplemental 23 to our designation of the web as our official 24 vehicle to satisfy federal requirements in 40 25 CFR Part 51.</p>	<p style="text-align: right;">Page 51</p> <p>1 Other changes to Chapter 4 include 2 the option of FESOP enhanced NSR for minor 3 source facilities and the requirement to 4 undergo Tier II public review when a facility 5 moves from a Title V operating permit to a 6 synthetic minor operating permit.</p> <p>7 Next slide. Two new definitions and 8 one new acronym will be added to Chapter 100, 9 Subchapter 1. Because New Source Review, NSR, 10 will be used in both Subchapters 7 and 8, we 11 thought it best to define the terms here.</p> <p>12 Next slide. Changes to subchapter 7 13 are spread over two slides. Changes include 14 the definition of FESOP and the requirement 15 for individual minor source construction 16 permits to undergo public review in accordance 17 with EPA Part 51 requirements for NSR. 18 Language was added to clarify that the 5-ton 19 per year project emission increase threshold 20 for Subchapter 7 permitting applies to 21 permitted emission increases. The new 22 requirement -- sorry -- the new replacement 23 unit exemption has also been added. And a new 24 duty-to-comply requirement was added for 25 operating permits and a clarification was</p>
<p style="text-align: right;">Page 52</p> <p>1 added for construction permits.</p> <p>2 Next slide. A clarification was 3 added that construction permits, or NSR 4 permits, do not expire; rather the 5 authorization to construct under the NSR 6 permit expires if construction does not take 7 place.</p> <p>8 Small changes were made to remove 9 problematic null and void language, to 10 identify different types of operating permit, 11 and to clarify that, 180 days after startup of 12 any emission unit authorized by a construction 13 permit, the applicant must apply for the 14 initial operating permit or a modified version 15 of an existing operating permit.</p> <p>16 Construction permits may undergo 17 traditional NSR or FESOP enhanced NSR to 18 accommodate requirements for public and EPA 19 review.</p> <p>20 Next slide. Changes to Subchapter 8 21 are summarized on three different slides. 22 This slide highlights the addition of 23 traditional NSR as an option and the formal 24 use of enhanced NSR to describe that option 25 for facilities that already have Title V</p>	<p style="text-align: right;">Page 53</p> <p>1 permits. The addition of the words "or change 2 in the method of operation" brings our rule 3 language in line with EPA. Minor 4 modifications to Title V operating permits 5 will need minor NSR permits, construction 6 permits, first, unless project emission 7 increases are below the threshold described. 8 Potential emission increases for a project 9 will be calculated following the approach from 10 the Tribal NSR Rule.</p> <p>11 Next slide. Slide 60 summarizes 12 additional proposed rule changes in Subchapter 13 8. In response to a stakeholder request, we 14 are proposing to remove outdated language 15 establishing the initial schedule for 16 submission of Title V operating permits. 17 Language has been added to clarify that it is 18 the enhanced NSR process that allows a 19 facility, with an existing Title V operating 20 permit, to incorporate changes from an NSR 21 permit into the Title V operating permit 22 through an administrative amendment.</p> <p>23 We are clarifying the language 24 describing our process for sharing draft and 25 proposed permits with EPA for their review.</p>



<p style="text-align: right;">Page 54</p> <p>1 In particular, we are noting that the petition 2 process only relates to the review of a Title 3 V operating permit. Other administrative 4 remedies are available to parties who wish to 5 contest an NSR permit. 6 Next slide. We are further 7 clarifying that, if EPA objects to an NSR 8 permit and that permit is going through the 9 enhanced NSR process, DEQ may choose to issue 10 the NSR permit over EPA's objection. If that 11 were to take place, we would still need to 12 address EPA's objection during the Title V 13 permit review. 14 Next slide. Our Path Forward. We 15 posted a version of the rules, with proposed 16 changes, on the web on September 15 for public 17 review. After receiving stakeholder feedback, 18 we made additional changes and posted an 19 update on the web yesterday. As I go through 20 the changes, I plan to show when the 21 particular change was first presented and 22 whether the rule was updated recently. 23 But before I start going over the 24 details, as I did in June and July, I would 25 like to give a tip of the hat to Brooks Kirlin</p>	<p style="text-align: right;">Page 55</p> <p>1 as the primary author of all the changes to 2 the rules we are presenting. I cannot count 3 the number of times I suggested specific rule 4 language, but Brooks offered edits, adding 5 clarity and focus. Thank you, Brooks! 6 And I would also like to note that I 7 may re-direct particularly difficult questions 8 to Brooks, or to other members of the team, as 9 necessary. Thank you, in advance, to everyone 10 involved. 11 I would also like to note, in 12 advance, that staff will recommend that the 13 Council adopt the proposed rule changes shared 14 today. 15 With that, we would like to turn to 16 the specific rule language, starting with 17 Chapter 4. 18 Next slide. If you are not able to 19 view the presentation, please turn in your 20 packets to the proposed amendments to rule 21 text in Chapter 4, Subchapter 7. 22 Next slide. Please note that, in 23 this presentation, much of the rule language 24 not being changed has been omitted. The 25 complete text of each section is included in</p>
<p style="text-align: right;">Page 56</p> <p>1 the rule text documents included in the packet 2 and on the web. 3 In addition, where the changes were 4 presented during the June or July meetings, 5 the slides have been marked accordingly. New 6 changes will also be labeled as such. 7 The changes shown on this slide 8 include an additional reference to the 9 enabling statute and changes to the rules so 10 that enhanced NSR may only be used to modify 11 an existing Title V permit. With these 12 changes in place, the initial Title V permit 13 will require Tier II public review. And, 14 based on stakeholder assistance, we are fixing 15 a typo in the included language. 16 Next slide. EPA requires us to pick 17 one consistent noticing method for public 18 review. New paragraph 6 states that our 19 official method will be publication on the 20 web. Oklahoma statute also requires public 21 noticing of various permitting actions and 22 requires public notices to be published in the 23 newspaper. Paragraph 6 will have no effect on 24 those requirements. 25 New paragraph 7 states that all new</p>	<p style="text-align: right;">Page 57</p> <p>1 requirements for Tier I public review will be 2 noticed exclusively on the web. These 3 permitting actions are not required by 4 Oklahoma statute to be published in the 5 newspaper. 6 The slight change mentioned here is 7 the indenting of these paragraphs. 8 Next slide. Paragraph 8 allows minor 9 source facilities to use FESOP enhanced NSR to 10 incorporate requirements from a minor NSR 11 permit, which went through public and EPA 12 review, into an existing minor source 13 operating permit through a Subchapter 7 14 operating permit modification without 15 additional public or EPA review. 16 Paragraph 9 states that DEQ will post 17 Tier I individual minor source operating 18 permits on the web for public review. The 19 highlighted text was added to clarify that, if 20 the FESOP is amended without following 21 issuance of a construction permit that adopted 22 the enhanced NSR process, the modified FESOP 23 must undergo public review on the web. Thanks 24 to a stakeholder for suggesting that 25 clarification.</p>

<p style="text-align: right;">Page 58</p> <p>1 Paragraph 10 states that additional 2 notices may be posted on the web at the 3 Director's discretion. 4 Next slide. The deletions in Section 5 32, Air quality applications - Tier I, 6 paragraph (b), codify the requirement that 7 initial Title V permits must undergo Tier II 8 public review. Enhanced NSR will no longer be 9 available for the initial Title V operating 10 permit. 11 Next slide. New language in 12 paragraph 1, subparagraph (A) notes that some 13 Subchapter 8 minor NSR permits issued after 14 adoption of these rules will undergo Tier I 15 public review on the web. Additional changes 16 allow these minor NSR permits to use enhanced 17 NSR. 18 Next slide. The added text shown in 19 subsection (a), paragraph 2, formally 20 incorporates the requirement for a permit 21 incorporating limits to move the facility from 22 the Title V operating permit to a synthetic 23 minor permit to go through Tier II public 24 review. 25 The changes to subsection (b) codify</p>	<p style="text-align: right;">Page 59</p> <p>1 the change in policy requiring an initial 2 Title V permit to undergo Tier II public 3 review. 4 Next slide. That concludes my 5 presentation on our proposed changes to 6 Chapter 4. 7 I would like to restate the staff's 8 recommendations: 9 AQD staff recommends the Council pass 10 Chapter 4. However, given the interrelatedness 11 of Chapter 4 with the Chapter 100 proposed 12 changes that follow, it may behoove the 13 Council to vote to postpone discussion by the 14 Council and comment from the public until 15 after I have completed my Chapter 100 16 presentation. 17 Thank you. I will now ask Beverly 18 Botchlet-Smith, our protocol officer for 19 today's meeting, to discuss the next step in 20 the process. 21 MS. BOTCHLET-SMITH: So, Laura, at 22 this point, we have a couple of paths here. 23 You can discuss a motion to delay this vote 24 till after the hearing the next presentation. 25 Or the other option would be to decide when</p>
<p style="text-align: right;">Page 60</p> <p>1 you want to take a break, given the length of 2 the meeting. And if you should do that, 3 you're also going to need a motion for a 4 recess so -- for the Council to discuss their 5 preference on those items. 6 CHAIRMAN LODS: I know one thing we 7 had discussed was deferring the discussion and 8 vote on Chapter 4 until after we've had our 9 Chapter 100 discussion. My recommendation is 10 we make that motion and vote, and we also do a 11 brief recess, like a ten-minute recess, since 12 it's 10:10, before we get into what may be a 13 lengthy discussion on Chapter 100 -- or 7 and 14 8. 15 Other Council members? 16 MS. BOTCHLET-SMITH: In doing that, 17 please, Council members, if you'd remember to 18 announce yourself when you make a motion just 19 as a courtesy for our court reporter. 20 Thank you. 21 MR. LANDERS: This is Steve 22 Landers (inaudible) -- 23 MR. ELLIOTT: Go ahead. 24 CHAIRMAN LODS: Steve? 25 MR. LANDERS: No, I wasn't making a</p>	<p style="text-align: right;">Page 61</p> <p>1 motion. I just was agreeing with your 2 suggestion. 3 CHAIRMAN LODS: Okay. Gary -- 4 MR. COLLINS: Hey, Laura, so this is 5 Gary Collins. Yeah, I move that we postpone 6 the discussion and the vote on the proposed 7 changes to Chapter 4 until after the 8 discussion on Chapter 100. 9 CHAIRMAN LODS: I have a motion. Do 10 I have a second? 11 MR. ELLIOTT: This is Greg. I'll 12 second that. 13 CHAIRMAN LODS: Quiana, will you 14 please call roll? 15 MS. FIELDS: Mr. Caves? 16 MR. CAVES: Yes. 17 MS. FIELDS: Mr. Collins? 18 MR. COLLINS: Yes. 19 MS. FIELDS: Dr. Delano? 20 DR. DELANO: Yes. 21 MS. FIELDS: Mr. Elliott? 22 MR. ELLIOTT: Yes. 23 MS. FIELDS: Mr. Keele? 24 MR. KEELE: Yes. 25 MS. FIELDS: Mr. Landers?</p>

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<p>1 MR. LANDERS: Yes.</p> <p>2 MS. FIELDS: Mr. Privrat?</p> <p>3 MR. PRIVRAT: Yes.</p> <p>4 MS. FIELDS: Mr. Taylor?</p> <p>5 MR. TAYLOR: Yes.</p> <p>6 MS. FIELDS: Ms. Lodes?</p> <p>7 CHAIRMAN LODES: Yes.</p> <p>8 MS. FIELDS: Motion passed.</p> <p>9 CHAIRMAN LODES: We'll be delaying</p> <p>10 the discussion and vote on Chapter 4 until we</p> <p>11 do 100.</p> <p>12 The second thing we had requested is,</p> <p>13 Council, do I have a motion for a brief</p> <p>14 recess, say, 15 minutes?</p> <p>15 MR. CAVES: This is Matt Caves. I'd</p> <p>16 make a motion to recess for 15 minutes.</p> <p>17 CHAIRMAN LODES: Thank you.</p> <p>18 MR. TAYLOR: I'll second that.</p> <p>19 CHAIRMAN LODES: Quiana, will you</p> <p>20 please call roll?</p> <p>21 MS. FIELDS: Mr. Caves?</p> <p>22 MR. CAVES: Yes.</p> <p>23 MS. FIELDS: Mr. Collins?</p> <p>24 MR. COLLINS: Yes.</p> <p>25 MS. FIELDS: Dr. Delano?</p>	<p>1 DR. DELANO: Yes.</p> <p>2 MS. FIELDS: Mr. Elliott?</p> <p>3 MR. ELLIOTT: Yes.</p> <p>4 MS. FIELDS: Mr. Keele?</p> <p>5 MR. KEELE: Yes.</p> <p>6 MS. FIELDS: Mr. Landers?</p> <p>7 MR. LANDERS: Yes.</p> <p>8 MS. FIELDS: Mr. Privrat?</p> <p>9 MR. PRIVRAT: Yes.</p> <p>10 MS. FIELDS: Mr. Taylor?</p> <p>11 MR. TAYLOR: Yes.</p> <p>12 MS. FIELDS: Ms. Lodes?</p> <p>13 CHAIRMAN LODES: Yes.</p> <p>14 MS. FIELDS: Motion passed.</p> <p>15 MS. BOTCHLET-SMITH: Laura, what time</p> <p>16 do you have that we will reconvene?</p> <p>17 CHAIRMAN LODES: My computer says</p> <p>18 it's 10:13, so we're going to do a 15-minute</p> <p>19 recess. That's 10:28. Shoot for 10:30 when I</p> <p>20 actually call it all back to order, since</p> <p>21 that's a nice round number.</p> <p>22 MS. BOTCHLET-SMITH: Okay. I just</p> <p>23 wanted to state that for any members of the</p> <p>24 public.</p> <p>25 CHAIRMAN LODES: We're going to take</p>
Page 64	Page 65
<p>1 a brief break, so we can -- so those of us who</p> <p>2 are on camera can stand up and move for a</p> <p>3 second. Anybody that needs to go get a coffee</p> <p>4 or anything else and we'll reconvene at 10:30.</p> <p>5 Thank you.</p> <p>6 (Whereupon, at this point in the</p> <p>7 proceedings, a brief recess was had.)</p> <p>8 BACK ON THE RECORD.</p> <p>9 CHAIRMAN LODES: I'd like to call</p> <p>10 today's meeting back to order. I believe we</p> <p>11 were with -- Tom was going to begin the</p> <p>12 presentation on Chapter 100, the changes to</p> <p>13 100, subchapters 1, 7 and 8.</p> <p>14 Beverly.</p> <p>15 MS. BOTCHLET-SMITH: Yes, the next</p> <p>16 item on our Agenda is item 5D, and this is</p> <p>17 Chapter 100, Air Pollution Control, Subchapter</p> <p>18 1, Definitions, Subchapter 7, Permits for</p> <p>19 Minor Facilities, Subchapter 8, Permits for</p> <p>20 Part 70 Sources and Major New Source Review,</p> <p>21 Sources, excuse me, for NSR.</p> <p>22 And Tom, will continue with his</p> <p>23 presentation.</p> <p>24 MR. RICHARDSON: Thank you, Beverly.</p> <p>25 Once again, I should check, Beverly, can you</p>	<p>1 confirm that you can hear me?</p> <p>2 MS. BOTCHLET-SMITH: When I unmute</p> <p>3 myself, yes. Yes, Tom, we can hear you.</p> <p>4 MR. RICHARDSON: Thank you very much.</p> <p>5 We are now on slide 75. If you're not able to</p> <p>6 follow the presentation, please turn in your</p> <p>7 packets to the proposed amendments to rule</p> <p>8 text in Chapter 100, Subchapters 1, 7 and 8.</p> <p>9 Next slide. This slide shows the</p> <p>10 definitions for New Source Review or NSR and</p> <p>11 NSR permit that will be added to Subchapter 1.</p> <p>12 And NSR is added to the list of acronyms. The</p> <p>13 version initially posted showed the definition</p> <p>14 of Title V permit to be underlined. That was</p> <p>15 an error. That definition was added in the</p> <p>16 rule changes that became effective September</p> <p>17 15, 2020. We are not proposing any changes to</p> <p>18 this definition.</p> <p>19 Next slide. The next set of slides</p> <p>20 present changes we are proposing to Subchapter</p> <p>21 7.</p> <p>22 On this slide new definitions for</p> <p>23 FESOP and FESOP enhanced NSR process are added</p> <p>24 to Section 1.1. All subchapter 7 minor source</p> <p>25 operating permits are considered to be FESOPs.</p>

<p style="text-align: right;">Page 66</p> <p>1 FESOP enhanced NSR, in Subchapter 7, 2 is similar to enhanced NSR in Subchapter 8, in 3 that it allows changes from an NSR permit, 4 which has undergone public review and EPA 5 review, to be incorporated into an existing 6 minor source operating permit without 7 undergoing another round of public and EPA 8 review. The difference is that in FESOP 9 enhanced NSR there is no 45-day EPA review 10 period. EPA is given an opportunity to review 11 the NSR permit along with the public. 12 The clarification noted is the 13 language stating that FESOP and operating 14 permit when used in this subchapter are 15 synonymous. We received a request to replace 16 all instances of operating permit with FESOP, 17 but that would -- that change would have been 18 cumbersome. We hope this language is 19 sufficient. 20 Another slight change is the removal 21 of smart quotes and the substitution of the 22 not-so-smart kind. For typographical reasons, 23 the OAC does not like smart quotes. 24 Next slide. This slide shows two 25 different definitions -- sorry -- two</p>	<p style="text-align: right;">Page 67</p> <p>1 additional definitions added to Subchapter 7: 2 replacement unit and traditional NSR process. 3 The definition of replacement unit was updated 4 yesterday, based on stakeholder feedback, to 5 include a reference to the definition of 6 reconstruction in 40 CFR Part 63. We had, 7 inadvertently, failed to include a definition 8 of traditional NSR process in Subchapter 7. 9 Thanks to a stakeholder for bringing that 10 oversight to our attention. 11 Next slide. This slide shows changes 12 to the requirements for a construction permit 13 under Subchapter 7. The first change 14 clarifies that it is modification of a unit 15 resulting in a permitted emissions increase 16 greater than 5-tons per year that triggers the 17 requirement to get a Subchapter 7 construction 18 permit. 19 The second change exempts replacement 20 units from the requirement for a construction 21 permit, as long as the replacement unit does 22 not require a change in an emission limit. In 23 spite of this exemption, the permittee will be 24 required to notify the Department within 15 25 days of startup of the replacement unit or as</p>
<p style="text-align: right;">Page 68</p> <p>1 specified in the permit. A typo was corrected 2 thanks to stakeholder feedback. 3 Next slide. Subsection (e) was 4 altered to conform with duty to comply 5 language added later for operating permits. 6 Next slide. Subsection (f) includes 7 language stating that NSR permits do not 8 technically expire. They are superseded by 9 later permits. However, the authority to 10 construct under an NSR permit will expire 11 under certain circumstances, primarily overly 12 long delays in the initiation of construction. 13 In addition, problematic null and void 14 language has been removed. 15 Subsection (h) was added to clarify 16 when the authorization to construct expires. 17 The correction noted was a formatting 18 change: a hard return was removed after the 19 word modify, because there was no formatted 20 paragraph to follow, just continued text. 21 Next slide. Section 18, subsection 22 (a), paragraph (2) states that the requirement 23 to apply for an operating permit or a modified 24 operating permit is triggered 180 days after 25 startup of any emission unit authorized by a</p>	<p style="text-align: right;">Page 69</p> <p>1 construction permit. 2 Subsection (b) adds mention of the 3 three types of operating permit available to 4 better mirror the language related to types of 5 construction permits. 6 In subsection (f), paragraph (3) 7 states that the facilities that already have 8 operating permits may use the FESOP enhanced 9 NSR process for additional modifications to 10 the facility. 11 Next slide. The duty-to-comply 12 language for operating permits was added based 13 on input from EPA Region 6. 14 Next slide. The next set of slides 15 show proposed changes to Subchapter 8. 16 This slide shows the new definitions 17 which will be added to Subchapter 8: Enhanced 18 NSR process and Traditional NSR process. As 19 we have noted a number of times, the enhanced 20 NSR process is the process we have been using 21 in Oklahoma for years. However, we now 22 require a facility to already have a Title V 23 operating permit to be eligible for the 24 enhanced NSR process. The traditional NSR 25 process will also be provided as an option.</p>

<p style="text-align: right;">Page 70</p> <p>1 Under traditional NSR, EPA and the</p> <p>2 public share a 30-day review window for an NSR</p> <p>3 permit. Under traditional NSR, when those</p> <p>4 requirements are incorporated into the Title V</p> <p>5 operating permit, there is both a 30-day</p> <p>6 public and a 45-day EPA review period. Except</p> <p>7 for minor mods, which have no public review</p> <p>8 period when the operating permit is modified.</p> <p>9 The traditional NSR process speeds up</p> <p>10 issuance of the NSR permit, compared to the</p> <p>11 enhanced NSR process, but there is another</p> <p>12 round of public review, except for minor mods,</p> <p>13 and EPA review when the requirements are</p> <p>14 incorporated into the Title V permit.</p> <p>15 Next slide. The additional text in</p> <p>16 subsection (a) makes significant changes to</p> <p>17 the requirements for minor NSR permits under</p> <p>18 Subchapter 8. The "or change in the method of</p> <p>19 operation" language brings our requirement for</p> <p>20 construction permits more formally in line</p> <p>21 with EPA's requirements for New Source Review,</p> <p>22 or NSR.</p> <p>23 The new language in subparagraph (B),</p> <p>24 unit (iv) or, unit roman numeral four, states</p> <p>25 that a construction permit will be required</p>	<p style="text-align: right;">Page 71</p> <p>1 for a minor modification to allow a physical</p> <p>2 change or a change in the method of operation</p> <p>3 that results in a potential emissions increase</p> <p>4 of more than 10-tons per year of any regulated</p> <p>5 air pollutant. The reference to the</p> <p>6 calculation approach in 40 CFR, Section</p> <p>7 49.153(b) is meant to clarify how project</p> <p>8 emission increases will be determined. We are</p> <p>9 basing our approach on EPA's calculation</p> <p>10 method in the Tribal NSR Rule. We intend to</p> <p>11 offer guidance to clarify how we will apply</p> <p>12 that approach.</p> <p>13 Next slide. The deletions on the</p> <p>14 next two slides were made based on the</p> <p>15 stakeholder request. The deleted rule text</p> <p>16 set up the original schedule for the</p> <p>17 submission of initial Title V applications for</p> <p>18 facilities that were operating and became</p> <p>19 subject to Title V permitting requirements</p> <p>20 when the program was established.</p> <p>21 Next slide. This slide shows</p> <p>22 additional deletions, but also the text that</p> <p>23 will be retained to establish the ongoing</p> <p>24 requirement for any facility that slipped</p> <p>25 through unnoticed to abide by this</p>
<p style="text-align: right;">Page 72</p> <p>1 requirement, or for a facility that becomes</p> <p>2 newly subject and will need to obtain a Title</p> <p>3 V operating permit.</p> <p>4 Next slide. New subsection (c)</p> <p>5 states that the enhanced NSR process is</p> <p>6 available for facilities with existing Title V</p> <p>7 permits.</p> <p>8 Next slide. In Section 5, subsection</p> <p>9 (d), paragraph (3), language will be added</p> <p>10 requiring the applicant to choose between</p> <p>11 traditional NSR and enhanced NSR when applying</p> <p>12 for a major source construction permit, if the</p> <p>13 facility already has a Title V operating</p> <p>14 permit. Note: a facility may change that</p> <p>15 initial request up to the date that the notice</p> <p>16 is published.</p> <p>17 Next slide. The changes to</p> <p>18 subsection (a), paragraph (1), subparagraph</p> <p>19 (E) clarify that an administrative amendment</p> <p>20 may be used to incorporate applicable</p> <p>21 requirements from a Tier II construction</p> <p>22 permit into an existing, not an initial, Title</p> <p>23 V permit.</p> <p>24 Next slide. Changes shown to Section</p> <p>25 8, subsection (f), clarify the types of</p>	<p style="text-align: right;">Page 73</p> <p>1 permits that undergo public review, have</p> <p>2 comments addressed, and then are submitted to</p> <p>3 EPA for the 45-day review period.</p> <p>4 Paragraphs (1) and (2) refer to the</p> <p>5 initial and modified Title V operating permits</p> <p>6 under traditional NSR.</p> <p>7 Paragraph (3) refers to construction</p> <p>8 permits undergoing enhanced NSR, where EPA</p> <p>9 performs a review of both the NSR issues and</p> <p>10 the procedural and compliance requirements</p> <p>11 under the Title V operating permit program at</p> <p>12 the same time. The formatting update changed</p> <p>13 Subparagraphs (A), (B), and (C) to Paragraphs</p> <p>14 (1), (2), and (3) as shown.</p> <p>15 Subsection (g) provides the</p> <p>16 additional clarification of the requirement</p> <p>17 that the DEQ notify EPA and any affected state</p> <p>18 if the DEQ refuses to accept recommendations</p> <p>19 submitted during the review period.</p> <p>20 Subsection (h) clarifies that, if the</p> <p>21 45-day EPA review period expires and EPA has</p> <p>22 not submitted comments, or if EPA provides</p> <p>23 notice to the DEQ that EPA has no objection to</p> <p>24 either a Title V permit or a permit undergoing</p> <p>25 enhanced NSR, the DEQ will issue the permit</p>

<p style="text-align: right;">Page 74</p> <p>1 unless an administrative hearing has been 2 requested following DEQ Tier III procedures. 3       Next slide. Subsection (i), 4 paragraph (1) clarifies that DEQ may not issue 5 a Title V permit to which EPA has objected 6 during the 45-day EPA review period. The 7 rules governing such an objection are specific 8 to Title V operating permits. Because 9 enhanced NSR provides EPA with an opportunity 10 to review both the NSR permit and the 11 procedural and compliance requirements under 12 the Title V operating permit program, EPA may 13 issue an objection with regard to the Title V 14 permit modification which would otherwise be 15 issued as an administrative amendment. 16       Paragraph (5) requires the DEQ to 17 consult with the EPA to try to resolve issues 18 associated with any objection. The new 19 language allows the DEQ to, at the Director's 20 discretion, issue an NSR permit under the 21 traditional NSR process in spite of an 22 objection EPA has made during the 45-day 23 review of the permit under the enhanced NSR 24 process. The DEQ would still need to work 25 with EPA to resolve the dispute prior to</p>	<p style="text-align: right;">Page 75</p> <p>1 issuance of the Title V operating permit 2 modification. 3       Next slide. The language added to 4 subsection (j) clarifies that the petition 5 process is associated with the issuance of the 6 Title V operating permit. There are other 7 administrative remedies available to parties 8 who object to an NSR permit, but the petition 9 process is exclusively associated with 40 CFR 10 Part 70, the Title V operating permit process. 11       Next slide. That concludes my 12 presentation on our proposed changes to 13 Chapter 100, Subchapters 1, 7, and 8. 14       Please note that staff is 15 recommending that the Council adopt the 16 proposed rule changes to both Chapter 4 and 17 Chapter 100 during today's meeting. 18       Thank you. 19       Once again, I will ask Beverly 20 Botchlet-Smith to discuss the next steps in 21 the process. 22       MS. BOTCHLET-SMITH: The Council will 23 now have an opportunity to ask questions of 24 staff. Before you start with that, I notice 25 we've had some new people join the meeting so</p>
<p style="text-align: right;">Page 76</p> <p>1 I just want to restate that to ensure the 2 public is able to hear all of the Council's 3 deliberation on this rule and Chapter 4, the 4 questions from the Council will all be made 5 audibly. There are no chat functions in Zoom 6 enabled and being used by the Council. 7       So, at this time, do we have any 8 questions from the Council for Chapter 4 or 9 Subchapter 7 and 8 under Chapter 100? 10       CHAIRMAN LODES: I have a number of 11 questions. One of them is, we'll start with 12 Subchapter 7. So in Subchapter 7, we're now 13 going to require public notice for minor 14 source permits. 15       My understanding from discussions 16 with staff is that they feel like the existing 17 issued permits need to go through a 30-day 18 public notice process, and that the Agency 19 intends to do a batch to notice the currently 20 issued individual minor source permits in 21 batches; is this correct? 22       MR. RICHARDSON: Uh, Laura. Yes. So 23 that's an issue, we believe -- while we do 24 believe our current SIP and aspects of our 25 program are in the SIP. And we do believe</p>	<p style="text-align: right;">Page 77</p> <p>1 that our current Subchapter 7 operating 2 permits are, at least in our conception, 3 federally enforceable. 4       We do believe that the formal 5 adoption of FESOP requires an upgrade. And we 6 believe that all of the existing operating 7 permits would benefit from going through that 8 upgrade. For one thing, that will make them 9 eligible for the FESOP enhanced NSR process. 10       But, in addition, we feel like that 11 upgrade is kind of synonymous with when you, 12 maybe, upgrade your software. That it brings 13 the existing operating permits up to grade, 14 and they now will be unambiguously part of the 15 SIP. 16       In addition, that upgrade process 17 would only take place after EPA has formally 18 approved these additions to our SIP. So the 19 additions to the SIP would be finalized in the 20 Federal Register. And then we would begin 21 this batch process of upgrading existing 22 Subchapter 7 operating permits. 23       CHAIRMAN LODES: So that's something 24 that I would like clarified. Because my 25 concern is that we're opening a bit of</p>

<p style="text-align: right;">Page 78</p> <p>1 Pandora's box here. If I got an issued permit 2 ten years ago that was issued, we -- our SIP 3 was last approved, the 99 version of 4 Subchapter 7 was approved in 2017 by the EPA, 5 so it's -- You know, I realize that we've had 6 variations -- we've had changes to Subchapter 7 7 since then, but these were issued permits 8 with an approved SIP.</p> <p>9 So if you're going to suddenly go out 10 and send this permit out for public notice, 11 what happens if somebody comes back or the EPA 12 come backs and they want something changed in 13 that? The facility doesn't have an open 14 construction permit. They may not have an 15 open construction process. So are they now 16 going to have to change or make facility 17 modifications outside of a normal construction 18 process for something that the DEQ issued as a 19 State-issued permit 10 years ago?</p> <p>20 MR. RICHARDSON: So those are 21 significant questions. So I think there are 22 some issues that would just -- that would 23 really constitute just bring the permit up to 24 reflect existing requirements. An example 25 would be a facility might have an emission</p>	<p style="text-align: right;">Page 79</p> <p>1 unit that was, at the time, not subject to any 2 federal NESHAP requirements. But then 3 EPA adopts -- say, for example, NESHAP subpart 4 4Z, so an engine becomes subject to that as an 5 existing engine.</p> <p>6 So whether or not those requirements 7 were incorporated in that operating permit 8 when it was issued, say, 20 years ago, that 9 unit is still subject to those NESHAP 10 requirements. So it would not be problematic, 11 I would think, to add that to the specific 12 conditions in the permit to reflect the 13 existing applicable requirements. And there 14 are other issues that might need to be 15 upgraded into the FESOP.</p> <p>16 And these are open questions that 17 we're discussing in-house, and we would 18 discuss that.</p> <p>19 In addition, there may be public 20 comments. And if those public comments are 21 substantive, we would need to address the 22 public comments.</p> <p>23 But if a permit was issued 20 years 24 ago, and that permit is so completely, 25 hypothetically, out of phase with current</p>
<p style="text-align: right;">Page 80</p> <p>1 practice, we believe it's actually protective, 2 both of the public and the permit holder, to 3 ensure that if a permit is upgraded to a 4 current FESOP, that it does so and reflects 5 the current requirements.</p> <p>6 And I think there will always be 7 issues that need to be worked out in the 8 details of a particular facility's permit.</p> <p>9 But we do believe going forward that 10 this fixes potential gaps, potential issues 11 with our existing SIP. And that going 12 forward, we will consider all operating 13 permits to be FESOPs. We believe by upgrading 14 existing operating permits to FESOPs, we 15 benefit both the public, the permit holder and 16 others.</p> <p>17 CHAIRMAN LODES: To me it seems like 18 we're retroactively applying a regulation, and 19 also I -- my point of concern would be, say an 20 asphalt roofing manufacturer has built a 21 facility the last 15 years, 20 years ago. 22 They were authorized properly by an individual 23 minor source permit, but somebody came in and 24 put a neighborhood next to them after that 25 permit was issued, and now the neighbors</p>	<p style="text-align: right;">Page 81</p> <p>1 complain about that facility.</p> <p>2 Are they going to have a substantive 3 reason to file a complaint? Is the facility 4 now going to be required to make 5 modifications, even though they were issued a 6 federally enforceable permit at the time of 7 issuance 20 years ago?</p> <p>8 Because we had a -- I go back to we 9 have an approved SIP for Subchapter 7 today.</p> <p>10 MR. RICHARDSON: So, Laura, I guess 11 the concern you're raising, so if the facility 12 was constructed, say, 20 years ago. At the 13 time, it met all of the established Oklahoma 14 rules, federal rules; it has an operating 15 permit that we believe is federally 16 enforceable and that is reflective of the SIP 17 that was present at the time that permit was 18 issued. So this upgrade we're referring to -- 19 you're suggesting there might be public 20 comments from the neighbors saying they would 21 like changes to the facility.</p> <p>22 There's a difference between 23 substantive comments made on a construction 24 permit and substantive comments made on an 25 existing facility, so I think those would be</p>

<p style="text-align: right;">Page 82</p> <p>1 addressed as such.</p> <p>2 So, for example, when a construction</p> <p>3 permit is open for public review, it is</p> <p>4 unlikely that a comment made on existing</p> <p>5 equipment merits any additional, concrete</p> <p>6 change to the operating permit.</p> <p>7 I can't, of course, rule that out,</p> <p>8 but I think what we would focus on is that the</p> <p>9 comments would be made on upgrading an</p> <p>10 existing facility's operating permit to a</p> <p>11 FESOP, not revisiting what was done when the</p> <p>12 facility was initially constructed. Or if the</p> <p>13 facility was constructed before, gosh,</p> <p>14 before there was even an operating permit</p> <p>15 program, many, many years ago, I think those</p> <p>16 issues would be irrelevant to this particular</p> <p>17 upgrade.</p> <p>18 CHAIRMAN LODES: Just to me I feel</p> <p>19 like we're opening a Pandora's box of</p> <p>20 requirements. Because if you're not going to</p> <p>21 allow -- if the public comments aren't going</p> <p>22 to be a substantive change to the permit,</p> <p>23 what's the -- and if we're making no changes,</p> <p>24 and the permit meets the -- the facility</p> <p>25 hasn't made any changes, and they meet the</p>	<p style="text-align: right;">Page 83</p> <p>1 requirements, what's the point of the public</p> <p>2 notice? Are we retroactively applying a</p> <p>3 regulation to facilities because the EPA</p> <p>4 changed their mind on how they wanted us to</p> <p>5 run our program?</p> <p>6 MR. RICHARDSON: Well, let me address</p> <p>7 the second part of the question first. So I</p> <p>8 don't believe any of these changes would be</p> <p>9 retroactive. So they would be date forward,</p> <p>10 and let me give you a concrete example.</p> <p>11 So 20 years ago our specific</p> <p>12 conditions had record requirements, that</p> <p>13 records be maintained for two years, and</p> <p>14 that's changed. And now when we issue</p> <p>15 operating permits, there's a five-year</p> <p>16 recordkeeping requirement. I think it would</p> <p>17 not be inappropriate, when we make this</p> <p>18 upgrade, if we decided date forward to put</p> <p>19 that five-year recordkeeping requirement in</p> <p>20 place. But that wouldn't, retroactively,</p> <p>21 affect records that were kept by the permit up</p> <p>22 until the FESOP is issued for that permit at</p> <p>23 some point in the future.</p> <p>24 So I think those are the sorts of</p> <p>25 issues that we would be looking at. For</p>
<p style="text-align: right;">Page 84</p> <p>1 example, I think the recordkeeping is one,</p> <p>2 also, standard conditions. I think it would</p> <p>3 not be inappropriate to reissue the FESOP with</p> <p>4 the current, standard permit conditions rather</p> <p>5 than the standard conditions that were in</p> <p>6 place 20 years ago.</p> <p>7 CHAIRMAN LODES: So who's going to</p> <p>8 pay the fee for reopening and modifying these</p> <p>9 permits?</p> <p>10 MR. RICHARDSON: So our current</p> <p>11 thinking is that there would be no fee</p> <p>12 required for this upgrade. However, during</p> <p>13 the interim, after the rules are passed, if a</p> <p>14 facility needs a construction permit to make a</p> <p>15 modification, then that would have to go</p> <p>16 through the traditional NSR process,</p> <p>17 because there would be, at least if the rules</p> <p>18 are adopted, there would be no existing FESOP.</p> <p>19 They would have an existing operating permit</p> <p>20 but it would not yet be a FESOP in a formal</p> <p>21 manner. So if they requested a construction</p> <p>22 permit, there would be fees for that</p> <p>23 construction permit going forward.</p> <p>24 But this upgrade I'm referring to,</p> <p>25 we're not, at least at present, envisioning</p>	<p style="text-align: right;">Page 85</p> <p>1 any costs associated with that for the permit</p> <p>2 holder.</p> <p>3 CHAIRMAN LODES: So I guess my thing</p> <p>4 is if a facility wants to make a change, yes,</p> <p>5 they need to come in file for a construction</p> <p>6 permit and go through the normal process.</p> <p>7 But if they're not making any change,</p> <p>8 why do they need to do anything to their</p> <p>9 permit? If their -- because their permit,</p> <p>10 I'll go again, we have a SIP-approved program</p> <p>11 today. They have a federally enforceable</p> <p>12 permit issued under an approved SIP today. If</p> <p>13 they don't want to make any changes to it, why</p> <p>14 should they have to change it? I mean, yes,</p> <p>15 they have to comply with quad Z, if they're</p> <p>16 subject to it. But I don't understand the</p> <p>17 purpose in us reopening, I don't know how</p> <p>18 many, a thousand permits in the State of</p> <p>19 Oklahoma, and putting them through public</p> <p>20 notice, then who's going to pay for the costs</p> <p>21 of the facilities' time to respond to</p> <p>22 questions, if the public responds?</p> <p>23 You know, there's a lot there. The</p> <p>24 neighborhood, you know, the low-income housing</p> <p>25 neighborhood that went up next door to the</p>



<p style="text-align: right;">Page 86</p> <p>1 facility after the facility was built, decides 2 to complain, who's going to pay for the time 3 and effort by the company to respond on a 4 permit that was issued, in accordance with all 5 laws and regulations at the time, and they're 6 in compliance today? 7 MS. STEGMANN: Can I say something 8 real quick? I appreciate your comments, 9 Laura. I'm just wondering on these, these 10 seem to me worst-case scenarios. I'm not sure 11 how often they would come up, because a lot of 12 those questions are going to be dealing if -- 13 with zoning issues. 14 We're looking at just what they can 15 and cannot do under air quality regulations. 16 Not based on a citizen's, you know, complaint, 17 basically. I just think those situations 18 would be very rare, because we don't get a lot 19 of comments, as it is. So, I mean, I 20 appreciate your concern for these existing 21 sources, but I really don't think that is a 22 major issue. 23 MR. LANDERS: I guess asked a 24 different way, what is the harm in just 25 waiting until a facility needs a construction</p>	<p style="text-align: right;">Page 87</p> <p>1 permit to do this upgrade? 2 CHAIRMAN LODES: I mean, that's my 3 thought. Why do we need to change them today? 4 Why not just let them wait until they want to 5 come in and make a change? 6 MR. LANDERS: I'm not arguing either 7 way. I mean, just saying what is the downside 8 to not doing it? 9 MS. STEGMANN: I mean, I understand. 10 I mean, we haven't set -- when dealing with 11 existing sources, we haven't set it in stone 12 exactly how we're going to do it. I think 13 that's going to be a conversation after we get 14 this package passed. So, I mean, I would 15 rather focus on new construction, and the new 16 permits rather than existing, because that can 17 be a discussion and a dialogue, you know, 18 outside of this conversation. I just would 19 prefer us to focus on new construction. 20 CHAIRMAN LODES: Okay. And I'm fine 21 with that. I just don't -- 22 MS. STEGMANN: I mean, that is part 23 of -- that -- we can open a dialogue with 24 stakeholders in how the best way to get -- to 25 deal with existing sources. But I think</p>
<p style="text-align: right;">Page 88</p> <p>1 today, I think we need to focus on, today 2 going forward, for new construction. Does 3 that make sense? 4 CHAIRMAN LODES: I just don't want to 5 do something that's then going to hinder my 6 existing sources. I don't want the, you 7 know, the law of unintended consequences here. 8 I do this and suddenly, I mean, this wasn't 9 here before. This reads as though my existing 10 facilities don't have a FESOP today, and my 11 argument is, they do. They have a federally 12 enforceable permit. 13 DR. DELANO: Yes. I would like to 14 say one thing if I might. I agree with Laura. 15 I think this needs further discussion. 16 For your example, if you have an 17 existing permit and some low housing is built 18 in your area, and you have to redo your permit 19 based on that, I say that should already be -- 20 that already should have been ironed out 21 before housing came into that area. So -- or 22 something else, whatever that is. 23 CHAIRMAN LODES: So in my mind -- 24 DR. DELANO: So I -- Go ahead, Laura. 25 CHAIRMAN LODES: No, go ahead, Bob.</p>	<p style="text-align: right;">Page 89</p> <p>1 DR. DELANO: Again, I -- we should 2 know what areas that we have businesses in, 3 you would not purposely build some housing 4 area into that sector and then make the 5 businesses change. So I don't know. I think 6 this needs further discussion myself. That's 7 all I have. 8 MR. LANDERS: And I would be curious 9 as to whether, Kendal, you have the staff that 10 could go work on, literally, dozens or 11 hundreds or thousands of these. I don't know 12 how many permits there are, and start popping 13 those out. I mean, do you have resources to 14 do that even right now? 15 MS. STEGMANN: Not right now, no, to 16 be honest. I mean, like I said before, this 17 has not been -- this is -- we haven't decided 18 exactly. We were -- you know, this is one 19 proposal that we're discussing as a batch way 20 of getting public notice out for these 21 permits. But we can continue to discuss what 22 needs to be done for existing sources. 23 CHAIRMAN LODES: Well then I guess -- 24 so in my mind, where we've got the definition 25 of a Federally Enforceable State Operating</p>

<p style="text-align: right;">Page 90</p> <p>1 Permit or FESOP, means an operating permit 2 issued under Subchapter 7 of this chapter, 3 including operating issued under the 4 provisions, you know. To me, cannot we put a 5 date in there and say permits issued prior to 6 X date are considered FESOPs? And then we 7 don't have to batch reopen all these permits. 8 MS. FOSTER: So this is Melanie 9 Foster. EPA would not approve of us going 10 forward with putting in a date and saying 11 they're FESOPs. Because, technically, the way 12 our rules are written, the FESOP terminology 13 is very specific, and we have to be explicit 14 in our program, which is what we're attempting 15 to be with these rule revisions. 16 And so until our SIP says that we 17 have a FESOP -- Now, I'm not saying our 18 permits aren't federally enforceable. I'm 19 saying we do not have what they would term a 20 FESOP currently. And so until we're explicit, 21 we would not be able to put a date certain and 22 say all existing are. That just wouldn't be 23 able to be approved by EPA. Because we've 24 already had dialogue, and we know that until 25 they formally approve this, even into our</p>	<p style="text-align: right;">Page 91</p> <p>1 program, we can't move forward with explicitly 2 saying that these are FESOPs. 3 There's nothing, as we've written in 4 the rule currently, that makes us push 5 existing facilities through the FESOP program. 6 We currently thinks it's a good idea for our 7 existing sources to become an explicit FESOP. 8 But there is the option, as we have this 9 dialogue that Kendal has mentioned, with 10 existing sources that there may be reasons why 11 we decide that existing sources may choose or 12 we may choose not to want to push them through 13 the process, and I think that is an option, 14 you know, going forward. 15 But to speak to Dr. Delano's point, 16 and I'm not the permitting authority, so I 17 will defer to Phillip Fielder or Lee or 18 somebody, but there should not be any 19 conditions, again, there may be zoning issues, 20 as Kendal mentioned, but as far as permits go 21 there shouldn't be conditions that change 22 based on where they're located. 23 If they're having -- Let's say 24 fugitive dust emissions now, that's something 25 that should be fixed, you know, now. That</p>
<p style="text-align: right;">Page 92</p> <p>1 doesn't have anything to do with the FESOP 2 issue. But the actual conditions that they 3 have are going to be based on existing NSPSS 4 that they're subject to, existing NESHAPs, and 5 just our normal standard conditions for any 6 facility. 7 But, again, Phillip, Lee, Tom, please 8 correct me if I said anything in error. 9 I'll say one last point on this is 10 that we currently close our minor source, as 11 in Subchapter 7, construction permits, 12 because it just makes sense once we roll them 13 into an operating permit, that's another 14 thing, that I think you guys know probably 15 from the major source side, that the 16 conditions that make things federally 17 enforceable tend to be in the minor NSR or 18 major NSR realm, right? 19 That's what happens in Title V. You 20 must put it into the major NSR, you know, or 21 minor NSR permit first, then roll it into the 22 Title V, because that's your foundational 23 condition. And because we're closing out our 24 minor source permits, which makes good sense, 25 then when the operating permit goes forward,</p>	<p style="text-align: right;">Page 93</p> <p>1 having this explicit FESOP ensures that 2 there's no question that those conditions that 3 are in that closed minor NSR permit are still 4 federally enforceable. 5 CHAIRMAN LODES: Well, I guess, and 6 this is my fundamental reason for the 7 questions is the way our FESOP definition 8 reads and such here, it appears to me that 9 once this rule package is issued and goes 10 final into our rules, that facilities who 11 haven't gone through a 30-day public notice 12 period do not appear to have a Federally 13 Enforceable State Operating Permit. When I 14 would argue they have one, because they were 15 under an approved SIP at the time, and it is 16 federally enforceable. 17 So are you then going to -- it gives 18 the appearance from an enforcement perspective 19 that I've got an individual minor source 20 permit. It's a synthetic minor. We're 21 authorized to emit 90 tons of NOX. We now 22 have the appearance that we don't have a 23 federally enforceable limit that made us a 24 synthetic minor source. 25 And that's my biggest concern right</p>

<p style="text-align: right;">Page 94</p> <p>1 here is the way it's written today, it gives 2 that appearance, that we don't have federally 3 enforceable limits. And so maybe that's a 4 tweak in a definition or something to be clear 5 that we do have federally enforceable limits 6 for these sources if they choose to not reopen 7 their permit.</p> <p>8 MR. COLLINS: Laura, hey, this is 9 Gary Collins. Can you restate that one more 10 time so -- what's your concern?</p> <p>11 CHAIRMAN LODGES: So the way this new 12 version of Subchapter 7 reads, it talks about 13 a Federally Enforceable State Operating 14 Permit, and it talks about it going through 15 the public notice. My concern is if I have a 16 synthetic minor source permit today, and we've 17 relied on these state-issued permit limits to 18 show that we're not a Title V applicable 19 source, but the way this reads, it reads as 20 though I don't have a federally enforceable 21 permit now. I have a compliance risk because, 22 all of a sudden, what I thought was a 23 state-issued federally enforceable permit, it 24 doesn't read that way once this rule comes 25 into effect.</p>	<p style="text-align: right;">Page 95</p> <p>1 MR. COLLINS: Yeah, I get it.</p> <p>2 MR. LANDERS: But because it's not 3 technically a FESOP; is that what you're 4 saying?</p> <p>5 CHAIRMAN LODGES: Based off the 6 definition of FESOP and such in here, we don't 7 have anything that protects my existing 8 facilities -- or protects our existing 9 facilities to show that they have, yes, they 10 have a federally enforceable limit today that 11 kept them out of Title V.</p> <p>12 MR. LANDERS: It almost sounds like 13 you're now saying you should go through that 14 process.</p> <p>15 CHAIRMAN LODGES: Well, but -- That's 16 what I'm saying. You know, I got an issued 17 permit. When I did my construction permit, I 18 did everything according to the Oklahoma rules 19 at the time they were in place. I got my 20 federally enforceable limit at the time, and 21 now we're changing the rules of the game and 22 we're saying, nope, now you got to put 23 yourself at risk. We're going to make you 24 reopen the permit, because we're now issuing a 25 rule that says, yeah, you thought you had a</p>
<p style="text-align: right;">Page 96</p> <p>1 federally enforceable limit but maybe you 2 don't really have one.</p> <p>3 MS. STEGMANN: When we're talking 4 about synthetic minors, that goes through the 5 public comment process, correct?</p> <p>6 CHAIRMAN LODGES: No, it doesn't. Our 7 individual minor source permits today have 8 never gone through a public notice process.</p> <p>9 MS. STEGMANN: If they're trying to 10 get out of a Title V, they don't go through a 11 Tier II.</p> <p>12 CHAIRMAN LODGES: If they're trying to 13 get out of Title V. But I go out and I build 14 a new facility today, and I take runtime 15 limits on some piece of equipment, or 16 throughput limits on a piece of equipment, so 17 that I never get into Title V. I have a 18 synthetic minor source permit issued at a 19 greenfield site today and it will never have 20 gone through public notice.</p> <p>21 MR. FIELDER: Right. Laura, this is 22 Phillip Fielder, the air quality. Hey, so 23 I'll fill in my two cents, but I think you're 24 right. And I don't know -- maybe we just say 25 it. EPA's interpretation is this: Our</p>	<p style="text-align: right;">Page 97</p> <p>1 program was deficient at the time. When we 2 issued those NSR permits to avoid -- to get 3 federally enforceable limits, they should have 4 had public review. That has been EPA's 5 communication to us. Yes, you're right, we've 6 issued these permits over the years, and they 7 have said, hey, we failed. We allowed the DEQ 8 or the -- Oklahoma regulations to proceed in 9 this fashion. How do we go back and address 10 that, and do we -- do we -- knowing that's 11 what the discussion we're having. Their 12 criteria for a FESOP is the same as it is for 13 a NSR permit. When you get an NSR permit, 14 they're saying, hey, a FESOP can take the 15 place of an NSR permit, and under our 16 regulations all minor NSR permits should have 17 had public review. And they're saying -- they 18 came up with this FESOP procedure to allow 19 states to issue state operating permits, that 20 are also enforceable without having to rely on 21 that NSR permit without canceling it, and it 22 also allows Title V facilities to go directly 23 to the FESOP without going to the NSR public 24 review process.</p> <p>25 So it's kind of this dual thing. Not</p>

<p style="text-align: right;">Page 98</p> <p>1 many states do it. It's not necessary. But 2 even if we didn't do it, we have all these NSR 3 permits out there that are still problematic 4 based on EPA's issue with our historical 5 process that had been approved. 6 So there is a distinction -- 7 CHAIRMAN LODES: Phillip -- 8 MR. FIELDER: There is a distinction 9 between, oh, do I have conditions in my permit 10 that would be considered federally 11 enforceable? Do I have the monitoring? Do I 12 have the recordkeeping? Do I have the 13 emission limits? Yes, but do you have that 14 one -- one of the critical elements, which to 15 EPA, whether we agree with them or not, is 16 this public review, but, yes, you're 17 exactly right. Historically, we did not 18 require that. How do we interpret that? 19 And, again, I think that is a 20 discussion after these rules changes on how 21 we're going to deal with that. What is the 22 vulnerability of the facilities? And I think, 23 initially, we thought, well, we'll assist the 24 facilities and get them in there, that 25 vulnerability is not there. I don't think, on</p>	<p style="text-align: right;">Page 99</p> <p>1 our position, there is no -- we believe it 2 works the way it has worked as far as how the 3 permit is set up. 4 Now, you know, permits years ago 5 don't have -- we got better at writing 6 permits, and they may not have that clear 7 enforceability if Sierra Club or somebody else 8 comes in, so you got that issue also. But 9 that is EPA's position to us. But I get your 10 point to say, hey, if we clearly, based on the 11 wording of the rules, would that -- could 12 someone say, well, this is clearly not a 13 FESOP? Well, right. But someone could also 14 look at the criteria for an NSR permit if they 15 go to our SIP and what EPA requires. Well, 16 those NSR permits didn't go through public 17 review neither, so you're going to have that 18 vulnerability anyway. 19 CHAIRMAN LODES: But, Phillip, EPA 20 approved Subchapter 7 252:100-7-15, 21 Construction Permits, on May 15th, of 2017. 22 We have an approved SIP for construction 23 permits today. EPA may have changed their 24 mind, that's nifty and all, but we have an 25 approved SIP that has gone through the Federal</p>
<p style="text-align: right;">Page 100</p> <p>1 Register, and has been issued by the EPA. So 2 trying to say these permits today are 3 magically not in compliance, I have a hard 4 time swallowing EPA, because you gave us an 5 approved SIP. 6 MR. COLLINS: Hey, Phillip, this is 7 Gary Collins. Hey, so based on that 8 evaluation, based on that analysis, do we 9 think we have permits that were issued in 10 which the permittee thought he had, a FESOP, 11 avoided some type of federal reporting or 12 federal regulation, because he thought he had 13 a FESOP? And now we come back and say, well, 14 you really didn't have a FESOP. So what are 15 the consequences of that? Do we think -- Are 16 those situations as well? 17 MR. FIELDER: Correct. Now, the 18 FESOP is a special program that, again, we 19 don't have to implement. It was something we 20 believed was -- we would implement for the 21 flexibility of the facilities. It was a nice 22 little tool they could utilize. But -- so the 23 process would say, hey, if -- like, Laura's 24 example, if I built this facility and I want 25 to take -- I'm a potential major and I don't</p>	<p style="text-align: right;">Page 101</p> <p>1 want to take these limits, that NSR permit is 2 the mechanism to get those federally 3 enforceable limits there to avoid that. 4 So, and I agree with Laura here, and 5 it's almost getting into a very legal stance, 6 if we put those basic elements into that 7 permit, to create the actual enforceability, 8 but it didn't get that one item, which EPA 9 says is the public review, to give them that 10 opportunity to comment, what does that do? 11 And Sierra Club has done this under 12 other circumstances where they have said a SIP 13 has failed to meet the EPA requirements. It's 14 not only because EPA approved it, Sierra Club 15 has come in and challenged EPA themselves on 16 the fact they approved a deficient program, 17 and, yes, I would say if that was to happen, 18 Sierra Club would have standing to say, oh, 19 no, this permit failed to meet the full 20 portions of that approved federally 21 enforceable permit. And it is not federally 22 enforceable and, therefore, that is a 23 potential major source. I mean, that's worst 24 case. You know, like we're not -- Sierra Club 25 usually doesn't focus on these minor sources.</p>

<p style="text-align: right;">Page 102</p> <p>1 These things are -- and I say Sierra Club, but 2 other environmental groups. 3 But that is the core of the issue, 4 and what is our -- And, Laura, I can't answer 5 that. What is our legal obligation? What is 6 our vulnerabilities when EPA did approve that 7 SIP, as she described? I'm not saying that we 8 couldn't argue against that and win that 9 argument, but that's what we're talking about 10 here. 11 CHAIRMAN LODES: Correct. And that's 12 why I want it clear that existing sources, who 13 got an approved permit issued under our SIP, 14 as it stands today, which was approved by the 15 EPA, because both the operating permit and the 16 construction permit sections were approved by 17 the EPA on May 17th -- or May of 2017, that's 18 what I want clear. Because this says an 19 effective date of June 14th of 2017. When I 20 go to the EPA's website and I look at our 21 approved SIP. 22 MS. MILLER: This is Madison Miller. 23 I have something to add to this. So I think, 24 Laura, in response to that, I think our 25 concern would be that EPA would then not</p>	<p style="text-align: right;">Page 103</p> <p>1 approve these rules that we are trying to pass 2 now, if it has that provision. 3 And I wanted to mention a Federal 4 Register that came out from EPA in 2014 when 5 EPA was approving Texas's FESOP program. EPA 6 explicitly stated that because those permits 7 were not -- the previous permits, because they 8 were not issued under the regulations that EPA 9 is approving today, there can be no assurance 10 that the State-only permits fully comply with 11 the elements of the FESOP, and today's action 12 cannot make those State-only permits federally 13 approved unless and until a permit is 14 reissued. 15 So I understand where you're coming 16 from, but I just wanted to bring that up. 17 Because when EPA approves these rules, that 18 statement is probably going into the Federal 19 Register, so I just wanted to highlight that. 20 CHAIRMAN LODES: And that right 21 there, Madison, is my concern. They put that 22 in there and -- I mean, what is EPA's 23 regulatory citation for basically forcing us 24 to change Subchapter 7 that they approved? 25 Did we get a formal letter from EPA telling</p>
<p style="text-align: right;">Page 104</p> <p>1 us that we had -- 2 MS. MILLER: So the regulatory 3 citation is 51 -- 40 CFR 51.160-164, and then 4 that's based on Title I of the Clean Air Act. 5 Specifically, it would be Section 6 110(a)(2)(C). 7 MS. FOSTER: Laura, this is a 8 Melanie. Yes, we did get a letter, a formal 9 comment from Region 6 in support of the 10 rulemaking changes. And one of the things 11 that they do mention in there, and I'll just 12 read it for the record is, it says, "The 13 proposed provisions are the result of a 14 multi-year collaborative effort between the 15 EPA Region 6 and the ODEQ to identify and 16 address areas of concern in the Oklahoma Air 17 Permit Program. 18 We believe these proposed revisions 19 will serve to clarify how the Oklahoma Air 20 Permit program addresses the program 21 requirements of New Source Review, NSR, and 22 Title V. 23 Title I of the Clean Air Act requires 24 public notice for minor NSR at 40 CFR 51.160 25 to 51.164. The ODEQ's proposed revisions will</p>	<p style="text-align: right;">Page 105</p> <p>1 meet these federal requirements by requiring 2 electronic notice for all minor NSR permit 3 actions." 4 It goes on to say about Title V 5 having a separate public notice under 40 CFR 6 70.7 and that our proposed provisions also 7 meet those federal requirements by requiring a 8 public notice for all initial Title Vs. 9 There's additional, you know, 10 comments on the other parts and pieces, but 11 that is one specific thing where they've 12 called out that these changes would address 13 those public notice minor NSR. 14 And, again, I'll kind of maybe circle 15 back to Phillip, one of, hopefully, one of 16 Phillip's points is that because there is this 17 ambiguity, that's the reason why we want to be 18 very specific about the FESOP. And that's why 19 we were suggesting that we would want to batch 20 all of these facilities through the process to 21 make them formally a FESOP, just because we 22 don't want our facilities to have the 23 regulatory uncertainty. 24 Again, we feel like we probably could 25 defend as, Laura, you mentioned that we</p>

<p style="text-align: right;">Page 106</p> <p>1 have -- had a SIP-approved program, but that 2 does not mean that somebody else could not 3 attempt to challenge that. And if we could 4 pass the FESOP requirements and push everybody 5 through it, again, not that we have to, but if 6 we did, then we would circumvent any potential 7 argument that those other entities might have 8 that we did not follow all of EPA's 9 requirements for our sources to have federally 10 enforceable limits.</p> <p>11 CHAIRMAN LODES: Okay.</p> <p>12 MR. RICHARDSON: Laura, I would also 13 point out that we probably don't want to force 14 EPA's hand. In other words, we really don't 15 want to force them to issue a letter of 16 deficiency. I think we're better off moving 17 forward in trying to address these issues 18 collaboratively than by forcing EPA to make a 19 formal declaration that we have a problem.</p> <p>20 And maybe a simple analogy, let's say 21 you have a parking garage, and it's working, 22 and your cars are there, but you know you have 23 some problems. We want to build a new parking 24 garage. Move all the cars into that garage 25 before the City condemns the existing parking</p>	<p style="text-align: right;">Page 107</p> <p>1 garage, I guess that's how I would address it. 2 MR. KEELE: This is Garry Keele. I'm 3 sorry. Go ahead, Steve. 4 MR. LANDERS: Well, I was just going 5 to say so you stand the risk of being 6 challenged, let's say by an NGO, either for 7 not -- having a permit that did not go through 8 the public review process. Or if you now send 9 them through the public review process to 10 upgrade them to a FESOP, they can then 11 challenge the permit itself. So, I mean, it's 12 almost like you're picking the lesser of two 13 evils -- or the lesser of two risks, I should 14 say.</p> <p>15 Because an NGO could challenge either 16 way, is what we're saying. We don't send them 17 through public review, they could challenge 18 whether they are a major source or not. And 19 if we send them through public, they could 20 challenge the permit.</p> <p>21 MS. FOSTER: So, Steve, this is 22 Melanie. I think that's a good point. I 23 think you have a risk on both sides. But the 24 third factor that we have to think about is 25 the EPA factor here. So those other two,</p>
<p style="text-align: right;">Page 108</p> <p>1 you're right, are probably equal in the 2 possibility of happening or not happening, 3 right? But we still have the EPA review of 4 our program as a -- kind of a third factor 5 that we have to worry about.</p> <p>6 And sorry, Garry, I may have cut you 7 off.</p> <p>8 MR. KEELE: No, you're fine. So 9 sitting here listening to an interesting, 10 fascinating sort of conversation.</p> <p>11 Is it possible that EPA would approve 12 the program, the FESOP on a go-forward basis 13 where we allowed companies under the 2017 14 version to opt in if they wanted to versus -- 15 and if they don't want to, just to assume the 16 risk of staying in a position of maybe lacking 17 clarity on whether or not they fit in the SIP, 18 at least in EPA's mind.</p> <p>19 Do we feel like EPA will pass the 20 program going forward that way versus us 21 having to cleanup these retro items -- you 22 know, to the early part of this conversation, 23 I have -- I anticipate that if we batched 24 everybody in or tried to that most would go 25 through without issue. But I also guarantee</p>	<p style="text-align: right;">Page 109</p> <p>1 there will be some that will be messy. 2 So I'm just wondering is it possible 3 to move -- to sort of split the difference 4 here and move forward in a way -- you 5 know, sort of set a date, and then the others 6 that don't want to opt in can assume some 7 risk.</p> <p>8 MS. FOSTER: So, Gary, this is 9 Melanie again. Yeah, I think to an earlier 10 point, hopefully, that I made, and then also 11 to Madison's point about how EPA addressed it 12 in another rulemaking, I don't feel that our 13 rules as written push new facilities -- or, I 14 mean, existing facilities to go through the 15 FESOP. But as Laura pointed out, that will 16 create the potential optics, right, that you 17 either are or you are not?</p> <p>18 But I think, yeah, that's a 19 possibility that we could look at with these 20 dialogues that Kendal mentioned is do existing 21 sources, do we go through the batch process, 22 or do we look at risk and decide based on risk 23 whether facilities want to or don't want to. 24 Again, like an SM-80, or somebody who has 25 taken a federally enforceable limit, maybe</p>

<p style="text-align: right;">Page 110</p> <p>1 they're less -- maybe they're more risk 2 averse, I should say, to sitting on the bubble 3 and wondering which way they go. And so they 4 want to go into it or maybe they're not. 5 Phillip, Madison? 6 MR. LANDERS: Gary's proposal sounds 7 pretty good to me. That way the company or 8 the facility gets to make the decision on the 9 risk they choose. It's not us. 10 MR. FIELDER: Melanie, this is 11 Phillip in Permitting. So, yeah, maybe you 12 should just clarify again, the current status 13 of the rules does not force existing 14 facilities to do anything. 15 It's like Melanie said and Laura 16 said, it's the optics of, hey, the definition 17 says you're a FESOP if you do this, if you 18 meet this. Knowing that you're an existing 19 permitted facility that hasn't met that, and 20 you don't have a FESOP, so what are the 21 consequences of that? 22 The current rule structure does not 23 force those existing facilities to do 24 anything. And that is what everybody has been 25 talking about. The conversations that we may</p>	<p style="text-align: right;">Page 111</p> <p>1 have or will have after this. What do we do 2 with that? Remember, a lot of those minor 3 source permits, you know, facility, when we 4 talk about risk, are true minors, and even 5 though EPA, even in those cases, 6 believes public review is necessitated, 7 there's very little risk there for that 8 facility with regard to major source, 9 obviously. And so you're going to have 10 several different discussions to be had, when 11 we decide how best to -- and it may just be 12 rolling out a few options for these existing 13 facilities to take advantage of. And one of 14 them would be, hey, we're going to let -- we 15 want the State to voluntarily batch us 16 through. So those are all conversations that 17 need to be had after this, hopefully, after 18 these rulemakings. 19 MR. KEELE: Hey, this is Garry Keele 20 again. Just to be clear, I understand all of 21 that, what both Phillip and Melanie have said, 22 I appreciate that. 23 I guess my question more specifically 24 is, will EPA find this set of rules approvable 25 if we don't go back and batch everybody</p>
<p style="text-align: right;">Page 112</p> <p>1 through, or we don't commit to fixing other 2 than an opt in sort of option? I guess 3 that's -- will they find it still unapprovable 4 if we don't commit to fixing the group that 5 they don't agree with now? 6 MS. FOSTER: So this is Melanie. My 7 understanding from our discussions with EPA is 8 they will just be ruling -- ruling on the 9 rules themselves. They will just be approving 10 the rules themselves which set up the FESOP 11 program, you know, essentially going forward. 12 Because that, again, as Madison mentioned how 13 they've done another rulemaking. 14 So they will approve those before we 15 do anything. We will not be able to batch 16 these -- you know, these groups through until 17 after their approval to make sure that then 18 they are true, explicit FESOPs. So I don't 19 think their approval will not hinge on what we 20 are planning to do. It will just then have 21 that risk going forward again for those 22 facilities if we or they decide that we don't 23 have to do them all. But, no, the approval 24 should move forward, because the rule doesn't 25 explicitly say that we have to do this for</p>	<p style="text-align: right;">Page 113</p> <p>1 existing sources. 2 MR. KEELE: Thank you. 3 DR. DELANO: Hi, this is -- 4 MS. STEGMANN: Yeah, Garry, I like 5 the opt-in option. I think that is a 6 discussion we can have with EPA on -- I mean, 7 they seem to be open to negotiation and just 8 our individual needs, and what our 9 stakeholders need, so I think we can have an 10 open discussion with EPA on dealing with 11 existing sources, and how to weigh that risk 12 for them, and how we, you know, give them 13 guidance on that. But, yes, we can definitely 14 open that conversation with EPA. 15 CHAIRMAN LODES: So I'm looking at 16 Federal Register, Volume 85, No. 146 issued on 17 Wednesday, July 29th of 2020, and this is in 18 response to Florida's SIP, and it states: 19 As discussed in the NPRM, there are 20 no specific public notice requirements for 21 issuance of minor source air permits in the 22 Clean Air Act or implementing regulation. And 23 Florida's rule complies with the EPA'S FESOP 24 guidance. 25 The commenter does not challenge the</p>

<p style="text-align: right;">Page 114</p> <p>1 rationale for approving a SIP revision or</p> <p>2 explain why FESOP submitted for said purposes</p> <p>3 must undergo a 30-day comment. In this</p> <p>4 rulemaking, EPA approved Florida going to a</p> <p>5 14-day notice instead of 30.</p> <p>6 And so that clearly states to me, and</p> <p>7 this again is in the Federal Register issued</p> <p>8 by EPA, where it says there's no specific</p> <p>9 public notice requirements for issuance of</p> <p>10 minor source permits in the Clean Air Act.</p> <p>11 MS. FOSTER: Not for operating</p> <p>12 permits. There is definitely explicit for</p> <p>13 minor NSR. But, again, we do not technically,</p> <p>14 per EPA's regulations, even have to have a</p> <p>15 minor operating permit program, but we do,</p> <p>16 obviously, and we definitely think it makes</p> <p>17 great sense for our regulated community. But</p> <p>18 that is correct that a minor operating permit,</p> <p>19 just on its face, does not -- is not required</p> <p>20 or would not have to have public notice.</p> <p>21 Our portion is this, again, FESOP</p> <p>22 explicit terminology, because we're closing</p> <p>23 out the construction permit. We're making the</p> <p>24 operating permit the be-all, end-all permit</p> <p>25 that does have the operating -- I mean the</p>	<p style="text-align: right;">Page 115</p> <p>1 public notice portion.</p> <p>2 And, again, we've got the enhanced</p> <p>3 option for that, too, so that if you had an</p> <p>4 existing FESOP, you know, you would have all</p> <p>5 that public notice happen at the construction</p> <p>6 phase.</p> <p>7 Because, again, all minor NSR permits</p> <p>8 do have to go through public notice. So it</p> <p>9 will be streamlined once we have existing</p> <p>10 FESOPs, the construction process will handle</p> <p>11 that public notice.</p> <p>12 But I think to your point, Laura,</p> <p>13 that's accurate. It's just that our -- what</p> <p>14 we're trying to accomplish is slightly</p> <p>15 different.</p> <p>16 MR. FIELDER: Right. Melanie, let</p> <p>17 me -- this is Phillip. Let me just touch on</p> <p>18 that a second too. So that is correct. This</p> <p>19 discussion started with EPA about our minor</p> <p>20 NSR program and not our minor operating</p> <p>21 permit. Through this discussions with EPA, we</p> <p>22 became aware of this. We starting talking</p> <p>23 about operating permits and how that rolls</p> <p>24 into the -- what does it play in this system?</p> <p>25 And we became familiar with FESOP process, and</p>
<p style="text-align: right;">Page 116</p> <p>1 what benefits it could provide to our sources.</p> <p>2 So we opted to include this as an option, but</p> <p>3 the real issue is, our minor source NSR</p> <p>4 program and public review, and so that's why I</p> <p>5 brought that up earlier to the previous</p> <p>6 comment where, yeah, we could -- the issue</p> <p>7 isn't the FESOP. It is that NSR public review</p> <p>8 element. So this is just an option, the FESOP</p> <p>9 that we included as we thought was a good tool</p> <p>10 to have for everybody.</p> <p>11 CHAIRMAN LODES: So then if the</p> <p>12 30-day relates to a construction permit, and</p> <p>13 you can have a 14-day or none for an operating</p> <p>14 permit, then we are now writing this FESOP</p> <p>15 enhanced NSR permit as a 30-day public notice.</p> <p>16 Could we not restructure this</p> <p>17 Chapter slightly differently to say,</p> <p>18 Construction permits do the 30-day notice?</p> <p>19 But if it's strictly an operating permit</p> <p>20 change, it could be the 14-day?</p> <p>21 MR. FIELDER: That is a comment we</p> <p>22 received, and we did respond. And I'll let</p> <p>23 Tom speak to that or somebody else.</p> <p>24 But, yeah, that was a different angle</p> <p>25 than Florida's from all the other FESOP</p>	<p style="text-align: right;">Page 117</p> <p>1 programs that we've seen, and so --</p> <p>2 CHAIRMAN LODES: The response to</p> <p>3 comments that I saw, they said that that was</p> <p>4 just a proposal, but I'm looking at the</p> <p>5 Federal Register which says this rule is</p> <p>6 effective on August 28th of this year. So</p> <p>7 this is a newly issued rule that I have the</p> <p>8 Federal Register open and it's in effect</p> <p>9 today.</p> <p>10 MR. FIELDER: Right. It occurred</p> <p>11 right in the middle of our rulemaking, so we</p> <p>12 are aware of that, yes.</p> <p>13 MR. RICHARDSON: So, Laura, I would</p> <p>14 ask, does Florida have FESOP enhanced NSR? In</p> <p>15 other words, if you do a minor NSR permit in</p> <p>16 Florida, can you then incorporate those</p> <p>17 requirements into the FESOP without the 14-day</p> <p>18 public review?</p> <p>19 CHAIRMAN LODES: I mean, that's one</p> <p>20 of the things that I'd have to go through and</p> <p>21 dig through, but this allows for the FESOPs to</p> <p>22 be just the 14 days.</p> <p>23 MR. RICHARDSON: So my understanding</p> <p>24 is Oklahoma, what we'll do is have 30-day</p> <p>25 public review of a minor NSR permit; Florida</p>



<p style="text-align: right;">Page 118</p> <p>1 does the same thing. And then in Oklahoma, if 2 you have an existing FESOP, you then modify 3 your FESOP without additional public review. 4 In Florida, you modify your FESOP, with a 5 14-day public review. In addition, to the 6 30-day public review, you had for your NSR 7 permit. 8 So I guess our point is we think 9 we're actually better than Florida. Now, the 10 issue that you mentioned separately is just a 11 straight modification of the operating permit. 12 So in some cases, those modifications might 13 arguably not need public review. 14 But anything NSR-like, anything that 15 sets a limit, we think would necessitate that 16 30-day public review, whether it follows the 17 NSR path or whether it's a direct modification 18 of the FESOP. 19 So, for example, if you take a 20 throughput limit in your tanks to avoid, say, 21 federally applicable rule, like quad Oa, and 22 then because of, you know, changes you may 23 want to modify that, that modification can be 24 done directly to the FESOP under our rules. 25 In Florida, you would have to go through NSR</p>	<p style="text-align: right;">Page 119</p> <p>1 first, 30-day review, then 14-day review when 2 you incorporate it into the FESOP. 3 So, again, I think our rule, even 4 though it appears to be more stringent than 5 Florida, we believe it's actually more 6 flexible. 7 CHAIRMAN LODES: So looking at the 8 EF -- Florida's website, it says affected 9 parties, federal agencies and the public may 10 provide comments on the draft permit. The 11 comment period ends 30 days after publication 12 for PSD permits, and 14 days after publication 13 for all other permits. 14 MR. RICHARDSON: Is that for minor 15 NSR as well? 16 CHAIRMAN LODES: That says all other 17 permits, and that's Air Construction Permits 18 in Florida when I pull up their website. 19 MR. RICHARDSON: So Florida is able 20 to do their minor NSR permits with only 40-day 21 public review? 22 CHAIRMAN LODES: 14-day. 23 MR. RICHARDSON: 14-day. And that 24 basically is a violation of Part 51, so it 25 sounds like Florida is opening themselves up</p>
<p style="text-align: right;">Page 120</p> <p>1 for some potential problems down the road. 2 CHAIRMAN LODES: The EPA apparently 3 just approved their SIP 60 days ago, maybe, 4 MR. RICHARDSON: Did they approve the 5 14-day review of their minor NSR program, or 6 was it just the FESOP? 7 CHAIRMAN LODES: It's the FESOP 8 piece. But, you know, they don't have any 9 disclaiming language in it, and the EPA's 10 approval saying that your construction permits 11 are deficient. They've approved it. 12 MR. RICHARDSON: Maybe we need to 13 reach out to Florida and EPA Region -- is that 14 Region 4, to find out why they're allowing 15 minor NSR permits to go forward with just a 16 14-day review. That seems like an interesting 17 question. 18 MS. FOSTER: So this is Melanie 19 again. I think what we found as we've been 20 working on these rules, though, is each state, 21 obviously, again, with -- especially with a 22 minor operating permit program, we have a lot 23 of flexibility for how we structure our 24 program. Because, again, it's not necessarily 25 required, and some states don't even have one.</p>	<p style="text-align: right;">Page 121</p> <p>1 So the concern I would have with 2 comparing ourselves to other states is there's 3 going to be a lot of different options, not 4 just the Florida one, but other things as 5 well. And so we were trying to do the least 6 disruptive change within our rules to be the 7 most protective and the least disruptive and 8 the most streamlined with what we currently do 9 with the process that our facilities are 10 already used to, and so that's the way we have 11 written the rules. 12 The 14 days, yes, I suppose that 13 could have been something that we changed to, 14 but it made sense to us that the 30 days was 15 used in other areas of our program. And, 16 again, because of the enhanced FESOP process, 17 we thought it made sense to continue that as 18 written, and to be very clear with what EPA 19 expects under Part 51. 20 CHAIRMAN LODES: Okay. Since this is 21 minor source, we do have a lot of flexibility, 22 and that's why I feel like we're getting 23 backed into making our minor source look like 24 a major source program, and I just want to 25 make sure we all fully understand the</p>

<p style="text-align: right;">Page 122</p> <p>1 long-term implications of that, with one 2 throwing into jeopardy our individuals. 3 And I worry about, you know, five 4 years from now somebody doesn't opt in to 5 going through FESOP and a DEQ inspector comes 6 out and says, well, you're a synthetic minor, 7 but you don't have -- you've never gone 8 through the FESOP process, so you're out of 9 compliance. You're operating as Title V, and 10 we now have to argue that out. 11 So I worry from not just a NGO but 12 also some DEQ inspectors with that happening. 13 So I guess that's why I just want to just be 14 clear that, you know, we had -- we have 15 SIP-issued permits today. 16 DR. DELANO: This is Bob Delano, and 17 I agree with you. I feel, like we're trying 18 to ratchet this into the minors going to a 19 major program like this that we have here. 20 I have never seen EPA be real 21 flexible in my whole lifetime. So I think 22 that we need to get some things ironed out 23 before -- it's my opinion that we need to get 24 some things ironed out before we move forward 25 with adopting these amendments.</p>	<p style="text-align: right;">Page 123</p> <p>1 CHAIRMAN LODGES: So we've so far -- I 2 appreciate that. We've only talked about 3 Subchapter 7, so we know where we stand on 4 that one. 5 Should we talk about Subchapter 8? 6 Does anybody else have anything else on 7 Subchapter 7? 8 MS. BOTCHLET-SMITH: Laura, the 9 Council would like to think about that a 10 moment. We could open up for the public to 11 make some comments. 12 CHAIRMAN LODGES: On Chapter 7 or do 13 we want to discuss Chapter 8? 14 MS. BOTCHLET-SMITH: I would say on 15 anything that's on the table right now from 16 Chapter 4, 7 or 8? 17 CHAIRMAN LODGES: Does anybody else -- 18 So, Council, do you have comments on Chapter 8 19 before we go to the public? 20 MS. BOTCHLET-SMITH: If we have 21 questions from the public, it may generate 22 some thoughts by the Council, when we come 23 back to you. 24 So we would like to open this up for 25 questions from the public, and that would be</p>
<p style="text-align: right;">Page 124</p> <p>1 for Chapter 4 or 7 and 8 in Chapter 100. And 2 I'm now on the screen right now. If you're 3 able to see it, there are some instructions. 4 I'll just read through a couple of those that 5 if you do wish to make a comment, you need to 6 raise your hand on the device or you can press 7 *9 on your telephone keypad, and then the host 8 will unmute you when it's your time to speak. 9 You'll need to state your name, your 10 affiliation, you may have to spell your name, 11 and then the host will allow you to make your 12 comment at that time. 13 So let's proceed with any comments 14 from the public. 15 MS. HAGENS: And just to elaborate on 16 those instructions, the controls vary from 17 tablet to computer, so if you're on a 18 computer, the raise hand will be on the 19 participants tab down kind of at the bottom. 20 And if you're on a tablet, it will be at the 21 top right-hand corner of your screen under 22 more meeting settings. That's how you'll 23 raise your hand. And, of course, *9 if you're 24 calling in on the phone. 25 MR. ZACHARIAH: You may see ellipses</p>	<p style="text-align: right;">Page 125</p> <p>1 under participants, but if you click on that, 2 you'll see raise hand. And there's also alt 3 Y or option Y for keyboards. 4 MS. HAGENS: It looks like we have 5 one hand raised, Brian McQuown is wishing to 6 make a comment on the record. So, Brian, I 7 will unmute you. 8 Please state your name and 9 affiliation for the record, and you will have 10 three minutes to speak. 11 All right, Brian, you should now be 12 unmuted. 13 MR. McQUOWN: Brian McQuown, last 14 name spelled M-c-Q-u-o-w-n with Oklahoma Gas &amp; 15 Electric, and I just wanted to offer a brief 16 comment in support of another commenter 17 regarding Subchapter 8. And it's just simply 18 that we were aware of the Altamira US 19 Consulting firm sent a letter and offered in 20 part related to incorporating the reasonable 21 possibility language from 40 CFR 52.21 into 22 Subchapter 8, maybe section, Subsection 36.2, 23 so we recognize that maybe outside the scope 24 of today's rulemaking Agenda but just wanted 25 to note that we were supportive of those</p>

<p style="text-align: right;">Page 126</p> <p>1 comments. That's all.</p> <p>2 MS. HAGENS: Does this conclude your</p> <p>3 comment?</p> <p>4 MR. McQUOWN: It does conclude, yes.</p> <p>5 MS. HAGENS: Thank you. I will now</p> <p>6 mute you and lower your hand.</p> <p>7 Any other members of the public</p> <p>8 wishing to make a comment on the record,</p> <p>9 please raise your hand now.</p> <p>10 (No oral response.)</p> <p>11 MS. HAGENS: Alright, I'm not seeing</p> <p>12 any more hands raised. Beverly.</p> <p>13 MS. BOTCHLET-SMITH: Alright. Thank</p> <p>14 you for your comments. We will throw this</p> <p>15 back to the Council for any additional</p> <p>16 discussion.</p> <p>17 MR. COLLINS: This is Gary Collins.</p> <p>18 So one question that I have on the comments,</p> <p>19 it looks like we got a lot of comments from</p> <p>20 the Petroleum Alliance and as well as Enogex</p> <p>21 and, I guess, do they feel like they got the</p> <p>22 appropriate response? Are they satisfied with</p> <p>23 the response? Because it looks like a lot of</p> <p>24 the responses were that the Department was not</p> <p>25 in agreement with the comment.</p>	<p style="text-align: right;">Page 127</p> <p>1 So I'm assuming that if they did not</p> <p>2 agree with the response that they got that</p> <p>3 they would be making public comments on the</p> <p>4 record today. Is that a fair assumption?</p> <p>5 MS. FOSTER: So this is Melanie. My</p> <p>6 personal opinion is, yes, I think that's a</p> <p>7 fair assumption, but I don't know that we can</p> <p>8 state that or not. The response to comments</p> <p>9 were provided back to both the original</p> <p>10 response to comments to EFO and to Enable</p> <p>11 Midstream Partners, were provided back to</p> <p>12 them. There is also the additional of the</p> <p>13 Altamira comments, and those were only</p> <p>14 recently posted, so I can't say whether</p> <p>15 they've had a full opportunity to review those</p> <p>16 and respond back. But certainly they were</p> <p>17 interested and so I would hope that they would</p> <p>18 be willing to state on the record if they were</p> <p>19 not satisfied with our responses.</p> <p>20 MR. COLLINS: Okay. It looks like,</p> <p>21 just looking through the attendees, it looks</p> <p>22 like they're on the meeting today. Okay.</p> <p>23 Thank you.</p> <p>24 CHAIRMAN LODES: So I do have a</p> <p>25 question on Chapter 8-4 for Construction</p>
<p style="text-align: right;">Page 128</p> <p>1 Permits. I appreciate the addition of the 10</p> <p>2 tons from the prior meeting, so we do have the</p> <p>3 ability to do what I'll call a minor mod, and</p> <p>4 that we have added the calculation methodology</p> <p>5 that goes with the Tribal NSR.</p> <p>6 One thing I want to make sure I'm</p> <p>7 clear on, I know that the EPA's complaints on</p> <p>8 our program, or what the EPA has said is that</p> <p>9 when we've done minor mods to an operating</p> <p>10 permit, none of those were federally</p> <p>11 enforceable. And so we've gone back and had</p> <p>12 some of our clients make modifications to old</p> <p>13 construction permits, essentially, I'll say</p> <p>14 sweeping in all of those minor operating</p> <p>15 permit mods into a construction permit to</p> <p>16 ensure the enforceability of it.</p> <p>17 It looks to me with the Chapter 8-4,</p> <p>18 if I want to make a minor mod to my permit</p> <p>19 today, it's always going to be done to the</p> <p>20 construction permit. It's not going to be</p> <p>21 done to the operating permit, is that correct,</p> <p>22 because we still have the minor mod operating</p> <p>23 permit procedures in here?</p> <p>24 MR. RICHARDSON: So, Laura, I would</p> <p>25 maybe start by offering an answer and then I</p>	<p style="text-align: right;">Page 129</p> <p>1 may throw to Phillip Fielder to discuss</p> <p>2 modifying the construction permits.</p> <p>3 With regard to minor mods, most minor</p> <p>4 mods actually address so you can't -- you</p> <p>5 can't have a minor modification if it's a</p> <p>6 modification under Chapter 1, or rather Title</p> <p>7 I of the Clean Air Act. So most minor mods do</p> <p>8 things like add additional pieces of</p> <p>9 equipment, like emergency engines or make</p> <p>10 additional unit additions that come in under</p> <p>11 the -- under the minor mod thresholds.</p> <p>12 Often those equipment or emission</p> <p>13 units, rather, are limited in their emissions</p> <p>14 by a separate applicable federal requirement.</p> <p>15 So if you put an engine in place, it's subject</p> <p>16 to NSPS, those limits are federally</p> <p>17 enforceable, because they're federally set.</p> <p>18 You don't actually need an NSR permit to</p> <p>19 create that limit.</p> <p>20 So minor mods to the operating permit</p> <p>21 can still go forward, you can still add pieces</p> <p>22 of equipment, and those limits are federally</p> <p>23 enforceable to the extent they were set by</p> <p>24 alternative federal requirements.</p> <p>25 Now, with regard to minor mods to</p>

<p style="text-align: right;">Page 130</p> <p>1 construction permits, that's where I would 2 like to have Phillip step in. 3 CHAIRMAN LODS: Phillip, I -- 4 MR. FIELDER: Yeah. 5 CHAIRMAN LODS: I want to clarify 6 one thing, Tom. Today, because as a 7 consultant, I've done it under a minor mod to 8 operating permit, I can go in and do a pretty 9 substantial change at a major facility, as 10 long as I was able to show site-wide netting 11 was below the PSD thresholds, and I didn't 12 have a modification or an NSPS or NESHAP, and 13 we have -- I think every refinery in the state 14 has done some pretty substantial changes just 15 as Title V operating permit mods and not gone 16 through the construction permit process 17 historically. 18 MR. FIELDER: So, yeah, this is 19 Phillip again. So based on this change, and 20 those minor mods under the criteria we're 21 including there, a lot of those are going to 22 end up NSR permits, because that was the EPA'S 23 concern, those significant projects that 24 because of the way we overlapped our NSR 25 program, that tied it to the Title V minor</p>	<p style="text-align: right;">Page 131</p> <p>1 versus significant mod definition. 2 It created this segment of actions 3 that, in their opinion, circumvented NSR 4 provisions, so and that is the specific reason 5 we're including that now, under the NSR 6 program. 7 So the issue I think here is that now 8 that we're doing that, and we're including 9 this 10-ton per year criteria, what is it that 10 the facility can do under this new 10-ton per 11 year criteria, and the -- well, it's actually 12 all four bullets that we've added there under 13 that criteria, there's four items there. 14 If a physical change, change in the 15 method of operation meets those four criteria 16 and scoots right through the NSR criteria and 17 they go to their Title V, and say, okay, well, 18 I can't do it as an administrative amendment, 19 so I need to do it as a minor mod, there is 20 still the scenario where under permitting 21 policy, there might be a need to put a limit 22 in the permit. 23 Well, what does that mean? It might 24 be permitting policy by DEQ-ODEQ, but is it 25 really needed for a federally enforceable</p>
<p style="text-align: right;">Page 132</p> <p>1 purpose? 2 Because it passed that first four 3 criteria, the answer is most likely no. 4 Now, one of the main elements of that 5 minor versus significant mod, are you taking a 6 limit is what Tom was touching on. Are you 7 taking a limit to avoid? And it throws you 8 right back to the NSR program if you're 9 proposing to do that, and so -- 10 I think in summary, a lot of those 11 projects are now gonna be forced through the 12 NSR process, even though they do the PSD 13 review like you're talking about. 14 Now, I won't say all of them, 15 because as you know, and many know, that have 16 to deal in that program, still somewhat 17 significant projects can occur, especially 18 when you talk to the refiners and say, 19 yeah, this is significant. 20 But the PSD program, based on its 21 projections, its allowance to remove -- demand 22 growth in those different steps, would still 23 allow facilities to do what could be construed 24 to them as significant projects, but fall 25 under this actual 10-ton per year increase</p>	<p style="text-align: right;">Page 133</p> <p>1 possibly. 2 So, you know, those are very specific 3 case-by-case evaluations but, hopefully, I 4 summarized at least my understanding of this 5 rule change and how it's going to be. You 6 know, what it's going to mean for everybody, 7 if it's passed. 8 MR. LANDERS: Phillip, this is Steve 9 Landers. You said -- I thought I heard you 10 say actual emissions of 10-tons per year. It 11 is potential, right? 12 MR. FIELDER: So the 10 tons -- I'm 13 sorry if I said is potential, the -- what I 14 meant was under the PSD review, because a PSD 15 facility would need to do both this analysis. 16 They would need to do their projected actual 17 under the PSD. And once they've gone through 18 that review, then the 10-ton per year 19 potential for what they want to do in their 20 actual permit would need to be reviewed. So, 21 yeah, so you're right, it is potential for the 22 10 ton. 23 MS. HAGENS: Just so you know, we 24 have one member of the public with their hand 25 raised that is wishing to speak on the record.</p>

<p style="text-align: right;">Page 134</p> <p>1 Would we like to open it up for public comment 2 again? 3 CHAIRMAN LODES: I'd say yes. 4 MS. HAGENS: Alright. So Sean Walker 5 is requesting to speak. Sean, I will unmute 6 you and please identify yourself and your 7 affiliation for the record, and you'll have 8 three minutes to speak. Sean, you should be 9 unmuted now. 10 MR. WALKER: Thank you. My name is 11 Sean Walker. I'm with Enable Midstream 12 Partners. Kind of just responding to Gary's 13 comment or question earlier about some of the 14 responses and comments. And so really I just 15 have one question that's kind of still kind of 16 unresolved, and it does relate back to the 17 14-days comment. But basically there was 18 another comment, Petroleum Alliance made 19 regarding regulatory uncertainty that could be 20 brought up with construction permits not 21 expiring. And the scenario that's -- or that 22 that was resolved by revising Chapter 4, 23 252:4-7-13 (g) (9) by basically saying that 24 draft modifications of existing minor facility 25 operating permits would still need to undergo</p>	<p style="text-align: right;">Page 135</p> <p>1 a 30-day review. 2 So based off of what Tom Richardson 3 said earlier in terms of like a scenario where 4 a facility would do a minor source, a minor 5 modification to a minor source operating 6 permit to increase condensate throughput 7 limit, or something along those lines, this 8 would still have to undergo a 30-day review. 9 And Tom, earlier it sounded like, was saying 10 it would not have to undergo any review. 11 So that was kind of the scenario 12 where the Alliance and Enable was wanting a 13 14-day public review because of issues that 14 might lead to some compliance issues in that 15 case. 16 So I just kind of wanted 17 clarification based off of what Tom said. 18 Would a minor modification of an operating 19 permit, a minor source operating permit have 20 to undergo 30-day review as is in this 21 proposed rule or not? 22 MS. HAGENS: Thank you. Does that 23 conclude your question? 24 MR. WALKER: Yes. 25 MS. HAGENS: Alright. I will now</p>
<p style="text-align: right;">Page 136</p> <p>1 lower your and put you back on mute. 2 THE COURT REPORTER: Can I get where 3 Sean, who he works for? I wasn't clear who he 4 represents. 5 MS. HAGENS: Sean, I've unmuted you. 6 MR. WALKER: Enable Midstream 7 Partners. 8 THE COURT REPORTER: Thank you. 9 MS. HAGENS: Thank you, Sean. 10 MR. RICHARDSON: Sean, thank you for 11 your question. This is Tom Richardson again. 12 So it sounds like I must have misspoke 13 earlier. So the throughput limit scenario I 14 was discussing, my anticipation with that, 15 that would necessitate a 30-day public review 16 of the FESOP. So say, for example, you have a 17 facility that has an existing FESOP, has an 18 existing throughput limit on the, you know, 19 hydrocarbon liquids on the condensate. If you 20 decide to increase that limit, that limit can 21 be made directly to the FESOP, but it would 22 not necessitate 30-day public review. And the 23 reason is because you need to change a limit. 24 And you're not adding a piece of equipment, so 25 you wouldn't need to go through a construction</p>	<p style="text-align: right;">Page 137</p> <p>1 permit. You would just directly modify the 2 FESOP, and that would be a 30-day public 3 review. 4 Now, the 14-day public review under 5 the Florida system, I don't have a good enough 6 understanding of the ins and out of that. So 7 I don't know whether the 14-day public review 8 in Florida could accommodate a change in an 9 emission limit. I think there is a good 10 reason to expect any kind of NSR type 11 operation that needs a federally enforceable 12 limit, that that would necessitate a 30-day 13 public review, whether it happens at the NSR 14 stage, under a construction permit, or 15 directly as a modification to the FESOP. I 16 think either way a 30-day review is likely to 17 be necessitated. 18 CHAIRMAN LODES: And so, Tom, and 19 staff, I think this is where -- what Enable is 20 saying is they would like to see a 14-day 21 review for these type situations. I mean, I 22 know one of the big concerns would be what if 23 operations on the oilfield pick back up and 24 they suddenly realize, hey, we may be out of 25 compliance with our permit. We're trying to</p>

<p style="text-align: right;">Page 138</p> <p>1 file the operating permit mod strictly to 2 increase our throughput limit, and I now have 3 to -- instead of getting it -- issued 4 immediately, which we can do these days; we 5 can get some of those turned around pretty 6 quick, you know, or even with just a 14-day 7 public notice, I'm going to have to wait 30 8 days, and then maybe that causes an issue that 9 we weren't otherwise -- or they weren't, 10 otherwise anticipating. So I think that's 11 where -- that's why they were requesting a 12 review of the 14-day in those scenarios.</p> <p>13 MR. RICHARDSON: So I guess another 14 one of the -- This is Tom again. Another one 15 of the Enable comments, and actually I think 16 it was really more focused on mechanism. So 17 in many cases facilities under our current 18 system actually take a different route to get 19 to the modification of their operating permit. 20 So they'll submit an authorization to 21 construct under the general permit and use 22 that mechanism to make the change that they 23 need, and then they'll come back and modify 24 their operating permit.</p> <p>25 So I think we have a number of tools</p>	<p style="text-align: right;">Page 139</p> <p>1 available, because when things are happening 2 and hopefully we get back and have a surge in 3 the oil patch again, and we have a lot of 4 activity there, we need to have many different 5 tools available so they can make immediate 6 changes. And I think the oil and gas general 7 permit that is -- I think the public-review 8 period is closed. I think that addresses 9 some of the concerns. But I do think that 10 while there are mechanisms available, the 11 direct modification of the FESOP is probably 12 not something that's going to be helped by the 13 14-day period, just because I think the 14-day 14 FESOP change anticipates an upstream NSR 15 permit.</p> <p>16 And maybe Phillip can step in to 17 cleanup any additional concerns.</p> <p>18 MR. FIELDER: Yes, this is Phillip. 19 No, I don't have anything really to add on a 20 14 versus the 30, and our understanding of the 21 program elements that EPA has told us, the 22 Florida things, based on at least our mild 23 knowledge we have of it seems a little weird. 24 Based on, not only Florida's but all the 25 states in Region 6, any -- most minor source</p>
<p style="text-align: right;">Page 140</p> <p>1 programs that we've heard of. But I think we 2 have provided the option and that is the 3 general permit and/or the PBR for the oil and 4 gas industry, so there's good options there.</p> <p>5 Like I said, we are on the final 6 stages of the new general permit to address 7 issues that have been lingering related to 8 companies that may have felt like they had 9 some issues with it, and, hopefully, we'll get 10 those addressed.</p> <p>11 CHAIRMAN LODES: What about 12 facilities that are not oil and gas?</p> <p>13 MR. FIELDER: Right. The majority of 14 our permitting is oil and gas. But, yeah, I 15 mean, I'm not denying that that, in some 16 instances, I mean, you can still have the oil 17 and gas industry out there that may not still 18 want to take advantage of that. So I can't -- 19 I'm not saying that wouldn't be an issue for 20 somebody in the timing, but I don't know what 21 the proper process is for us. I mean, I 22 think that -- I'll throw this back to Melanie. 23 That may be a decision the Council is going to 24 have to vote on these rules to implement it, 25 and how important is it to hold these rules up</p>	<p style="text-align: right;">Page 141</p> <p>1 for this 14 versus 30 days. I think that's 2 going to be -- Sounds like it may be one of 3 the critical, possible elements of a decision 4 on the vote.</p> <p>5 MS. FOSTER: This is Melanie again. 6 I don't really have anything to add on that 7 other than just to say that, again, 30 days 8 we've kind of used because that seems to be 9 the gold standard for public notice. I think 10 one could argue 14 days, 21 days, 25 days. I 11 mean, I think you could argue any number of 12 different days, and I think we've only keyed 13 on the 14 because of the most recent, you 14 know, Florida approval, and I understand 15 that's reasonable to point to another program.</p> <p>16 But I would just again reiterate that 17 each program is structured differently. So as 18 Tom keeps mentioning, we've had discussions 19 with other states, and we thought we 20 understood their program and we thought we 21 understood what EPA thought their program was 22 and we found those to not always be actually 23 in agreement.</p> <p>24 And so it's really hard, even just 25 reading a Federal Register, to really know the</p>

<p style="text-align: right;">Page 142</p> <p>1 nuances of a program and whether it works the 2 same way as our does. 3 So whether the 14 days is more 4 appropriate than 30, I would probably argue 5 again that for continuity of our program 30 6 seems reasonable still for us. 7 MR. RICHARDSON: Also, Melanie, it 8 kind of makes you wonder if there are states 9 talking to their Councils, saying, hey, maybe 10 we don't need public review of our minor NSR 11 permits, because Oklahoma doesn't have that 12 requirement right now, and may not be aware 13 that we're addressing this issue, as we speak. 14 MR. COLLINS: Yeah, I'm not going 15 to -- Hold on a second. 16 CHAIRMAN LODES: And I understand 17 that. The Florida one, since it was such a 18 recently issued approval by the EPA, felt like 19 that had some definite meat to it. Since it's 20 not one -- it's not 3 years, it's not 5 years 21 old, it's -- we're talking about something 22 that, you know, was issued in the last four or 23 five months. And so that's where I'm looking 24 at with that option, and just what's going to 25 allow us to continue to operate our program</p>	<p style="text-align: right;">Page 143</p> <p>1 with the flexibility our stakeholders need, 2 and still be protective like we need to be. 3 MS. FOSTER: Yeah, and I think that's 4 a good point, too, Laura, is that also we want 5 to make sure that we are affording the public, 6 you know, the time that they need, if they 7 were to want to look at something, and to be 8 aware. 9 Again, most of these are probably 10 going to be web-based notices now. I don't 11 know that the public is necessarily going to 12 be on there every day checking for new 13 permits, so we need to give them the 14 opportunity to see and comment, if they wanted 15 to. 16 If we're wrapping up this discussion, 17 we do have another comment. I'll turn it over 18 to Christina. 19 MS. HAGENS: Yes, we've got a member 20 of the public wishing to make a comment, so 21 Adrienne Burchett has their hand raised. So, 22 Adrienne, I will unmute you and you will state 23 your name and affiliation for the record, and 24 have three minutes to speak. Alright, you 25 should now be unmuted.</p>
<p style="text-align: right;">Page 144</p> <p>1 MS. BURCHETT: Thank you. This is 2 Adrienne Burchett, last name is 3 B-u-r-c-h-e-t-t, with Altamira. I was wanting 4 to make a public comment on the record, as I 5 did not see a response to my submitted written 6 comments from the DEQ published online, and 7 the information available. 8 I just wanted to incorporate the -- 9 or request to discuss and make comment on the 10 reasonable possibility language while we have 11 Subchapter 8 open and available for public 12 comment. 13 We've requested that the DEQ consider 14 incorporating the reasonable possibility 15 language from 40 CFR 52.21(r) into Subchapter 16 8-36.2(c) Source Obligation Requirement. This 17 will reduce the reporting burden of subject 18 facilities while maintaining compliance and 19 consistency with federal regulations. 20 The consulting costs of this 21 additional reporting for facilities would 22 be -- that would be otherwise exempt under the 23 federal regulations, can range from 750 per 24 year to 3,000 per year for five years, 25 depending on the number of projects.</p>	<p style="text-align: right;">Page 145</p> <p>1 Additionally, the Preconstruction 2 Notice Requirements cost approximately 2,500 3 to 7,500, depending on the project type for 4 consulting fees alone. 5 These additional consulting costs are 6 in addition to internal costs by permitted 7 facilities. These costs are associated with 8 reporting -- could be reduced or eliminated by 9 incorporating the federal reasonable 10 possibility language. 11 The Source Obligation Requirements 12 under 40 CFR 52.21(r) (6) (b) (i), reduces the 13 reporting burden if permittees can document 14 the emissions increase, using the PAE to BAE 15 methodology is less than 50% of the PSD 16 significance levels for each applicable NSR 17 pollutant. If the increase in emissions is 18 less than the 50% threshold, the 19 preconstruction notice and annual reporting 20 requirements are not required since there is 21 no reasonable possibility that the PSD 22 significance levels would be exceeded due to 23 the project. 24 Since the ODEQ Air Quality Rules and 25 OAC 252:100-8 do not include this reasonable</p>

<p style="text-align: right;">Page 146</p> <p>1 possibility language, permittees is regulated 2 by the DEQ, are subject to more stringent 3 reporting provisions, requirements than those 4 permitted in nearby states. 5 And then in the comments submitted, 6 we provided some regulatory language and 7 citations, suggested changes to the citations, 8 and I will end my comments. 9 MS. HAGENS: Thank you. If that 10 concludes your comment, I will now lower your 11 hand and put you back on mute. 12 MS. FOSTER: This is Melanie Foster. 13 So, Adrienne, I want to apologize first. I 14 just double-checked our website and it looks 15 like we did not, even though we said it was 16 the updated version, we did not get the 17 updated October 20th version of our Response 18 to Comments published on the web, but we will 19 rectify that as soon as we can. 20 To address your specific last comment 21 about the reasonable possibility language, the 22 way we have addressed that is that we 23 currently in this rulemaking do not have that 24 section open, so per our noticing requirements 25 and everything, we could not, through this</p>	<p style="text-align: right;">Page 147</p> <p>1 rulemaking action, do anything to address the 2 reasonable possibility language. 3 We know that this has been discussed 4 before with you guys, with Altamira, and we 5 certainly think this is something that we 6 would like to discuss with our stakeholders. 7 And hearing earlier Brian, from OG&amp;E, speaking 8 that they're supportive of that as well. That 9 would be something that we would want to look 10 at, discussing with additional stakeholders 11 and move forward with a separate rulemaking 12 action if our industry felt that that was 13 something that was necessary. 14 We did, as I think you know, 15 mentioned previously that at the time that we 16 made the rule, the way it exists now, we 17 had -- there were some issues with EPA's and 18 court orders and things like that for a reason 19 why we didn't include that. 20 And, subsequently, we have not 21 updated it to reflect EPA's current language 22 is because we do feel like the language, as it 23 stands, requires industry to take a few more 24 recordkeeping steps that is very protective of 25 industry. And so we feel like that is a good</p>
<p style="text-align: right;">Page 148</p> <p>1 thing for you guys and gives you a little 2 bit of protection. 3 And so even though it may be a little 4 bit of additional recordkeeping from what EPA 5 strictly requires, we think it's a helpful 6 thing. 7 But, again, we are not -- it's not 8 outside the realm of possibility for us to 9 discuss, but it's not something that we could 10 technically address during this rulemaking 11 today. 12 MS. BOTCHLET-SMITH: Since we've had 13 a couple of individuals from the public that 14 commented after we had gone back to the 15 Council, I think it would be appropriate for 16 us to open up public comments and give anyone 17 else the opportunity to speak. 18 So if we could -- if you are 19 interested in making a comment as a member of 20 the public, if you could raise your hand now 21 before we close those comments and move back 22 to the Council. 23 (No response.) 24 MS. BOTCHLET-SMITH: You know, again, 25 those instructions are on the screen. You</p>	<p style="text-align: right;">Page 149</p> <p>1 would need to raise your hand on your device 2 or hit *9 on your phone keypad. 3 So do we have any commenters from the 4 public? 5 (No response.) 6 MS. HAGENS: I'm not seeing any hands 7 raised at this moment. 8 MS. BOTCHLET-SMITH: We want to be 9 sure anyone from the public has an opportunity 10 to ask a question. So, again, any comments? 11 (No response.) 12 MS. BOTCHLET-SMITH: Christina did 13 you see any additional hands? 14 MS. HAGENS: I do not. 15 MS. BOTCHLET-SMITH: Okay. Sorry 16 about that, Laura, but we did want to make 17 sure that the public had an opportunity to 18 comment. So we will now move to additional 19 questions and Council -- additional questions 20 and discussion from the Council. Thank you. 21 CHAIRMAN LODES: I appreciate that 22 Beverly. 23 So, Council members, do you all have 24 more discussions on the rule package of 25 Subchapter 4 and 100, 7 and 8?</p>



<p style="text-align: right;">Page 150</p> <p>1 MR. KEELE: This is Garry Keele. I 2 have a nonsubstantive add -- well, it's 3 substantive but it's not so much we're all 4 going to argue about. 5 In 252:4-7-13, Paragraph 6 as 6 proposed, the first sentence mentions 27A OS 7 Section 301, 302 and 304, can we put in -- I 8 think it needs to be 2-14-301 in front of 9 those to make it sort of consistent with the 10 rest of the way the rules are read. 11 CHAIRMAN LODS: Pardon. Garry, 12 where did you say you are? I'm trying to flip 13 back. 14 MR. KEELE: Subchapter 4:7-13, 15 Paragraph 6 -- proposed Paragraph 6. 16 CHAIRMAN LODS: Oh, okay. 17 MS. FOSTER: (g) (6), I believe. 18 MR. KEELE: Could be, yeah. 19 CHAIRMAN LODS: Yeah, you are 20 correct. So what are you saying that should 21 be in front of that, Garry? 22 MR. KEELE: I'd do the full citation, 23 Section 2. I think it's 2-14-301, for 24 example. Just something I noticed when I was 25 reading through.</p>	<p style="text-align: right;">Page 151</p> <p>1 CHAIRMAN LODS: Thanks. Do we have 2 any other questions or concerns from the 3 Council on these rulemaking packages? 4 MR. LANDERS: This is Steve Landers. 5 I have one question, I think, for Tom. Tom, 6 early in your presentation, I think I heard 7 you mention the Air Quality Division's past 8 practice of allowing a facility to proceed 9 with construction with some risk once the 10 application has been deemed complete and 11 technically accurate. 12 But with these proposals, did I hear 13 you mention that will not be an option now, 14 and is that only under the NSR process? 15 MR. RICHARDSON: This is Tom. So 16 that process we were discussing was specific 17 to minor modifications to Title V operating 18 permits. 19 So our past practice, in fact, 20 current practice as of today, if an applicant 21 submits a complete application, they actually 22 can immediately install equipment, and operate 23 that equipment with that attended risk. And 24 many companies will wait until we get a chance 25 to do our administrative review, just</p>
<p style="text-align: right;">Page 152</p> <p>1 because that gives them a little bit more 2 feeling of security that their assessment was 3 correct. But that actually isn't an 4 obligation. They can install the equipment on 5 submission of the application. 6 So our rules going forward, if 7 they're adopted, will allow that to continue 8 for projects with less than or equal to 10 9 tons per year of emission increases of any 10 regulated air pollutant. 11 So we will still have that as an 12 available option but only for those projects 13 below that emission threshold. 14 For other projects, they'll have to 15 go through that minor NSR step before they get 16 to do the modification to the operating 17 permit. And we anticipate, with that being 18 the case, practically all, maybe all will go 19 through enhanced NSR. 20 In other words, they won't actually 21 submit the minor mod at the start of the 22 project. They'll submit an application for a 23 minor NSR permit. That permit will go through 24 enhanced NSR, so all of the review will be 25 upstream.</p>	<p style="text-align: right;">Page 153</p> <p>1 And then when they eventually do 2 modify the operating permit, it will be an 3 administrative amendment. 4 Does that clarify? 5 MR. LANDERS: Yes. Thank you. 6 MR. FIELDER: And, Tom, this is Phil. 7 I would like to just touch on that just a bit. 8 We were focusing on that 10 tons, but there's 9 actually four criteria under that section, and 10 so I just want to make sure, again, that there 11 could -- the four criteria has to be met and 12 the 10 tons is one of them and so -- but, 13 yeah, we're not taking away that allowance for 14 projects that meet that. 15 MR. RICHARDSON: This is Tom again. 16 Just for clarification, there's four criteria. 17 One of those criteria, you know, it can't be 18 subject to PSD. It can't be a major 19 modification under Title I. So basically the 20 criteria cabin those projects down to what I 21 would consider minor mods. 22 So if you're a minor mod, and you 23 have project emission increases less than -- 24 or equal to 10 tons per year, it could go 25 forward without that NSR step, and the changes</p>

<p style="text-align: right;">Page 154</p> <p>1 can be made immediately on submission of the 2 application. 3 MR. FIELDER: Yeah, this is Phil. I 4 agree. 5 CHAIRMAN LODS: What other -- Do we 6 have more questions, Council? 7 (No oral response.) 8 CHAIRMAN LODS: So, Melanie, I do 9 have one more question. I know with 10 Subchapter 7 one of EPA's big beefs is they 11 don't like our permanent exempt program. We 12 don't have that piece of the Subchapter 7 open 13 today, and so we're not going to send it down. 14 Are they going to take a mile when we 15 give them an inch when we give them this 16 piece? 17 MS. FOSTER: So, Laura, this is 18 Melanie. Our plan, right now, is that we 19 don't need to make any changes to those 20 provisions of Subchapter 7. And, you're 21 right, we have not submitted those, but our 22 plan is that will be another package. 23 And as Tom mentioned for this 24 permitting package, we have the 110(L). I 25 keep calling it the 110 (L)ish document that</p>	<p style="text-align: right;">Page 155</p> <p>1 he's created. But a full 110(L) would have to 2 be submitted with it. And that's one of the 3 things that we will also have to submit with 4 our Subchapter 7. 5 Essentially, we are going to tell 6 them our belief that we've been operating the 7 program with permit exempt for a number of 8 years now. That we have maintained our 9 attainment status for all the NAAQS, and, 10 therefore, in operating the permit program in 11 this way, we have not in any way failed to 12 meet our obligation to protect the Ambient Air 13 Quality. 14 And so our plan is to package that up 15 and send it also as a SIP package. It will 16 probably be a separate SIP package just to 17 keep things neat and clean. But it is our 18 plan to have it all eventually approved. 19 Because that's an outstanding issue and we 20 don't want to leave that as a hole in our 21 program either. 22 And we have had discussions with 23 Region 6 about that. They're aware that 24 that's our plan. They've mostly have just 25 discussed with us how to -- to make sure that</p>
<p style="text-align: right;">Page 156</p> <p>1 we justify it appropriately. Which again, we 2 think we can based on the fact that we're in 3 attainment. And they are willing to -- You 4 know, they can't say they can approve it, but 5 they're willing to accept our SIP package and 6 work with us to get that to an approvable 7 condition. Hopefully, the expectation is with 8 no rulemaking required on that piece. 9 CHAIRMAN LODS: Okay. Do we have 10 any further comments or questions from the 11 Council? 12 DR. DELANO: Yes. This is Bob 13 Delano. I want to be clear on something. Are 14 we getting ready to vote on Chapter 4, 15 Subchapter 7 and 8 collectively as a group, 16 because I still have problems with ?? 17 I think that EPA could shove a minor 18 source into a major. I do not think they're 19 very flexible on these kinds of issues. And 20 so if we vote okay on this, that gives them 21 higher ground, and it gives us -- we have less 22 actions that we can take if we approve this as 23 written. That's all I have to say. 24 CHAIRMAN LODS: Thanks. So I do 25 want the Council to know one thing, depending</p>	<p style="text-align: right;">Page 157</p> <p>1 on what we do today, either way, these 2 cannot -- if we do approve it today, we won't 3 be able to present them for approval at the 4 Environmental Quality Board meeting in 5 November. They won't -- because of issues 6 with the public notice, is my understanding, 7 and Melanie can correct me if I'm wrong. 8 These will not go before the Environmental 9 Quality Board until February at best. 10 We have discussed going ahead and 11 presenting it to the Environmental Quality 12 Board in November to see if they have any 13 questions or concerns, and so they 14 understand it. 15 I do have a question on that note, 16 Melanie. If we were to say approve these 17 today, and I present them in November to the 18 EQB, and Steve Mason or one of the other 19 members has substantive comments to the Rule, 20 would we have an issue reopening it and being 21 ready to do a revision in January or approval 22 in February or is that going to throw the 23 whole timeline off? 24 MS. FOSTER: You're correct about our 25 not being able to take them before the</p>


<p style="text-align: right;">Page 158</p> <p>1 November Board, because of noticing, 2 because they changed their location from DEQ 3 to the Sandridge Building. 4 I think if they did, if you 5 presented -- if you passed them and you 6 presented to them what we had passed, and that 7 they had substantive comments, I think we 8 would have the option, and I need Madison to 9 weigh in here, but I think they wouldn't 10 officially be remanding them, you know, back 11 to us, because it wasn't on Notice before 12 them. But the Council could potentially take 13 up the issue if we notice before our January 14 meeting. 15 CHAIRMAN LODES: Okay. 16 MS. MILLER: Melanie, are you 17 saying -- This is Madison Miller. Are you 18 saying that we would do an NRI and notice of 19 rulemaking for the January meeting? 20 MS. FOSTER: Yes. 21 MS. MILLER: Okay. Yeah, that sounds 22 right. 23 CHAIRMAN LODES: I'm just -- I'm just 24 concerned. We've had a lot of comments here. 25 I know there's several members of the</p>	<p style="text-align: right;">Page 159</p> <p>1 Environmental Quality Board who, likely, may 2 have comments as well, and I want to make sure 3 we're not putting ourselves in a pickle. If 4 we were to approve them today, and then 5 present it; they have issues, and then we're 6 trying to get it reopened and revised again in 7 January, I didn't know -- because they can't 8 officially remand it back to us, so I didn't 9 know what that did from a legal proceedings. 10 MS. FOSTER: So I would say my -- 11 probably as big if not bigger concern would be 12 that we didn't present to them or brief them 13 in some way, and we move forward to just 14 presenting at February, which is our last 15 Board opportunity before the legislative 16 session, and then they have issues, and then 17 we have no recourse to get it before the 18 legislative session. 19 CHAIRMAN LODES: And that's my 20 fundamental concern as well, Melanie. So my 21 thought was -- I guess my question was, are we 22 better off continuing these to a future 23 meeting? I present them in November, as we 24 discussed, which I think is the best idea of 25 all, because that way we know what their</p>
<p style="text-align: right;">Page 160</p> <p>1 concerns are. We present it in November. And 2 then if they have any changes or anything, 3 we've got the rules open and ready to go for 4 the January meeting. We make those revisions. 5 So, hopefully, when we do a formal 6 presentation in February, both our Council and 7 that Board, is in good shape to pass these 8 rules. 9 MS. FOSTER: Yes, that is our 10 thinking. We had not necessarily contemplated 11 that they would actually have changes, that 12 they would, you know, require. Because, 13 again, for anybody that's not aware, our 14 Council does have -- the Board cannot make 15 changes like they can to the other Council 16 rules. Our rules have to be approved by you 17 all first, and then remanded, as Laura 18 mentioned from the Board. They can't make a 19 change at their Board meeting. 20 So I hadn't contemplated that they 21 would have anything that they actually wanted 22 changed so, Laura, we can do a little research 23 on that and make sure. 24 But my thinking is that since it 25 hasn't been officially approved, which is the</p>	<p style="text-align: right;">Page 161</p> <p>1 Board's duty, if you guys have just 2 recommended it to the Board, that we could 3 still potentially come back in January and 4 make additional rulemaking changes, amend the 5 previous action of the Council, but again, I'm 6 starting to get off into a legal realm that I 7 can't actually say for sure. 8 CHAIRMAN LODES: This what I 9 contemplated last night was are we going to 10 get ourselves in a pickle? Because these 11 rules could go before November and the EQB 12 could not ask us a question. I've taken other 13 rules and they've not had a question one. 14 I've taken rules that I expected to go through 15 smoothly, like our PBR rule for emergency 16 generators, and I got a bunch of questions on 17 that simple rulemaking. So, I mean, yes, it 18 went through. I just don't want to -- and 19 that's what I was going to say. 20 I know you all have recommended we 21 pass these today. We've got a lot of 22 questions. There's questions on the 14 days 23 versus others. 24 Should we still try to move forward 25 with passing these today before we've done any</p>

<p style="text-align: right;">Page 162</p> <p>1 presentation to the EQB, or are we better off 2 as a Council holding these and continuing it 3 and then waiting to pass it until after we've 4 had a pass at the EQB? 5 MS. FOSTER: I will -- 6 MR. KEELE: This is Garry Keele. 7 Melanie, go ahead. 8 MS. FOSTER: No, no. Garry, you go 9 ahead. 10 MR. KEELE: I was going to say -- I 11 mean, given sort of the nuance for the air 12 group and the remand situation, it seems to me 13 if we really believe, and it sounds reasonable 14 to me that there are people on the Board that 15 will have comments on this sort of 16 wide-sweeping rule that we're talking about 17 here, it seems more efficient to me to pass 18 today. Let Laura present, get comments, and 19 then do it all at one time so they don't -- so 20 we don't get caught up in a remand situation, 21 if that could slow us down. 22 MR. LANDERS: When you say passed, do 23 you mean not approve? 24 MR. KEELE: That's what I would think 25 today would be basically to just move it to</p>	<p style="text-align: right;">Page 163</p> <p>1 the next meeting, whatever that's called. 2 MR. LANDERS: I agree. Laura, didn't 3 you say move it to the November meeting? 4 CHAIRMAN LODES: It would be to 5 continue it to our January meeting, and let me 6 present it at the November meeting. 7 DR. DELANO: Yes. 8 MR. LANDERS: I like that idea. 9 MS. BOTCHLET-SMITH: Laura, before 10 you ask for an action, you might clarify with 11 Tom as to whether they're wanting to vote on 12 these two rules separately, as in Chapter 4 in 13 one action, and Chapter 100 in another just so 14 we don't have to have any confusion there. 15 MS. MILLER: And this is Madison 16 Miller. I think if we are continuing the 17 meeting, we don't want to vote on the rules 18 today. We are continuing that vote until a 19 later date, so we wouldn't actually vote on 20 them yet. 21 MR. CAVES: Yeah, this is Matt Caves. 22 That's what I would believe is -- I mean, it's 23 on the Agenda as possible action, we just take 24 no action today. 25 MS. STEGMANN: You would basically</p>
<p style="text-align: right;">Page 164</p> <p>1 vote to continue the meeting until January. 2 MS. MILLER: Right. It looks like 3 first a vote to continue the meeting or 4 actually to adjourn the meeting to a later 5 date. And then there would be a vote to 6 postpone the vote on Chapter 4 and Chapter 100 7 until that later date that is decided. 8 MS. FOSTER: Hey, Madison, this is 9 Melanie. Let me interject one other thing. 10 If we want to continue this meeting, we can 11 continue it with only the action -- the Agenda 12 items that are on this meeting Agenda 13 currently, which is the Chapter 4 and the 14 Chapter 100, and we can set a date of your 15 choosing today. And, Madison, please, correct 16 me. We don't have to wait until January. So 17 you could present in November, and we could 18 continue this meeting until after that EQB 19 meeting, and then not have to wait until our 20 January meeting to leave everything until the 21 last minute as well. 22 That's correct, Madison? 23 MS. MILLER: Yes. That -- Yeah, 24 that's all correct. But one thing is the 25 amendment to the Open Meetings Act expires on</p>	<p style="text-align: right;">Page 165</p> <p>1 November 15th. So if we want to do a virtual 2 meeting, as far as I know right now, we don't 3 have any assurance that that virtual meeting 4 option will be available to us. If we 5 continue the meeting to a date that's after 6 November 15th. 7 MS. FOSTER: So just to be clear the 8 Council -- I'm sorry. The EQB meeting is 9 November 10th, the day before the Veterans's 10 Day holiday. November 15th date, that the 11 virtual meeting ends is Sunday the 15th. So 12 there would be the possibility - I'm not 13 saying this is viable for any of you - but 14 there would be the possibility to continue the 15 meeting to the 12th or 13th, after the EQB 16 meeting, after the presentation, if we thought 17 that was reasonable. And, again, it would 18 still be held in this virtual environment in 19 accordance with all open meetings 20 requirements. 21 CHAIRMAN LODES: So to make sure 22 everybody's clear, this is my understanding. 23 We can either (A), just vote to carry these 24 rules forward to a future meeting, which the 25 implication would be January, because that's</p>

<p style="text-align: right;">Page 166</p> <p>1 what we would usually have done in the past. 2 Or we can vote to continue this meeting for 3 just these rules and do it in November. 4 Are those the two options I'm looking 5 at here? 6 MS. FOSTER: If you're asking me 7 Laura, I would say yes. Madison? 8 CHAIRMAN LODES: I'm asking you too. 9 MS. MILLER: Yes. Yeah. That makes 10 sense to me. 11 CHAIRMAN LODES: Okay. Gentlemen, we 12 have the option as a Council to vote to either 13 (A) pass these rules as they've been presented 14 today with the revisions, (B) continue them to 15 a subsequent -- carry them forward to a 16 subsequent meeting, which would be, say, 17 January, or continue this meeting and set a 18 date of, as you said, what, November 11th or 19 12th? 20 MS. FOSTER: 12th or 13th. The 11th 21 being a holiday, which would be a Thursday, 22 November 12th or Friday, November 13th. 23 MR. COLLINS: Hey, Laura, this is 24 Gary Collins. So I just don't know -- I 25 appreciate the potential conflict with the</p>	<p style="text-align: right;">Page 167</p> <p>1 Open Meetings Act. I just don't know that the 2 12th or 13th, looking at my calendar, really 3 gives us enough time. If you truly get some 4 feedback or some comments from the Board on 5 the 10th, that's really going to be rushing to 6 try to gather some type of, you know, 7 evaluation of that, and then vote on the rule 8 change. That's just my opinion. 9 CHAIRMAN LODES: I mean, that's 10 giving maybe 48 hours to have something up and 11 ready to go based off the meeting, like you 12 said. 13 MS. MILLER: It does give us time to 14 come back together and hear what the Board's 15 thoughts were on what we're doing, and then it 16 gives us time to notice a new rulemaking 17 order, potentially, I guess, continue the 18 existing rulemaking again to January. 19 MR. COLLINS: And I'm fine with that, 20 if that's the approach. That it's not 21 intended to necessarily vote as a Council, but 22 to hear, you know, the feedback from the Board 23 meeting in November. And then, you know, 24 continue with the vote at the next, you know, 25 either scheduled or unscheduled meeting, I</p>
<p style="text-align: right;">Page 168</p> <p>1 think that's acceptable. 2 MR. LANDERS: I agree. If the Board 3 has substantive comments or questions, I'd 4 really like to hear those before January. 5 MS. FOSTER: And this is -- 6 DR. DELANO: Yeah, I would too. 7 MS. FOSTER: Apologies. This is 8 Melanie. I just wanted to let you know that 9 our deadline also for putting out a Notice of 10 Rulemaking Intent, a proper Notice of 11 Rulemaking Intent for the January Council 12 meeting, is November 25th. 13 So by November 25th we have to know 14 whether we are putting these rules on our 15 January Council meeting, to have proper 16 Notice. Unless, of course, we did a 17 continuance or whatever. But under normal 18 Notice of Rulemaking Intent process, November 19 25th is our deadline to get that to OAR. 20 CHAIRMAN LODES: And that's what I 21 was concerned with was that we were -- with 22 the EQB meeting and the rest, we were pushing 23 some deadlines and that's why I wanted to be 24 clear on that. So, gentlemen, what are your 25 thoughts?</p>	<p style="text-align: right;">Page 169</p> <p>1 MR. COLLINS: Sounds like -- yeah. 2 It sounds like you need a motion. I guess I'm 3 struggling a bit. Maybe Madison can help us 4 with what -- how this motion should be stated. 5 MS. MILLER: Yes, I, of course, can. 6 So motion to basically continue will say, I 7 move that when this meeting adjourns, it 8 adjourn to meet at X time on X date. 9 And I think -- Okay. It's before 10 November 15th, so you could say via Zoom with 11 call-in information to be posted by DEQ at 12 least 24 hours in advance. 13 MR. COLLINS: So do we think the 12th 14 or the 13th is acceptable? The 13th might 15 give us a few more days from the 10th. 16 MR. LANDERS: This is Steve Landers, 17 I'm unavailable on 13th. 18 CHAIRMAN LODES: Then we have the 19 12th. 20 DR. DELANO: I -- 21 MR. ELLIOTT: So this is Greg. I 22 just want to make sure and clarify. If I 23 understood if we did vote on these today, and 24 they passed, it still is not going to go 25 before the Air Quality Board in November,</p>

<p style="text-align: right;">Page 170</p> <p>1 because there was insufficient rulemake -- I 2 mean, Notice being able to be given. So 3 really it can't be remanded to us, because 4 it's not officially going to be on their 5 docket because of the Noticing. 6 So I guess what I'm asking is a vote, 7 either voting certain parts of these up or 8 down doesn't really matter, because they're 9 not going to be acted on by the Board, right, 10 in November? 11 MS. FOSTER: That is correct, the 12 Board cannot act on them in November. 13 MR. ELLIOTT: So typically what we 14 would do is we would -- if you would take a 15 vote and if it passes, then it goes before 16 them, but this time it won't but it's still 17 going to be presented. So what is the harm in 18 voting to pass or not pass these as they've 19 been submitted today? 20 MS. FOSTER: This is Melanie. From 21 my perspective, and again, I'll let others 22 speak to their potential issues, and then 23 Madison may want to speak legally. 24 But I do not see a concern, because I 25 think we can still -- because they have not</p>	<p style="text-align: right;">Page 171</p> <p>1 been officially approved by the Board, I think 2 we can still make changes to them at the 3 Council's discretion before they're given to 4 the Board. So if there were a fatal flaw at 5 the Board level, after Laura's presentation, I 6 think you would still be within your 7 authority, as long as we properly noticed, for 8 a future meeting for us to bring them back 9 before you with that flaw fixed. 10 MR. ELLIOTT: Okay, that's what I 11 thought. Thank you, Melanie. 12 MS. MILLER: I would add to that a 13 little bit. Yeah, Melanie, that's correct. 14 It would foreclose any action until January. 15 So, legally, I think that would be the only 16 concern is that if you guys vote no today, 17 then it shuts this down until January, but we 18 would still be able to present to the EQB and 19 get comment back from them. 20 CHAIRMAN LODES: Yeah, if we vote -- 21 if we vote if we do it -- or, I guess, if we 22 vote yes or no, we aren't going to have a 23 another group meeting, as far as the Council 24 is concerned, until January, so you all won't 25 be able to hear what the EQB group says, in</p>
<p style="text-align: right;">Page 172</p> <p>1 some kind of forum, until January. Or we 2 continue the meeting until just after the 3 November meeting of the EQB. 4 MS. MILLER: You could always call a 5 special meeting, you know, in between now and 6 the January meeting, that wouldn't be a 7 rulemaking meeting. But, again, you still 8 wouldn't be able to vote on anything. 9 CHAIRMAN LODES: We need a motion of 10 some kind. We can go Motion to Continue this. 11 MR. COLLINS: Who is not available on 12 the 12th? I thought I heard somebody say they 13 were not available that day either. 14 (No oral response.) 15 MR. COLLINS: Okay. Laura, I guess, 16 I -- you know, and I'm willing to make a 17 motion here. But I guess where I'm at with 18 this is that we postpone action, taking action 19 today, and continue the meeting via Zoom on 20 November 12th and listen to the responses from 21 what you hear from the Board and any follow-up 22 that we have from DEQ. 23 CHAIRMAN LODES: That's my 24 inclination, but I need you all to make that 25 recommendation or just say what you want to</p>	<p style="text-align: right;">Page 173</p> <p>1 do. 2 MS. MILLER: If anybody wants me to 3 reread the motion real quick, I can do that. 4 It is, I move that when this meeting 5 adjourns, it adjourns to meet at 9:00 am on 6 November 12th, 2020, via Zoom with call-in 7 information to be posted at least 24 hours in 8 advance. 9 MR. COLLINS: There's no way I'll 10 remember all that. 11 MR. LANDERS: We'll make a motion 12 to -- 13 CHAIRMAN LODES: Gary, it was 14 e-mailed to you the other day. 15 MR. COLLINS: Not this part. 16 MS. STEGMANN: Just say so moved. 17 MR. COLLINS: Yeah, so moved. I move 18 that when we adjourn this meeting, that we 19 adjourn to November 12th, that meeting will be 20 noticed in advance. I'm sorry. Go ahead and 21 say that again, Madison. 22 MS. MILLER: Here's what we're going 23 to do. I'm going to say it, and then Gary 24 when you make the Motion, you say I move to do 25 what Madison just said.</p>

<p style="text-align: right;">Page 174</p> <p>1           The Motion is I move that when this 2 meeting adjourns it adjourns to meet at 9:00 3 am on November 12th, 2020, via Zoom, with 4 call-in information to be posted by DEQ at 5 least 24 hours in advance. 6       MR. COLLINS: I move to what Madison 7 has just stated. 8       DR. DELANO: I second that. 9       CHAIRMAN LODES: I have a motion and 10 a second. 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. Elliott? 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?</p>	<p style="text-align: right;">Page 175</p> <p>1           MR. TAYLOR: Yes. 2           MS. FIELDS: Ms. Lodes? 3           CHAIRMAN LODES: Yes. 4           MS. FIELDS: Motion passed. 5           CHAIRMAN LODES: I would like to 6 notice motion is passed when this meeting 7 adjourns today. It will adjourn to meet on 8 November 12th at 9:00 am. 9           MS. BOTCHLET-SMITH: That concludes 10 the hearing portion of today's meeting. 11           MS. MILLER: Wait a second. We have 12 one more -- We've got one more, we've got to 13 do. Sorry. 14           Now, we need to move to postpone 15 Chapter 4 and Chapter 100 until November 12th. 16           CHAIRMAN LODES: Correct. So, Gary, 17 I sent you back the e-mail with the 18 recommendations. 19           MR. COLLINS: I'm looking at it right 20 now. Hold on. 21           CHAIRMAN LODES: Okay. 22           MR. COLLINS: So I move that we 23 postpone the vote for Chapters 4 and 100 until 24 the November 12th meeting. 25           MR. ELLIOTT: This is Greg. I second</p>
<p style="text-align: right;">Page 176</p> <p>1       it. 2           CHAIRMAN LODES: Madison, was that 3 adequate since you didn't say Subchapter 7 and 4 8? 5           MS. MILLER: Yeah, I think that's 6 fine. 7           CHAIRMAN LODES: Okay then. Quiana, 8 I have a Motion and a second. Will you please 9 call roll? 10       MS. FIELDS: Mr. Caves? 11       MR. CAVES: Yes. 12       MS. FIELDS: Mr. Collins? 13       MR. COLLINS: Yes. 14       MS. FIELDS: Dr. Delano? 15       DR. DELANO: Yes. 16       MS. FIELDS: Mr. Elliott? 17       MR. ELLIOTT: Yes. 18       MS. FIELDS: Mr. Keele? 19       MR. KEELE: Yes. 20       MS. FIELDS: Mr. Landers? 21       MR. LANDERS: Yes. 22       MS. FIELDS: Mr. Privrat? 23       MR. PRIVRAT: Yes. 24       MS. FIELDS: Mr. Taylor? 25       MR. TAYLOR: Yes.</p>	<p style="text-align: right;">Page 177</p> <p>1           MS. FIELDS: Ms. Lodes? 2           CHAIRMAN LODES: Yes. 3           MS. FIELDS: Motion passed. 4           MS. SMITH: Okay. 5           MS. MILLER: Yes, it does. I should 6 probably check with Madison first but, I 7 believe, now that concludes the end of the 8 hearing for today's meeting. 9           (PROCEEDINGS ADJOURNED AT 12:50 PM.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<div><div>1</div><div>COURT REPORTER'S CERTIFICATE</div><div>2</div><div>3 STATE OF OKLAHOMA:</div><div>4 COUNTY OF TULSA:</div><div>5</div><div>6 I, ELISE GRAYSON CRUCHON, CSR, for Tulsa County,</div><div>7 Oklahoma, CERTIFY:</div><div>8 1. The foregoing Zoom teleconference proceeding</div><div>9 was taken before me at the time and place stated in</div><div>10 the foregoing styled cause with the appearances as</div><div>11 noted;</div><div>12 2. Being a Court Reporter, I then reported the</div><div>13 teleconference proceeding in Stenotype to the best</div><div>14 of my skill and ability, and the foregoing pages</div><div>15 contain a full, true and correct transcript of my</div><div>16 said Stenotype notes then and there taken;</div><div>17 3. I am not in the employ of and am not related</div><div>18 to any of the parties or their counsel, and I have</div><div>19 no interest in the matter involved.</div><div>20 WITNESS MY SIGNATURE, this, the 22nd day of</div><div>21 October , 2020.</div><div>22 </div><div>23 E lise G rayson C ruchon</div><div>24 ELISE GRAYSON CRUCHON, CSR #1566</div><div>25</div></div>	<div>Page 178</div>



Meeting ID

Topic

Air Quality Advisory Council

93572491974 Meeting - October 21, 2020

Start Time

End Time

10/21/2020 8:32

10/21/2020 12:53

Name (Original Name)

User Email

14694906893

15803418204

15803418204

19185191920

19185870000

Adina Wiley# EPA Region 6

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Akly's iPhone

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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 7. Environmental Permit Process

Part 1. The Process

252:4-7-13 [AMENDED]

Part 3. Air Quality Division Tiers and Time Lines

252:4-7-32 [AMENDED]

252:4-7-33 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through 2-5-117.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

April 24, 2020

August 24, 2020

**COMMENT PERIOD:**

May 15, 2020 through June 17, 2020

September 15, 2020 through October 21, 2020

**PUBLIC HEARING:**

June 17, 2020, Air Quality Advisory Council

July 22, 2020, Air Quality Advisory Council

October 21, 2020, Air Quality Advisory Council

November 12, 2020, Air Quality Advisory Council

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The Department is proposing to amend and update various sections in OAC 252:4, Subchapter 7, to better align the Department's issuance process and public participation procedures for minor facility and Part 70 source (major source) Air Quality construction and operating permits with the New Source Review (NSR) permit requirements and Title V operating permit requirements 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, respectively. The proposal would also provide for the Department's use of online notices for Tier I applications for certain permits. Specifically, amendments are being proposed to subsection (g), (additional notice content requirements for Clean Air Act Permits) of OAC 252:4-7-13, Notices; OAC 252:4-7-32, Air quality applications –Tier I; and OAC 252:4-7-33, Air quality applications – Tier II. The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules requiring public notice are not less stringent than the federal rules require. This will remove an obstacle in obtaining approval from EPA for relevant portions of Oklahoma's State Implementation Plan (SIP), which will help ensure that the Department retains approval of the state NSR permit program and the Title V operating permit program.

**CONTACT PERSON:**

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) and 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS**

**PART 1 - THE PROCESS**

**252:4-7-13. Notices**

(a) **Statutory requirements for notice.** The Uniform Environmental Permitting Act requires an applicant to give notice in accordance with 27A O.S. § 2-14-301.

(b) **Notice to landowner.** Applicants shall certify by affidavit that they own the real property, have a current lease or easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.

(c) **Notice content.** The applicant shall provide DEQ with a draft notice for approval prior to publication. All published legal notice(s) shall contain the:

- (1) Name and address of the applicant;
- (2) Name, address and legal description of the site, facility and/or activity;
- (3) Purpose of notice;
- (4) Type of permit or permit action being sought;
- (5) Description of activities to be regulated;
- (6) Locations where the application may be reviewed;
- (7) Names, addresses and telephone numbers of contact persons for the DEQ and for the applicant;
- (8) Description of public participation opportunities and time period for comment and requests; and
- (9) Any other information required by DEQ rules.

(d) **Proof of publication.** Within twenty (20) days after the date of publication, an applicant shall provide the DEQ with a written affidavit of publication for each notice published. In case of a mistake in a published notice, the DEQ shall require a legal notice of correction or republication of the entire notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.

(e) **Exception to notice requirement.** Applicants for solid waste transfer station permits may be exempt from public meeting requirements under 27A O.S. § 2-10-307.

(f) **Additional notice.**

(1) Applicants for a NPDES, RCRA or UIC permit are subject to additional notice provisions of federal requirements adopted by reference as DEQ rules.

(2) Applicants for a proposed wastewater discharge permit that may affect the water quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-6-203(A)(7)]

(3) Applicants for a landfill permit shall provide notice by certified mail, return receipt requested, to owners of mineral interests and to adjacent landowners whose property may be substantially affected by installation of a landfill site. See *DuLaney v. OSDH*, 868 P.2d 676 (Okla. 1993).

(g) **Additional notice content requirements for Clean Air Act Permits.** In addition to the notice provisions of 27A O.S. §§ 2-14-301, ~~and 2-14-302, and 2-14-304(C)~~, and other provisions of this section, the following requirements apply.

(1) ~~For Tier II and Tier III air quality applications, applicants~~~~Applicants~~ shall give notice by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the DEQ, including those who request in writing to be on the list; and by other means if determined by the Executive Director to be necessary to assure adequate notice to the affected public.

(2) All published notice(s) for permit modification shall identify the emissions change involved in the modification.

(3) An applicant for a Part 70 permit that may affect the air quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]

(4) ~~An~~A ~~modification of an existing Part 70 source operating permit may be issued to an applicant for a new Part 70 operating permit without further public review if the operating permit modification accommodates a change for which no construction permit is required under 100-8-4(a)(1), or is based on a construction permit that meets the requirements of 252-4-7-32(b)(1)(B)-252-4-7-32(b)(2)(A) or (B). In the latter case, and the public notice for the construction permit contains~~ shall contain the following language.

(A) This permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 252:100-8-8 and 40 CFR § 70.8.

(B) If the operating permit as modified has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2), the operating permit modification will be issued without further public notice and comment; and,

(C) The public will not receive another opportunity to provide comments when the modified operating permit is issued.

(5) For permits under OAC 252:100-8, Part 7:

(A) all published notice(s) shall identify the degree of increment consumption that is expected from the source or modification.

(B) the mailing list developed by DEQ under paragraph (g)(1) shall include the mailing address and/or email address for those who request in writing to be on the list, as well as the EPA Administrator, and other officials and agencies having cognizance over the location where the proposed construction would occur as follows:

- (i) the chief executives of the city and county where the source would be located;
- (ii) any comprehensive regional land use planning agency; and
- (iii) any State, Federal Land Manager, or Tribal Government whose lands may be affected by emissions from the source or modification.

(6) In addition to any obligation for an applicant to publish notices under 27A O.S. Sections 2-14-301, 2-14-302, and 2-14-304, DEQ shall prepare and provide corresponding notices on the agency's web site for Tier II and III applications. Such notices shall, at a minimum, provide the same information as is provided in the corresponding published notices, which information may be posted in tabular form. For purposes of permits under OAC 252:100-8, Part 7 (PSD), these postings shall constitute the "consistent noticing method" referred to in 40 CFR Section 51.166(q)(2)(iii).

(7) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft individual construction permits and draft individual construction permit modifications for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of 40 CFR Section 51.161, and may be posted in tabular form with appropriate links to additional information sources.

(8) If a minor facility is eligible to use the FESOP Enhanced NSR process under OAC 252:100-7, the public notice for a construction permit for modification of a permitted minor facility prepared and posted under paragraph (7) shall contain a statement to the following effect: The facility's subsequent operating permit modification will be issued without further public notice and comment, unless the operating permit conditions as modified significantly differ from the construction permit's operating conditions.

(9) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft minor facility individual operating permits for Tier I applications and for draft modifications of existing minor facility operating permits for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of OAC 252:4-7-13(c), and may be posted in tabular form with appropriate links to additional information sources. However, for a minor facility that is eligible to use the FESOP Enhanced NSR process under OAC 252:100-7, a modification of an existing minor facility operating permit may be issued without further public review if the operating permit modification is based on a construction permit that was made available for review and comment under 252:4-7-13(g)(7) and (8).

(10) Posting of such notices for other authorizations as listed in OAC 252:4-7-32(c) shall be at the Director's discretion. In addition, posting of such notices for other Tier I applications, including Tier I applications under OAC 252:4-7-32(a)(2)(C) or OAC 252:4-7-32(b)(2)(C) for extension of expiration date of a construction permit, shall be at the Director's discretion.

### **PART 3 - AIR QUALITY DIVISION TIERS AND TIME LINES**

#### **252:4-7-32. Air quality applications - Tier I**

(a) **Minor facility permits.** The following air quality authorizations for minor facilities require Tier I applications.

- (1) **New permits.** New construction, operating and relocation permits.
  - (2) **Modifications of permits.**
    - (A) Modification of a construction permit for a minor facility that will remain minor after the modification.
    - (B) Modification of an operating permit that will not change the facility's classification from minor to major.
    - (C) Extension of expiration date of a construction permit.
- (b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier I applications.
- (1) **New permits.**
    - ~~(A) New construction permit for an existing Part 70 source for any change considered minor under 252:100-8-7.2(b)(1).~~
    - ~~(B) New operating permit that:~~
      - ~~(i) is based on a construction permit that was processed under Tier II or III, and 252:100-8-8, and~~
      - ~~(ii) has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2).~~
  - (2) **Modifications of permits.**
    - (A) Modification of any operating permit condition that: ~~(i) is based on the operating conditions of a construction permit that was processed under Tier I, II or III, and 252:100-8-8, and~~
      - ~~(ii) (i) does not differ from those construction permit conditions in any way considered significant under 252:100-8-7.2(b)(2) or,~~
      - ~~(ii) accommodates a change for which no construction permit is required under 100-8-4(a)(1).~~
    - (B) A construction or operating permit modification that is minor under 252:100-8-7.2(b)(1).
    - (C) Extension of expiration date of a Part 70 source's construction permit with no or minor modifications.
- (c) **Other authorizations.** The following air quality authorizations require Tier I applications.
- (1) New, modified and renewed individual authorizations under general operating permits for which a schedule of compliance is not required by 252:100-8-5(e)(8)(B)(i).
  - (2) Burn approvals.
  - (3) Administrative amendments of all air quality permits and other authorizations.

### **252:4-7-33. Air quality applications - Tier II**

- (a) **Minor facility permit actions.**
  - (1) Any minor facility seeking a permit for a modification that when completed would turn it into a Part 70 source is required to apply under subsection (b) of this section.
  - (2) Any Part 70 source seeking a permit that would limit its potential to emit such that when issued it would qualify as a minor facility requires a Tier II application.
- (b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier II applications.
  - (1) **New permits.**
    - (A) New construction permit for a new Part 70 source not classified under Tier III.
    - (B) New construction permit for an existing Part 70 source for any change considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.



- (C) New operating permit for a Part 70 source ~~that did not have an underlying construction permit processed under Tier II or III, and 252:100-8-8.~~
- (D) ~~[Reserved] New operating permit with one or more conditions that differ from the underlying Tier II or III construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).~~
- (E) New acid rain permit that is independent of a Part 70 permit application.
- (F) New temporary source permit under 252:100-8-6.2.
- (2) **Modifications of permits.**
  - (A) Significant modification, as described in 252:100-8-7.2(b)(2), of an operating permit that is not based on an underlying construction permit processed under Tier II or III, and 252:100-8-8.
  - (B) Modification of an operating permit when the conditions proposed for modification differ from the underlying construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).
  - (C) A construction permit modification considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.
- (3) **Renewals.** Renewals of operating permits.
- (c) **Other authorizations.** The following air quality authorizations require Tier II applications.
  - (1) New, modified and renewed general operating permits.
  - (2) Individual authorizations under any general operating permit for which a schedule of compliance is required by 252:100-8-5(c)(8)(B)(i).
  - (3) Plant-wide emission plan approval under 252:100-37-25(b) or 252:100-39-46(j).
  - (4) Alternative emissions reduction authorizations. (Also subject to state implementation plan revision procedures in 252:100-11.)

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

Before the Air Quality Advisory Council on June 17, 2020; July 22, 2020; October 21, 2020;  
and November 12, 2020

Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 7. Environmental Permit Process

Part 1. The Process

252:4-7-13 [AMENDED]

Part 3. Air Quality Division Tiers and Time Lines

252:4-7-32 [AMENDED]

252:4-7-33 [AMENDED]

**DESCRIPTION:** The Department of Environmental Quality (Department or DEQ) is proposing to amend the air quality portions of Chapter 4, Subchapter 7, to better align the Department's issuance process and public participation procedures for minor source and Part 70 source (major source) construction and operating permits with the New Source Review (NSR) permit requirements and Title V operating permit requirements 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. The proposal would also provide for the Department's use of online notices for Tier I applications for certain permits. Specifically, amendments are being proposed to subsection (g), (additional notice content requirements for Clean Air Act Permits) of OAC 252:4-7-13, Notices; OAC 252:4-7-32, Air quality applications – Tier I; and OAC 252:4-7-33, Air quality applications – Tier II. The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules requiring public notice are not less stringent than the federal rules require. This will remove an obstacle in obtaining approval from EPA for relevant portions of Oklahoma's State Implementation Plan (SIP), which will help ensure that the Department retains approval of the state NSR permit program and the Title V operating permit program.

**CLASSES OF PERSONS AFFECTED:** Classes of persons affected are the owners and operators of facilities that are subject to the permitting requirements in OAC 252:100, both Part 70 sources subject to Subchapter 8 and minor facilities subject to Subchapter 7.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** The owners and operators of facilities that are subject to the permitting requirements in OAC 252:100-7 and OAC 252:100-8 will bear the costs.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The Department has received no information on cost impacts from private or public entities pertaining to the proposed rule.

**CLASSES OF PERSONS BENEFITTED:** The proposed changes will benefit the citizens of Oklahoma and owners and operators of the facilities subject to these regulations. By ensuring that

the updated rules are consistent with EPA program requirements, the Department can continue to implement and enforce the requirements rather than EPA, which will benefit owners and operators of Part 70 sources and minor facilities.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** The Department anticipates no significant economic impact as a result of the proposed changes.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The Department anticipates no economic impact on political subdivisions as a result of the proposed changes.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** The Department expects no adverse effect on small business as a result of the proposed changes.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** No fee changes are included in the proposed amendment.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** The Department anticipates there will be minimal costs associated with the implementation and enforcement of these proposed amendments. The Department will benefit from the proposal because it will allow state implementation and enforcement of these requirements.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** There are none. No other agencies will be implementing or enforcing this rule.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Federal grants and fees will continue to be used as the sources of revenue to implement and enforce the rule.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The proposed revision should have little effect on net revenues for the Department and/or other agencies.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** Cooperation of political subdivisions will not be required to implement or enforce the rule.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** The Department has worked extensively with EPA to make changes in a manner that would minimize the cost to the regulated community, while achieving the purpose of the proposed rule.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** The proposed changes will establish state program requirements that are neither more nor less stringent than those prescribed by the federal program

requirements. The compliance costs for affected sources under the state rule should be similar to those under the federal program.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The proposed revision will have a positive effect on public health, safety, and the environment by clarifying and updating requirements to keep the public informed of permitting actions.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed changes will help keep the public informed of permitting actions that could affect public health, safety, and the environment.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** If the proposed changes are not implemented, the Department's program may not be fully approvable by EPA, which could ultimately result in its being implemented and enforced by the federal government rather than the State.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** There will be minimal impact on business entities since the proposed changes will better align state requirements with the current federal requirements. The owners or operators of businesses subject to federal requirements will benefit from consistent state and federal standards.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** May 15, 2020  
**MODIFIED ON:** September 15, 2020, November 12, 2020

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE  
SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS**

**EXECUTIVE SUMMARY:**

The Department of Environmental Quality (Department or DEQ) is proposing to amend portions of Chapter 4, Subchapter 7 that are specific to the air quality program, to better align the Department's issuance process and public participation procedures for minor facility and Part 70 source (major source) construction and operating permits with the New Source Review (NSR) permit requirements and Title V operating permit requirements 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, respectively. The proposal would also provide for the Department's use of online notices for Tier I applications for certain permits. Specifically, amendments are being proposed to subsection (g), (additional notice content requirements for Clean Air Act Permits) of OAC 252:4-7-13, Notices; OAC 252:4-7-32, Air quality applications – Tier I; and OAC 252:4-7-33, Air quality applications – Tier II. The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules requiring public notice are not less stringent than the federal rules require. This will remove an obstacle in obtaining approval from EPA for relevant portions of Oklahoma's State Implementation Plan (SIP), which will help ensure that the Department retains approval of the state NSR permit program and the Title V operating permit program.

**DIFFERENCES FROM ANALOGOUS FEDERAL RULES:**

The federal rules establish basic air quality management program components that must be adopted by a state to run its state permitting program. Most of the proposed rule changes incorporate minimum requirements needed to meet federal rules. The proposed changes add a requirement to comply with federal public participation requirements for certain categories of permitting actions that were not previously required to undergo public review under state program requirements. Changes made that are not required by federal rules include the proposal to make public noticing on the web the official method of noticing, the clarification that certain permitting actions still require public notices to be published in the newspaper per Oklahoma statutes, and offering options to industry for New Source Review (NSR) public and EPA noticing procedures. The options are either "traditional" or "enhanced" NSR. "Enhanced" NSR is a process where the construction permit is offered for public (30-day) and EPA (45-day) review and the operating permit is amended through an administrative process without further public or EPA review; enhanced NSR has been the practice in Oklahoma for years, although it was not formerly called "enhanced." "Traditional" NSR is newly proposed as an option. Under traditional NSR, the public review and EPA review of the construction permit are combined in a single 30-day comment period; when the operating permit is modified, there will be another round of public and EPA review.

**ENVIRONMENTAL BENEFIT STATEMENT:**

An Environmental Benefit Statement is not required.

**SUMMARY OF COMMENTS AND RESPONSES:**

See the attached response-to-comments document which addresses proposed changes to both Chapter 4 and Chapter 100.

**DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

**SUMMARY OF COMMENTS AND STAFF RESPONSES FOR PROPOSED REVISIONS  
TO  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE, SUBCHAPTER 7  
AND  
CHAPTER 100. AIR POLLUTION CONTROL RULES, SUBCHAPTERS 1, 7, AND 8**

**COMMENTS RECEIVED PRIOR TO AND DURING THE *OCTOBER 21, 2020*  
AIR QUALITY ADVISORY COUNCIL MEETING AND DURING THE *NOVEMBER 12,*  
*2020* CONTINUED AIR QUALITY ADVISORY COUNCIL MEETING**

**Written Comments**

**The Petroleum Alliance of Oklahoma** – Submitted as an attachment to an email received on August 31, 2020 from Mr. Howard L. (Bud) Ground, Director of Regulatory Affairs. Note that these comments were submitted in response to the Department's request during the July 22, 2020 Air Quality Advisory Council Special Meeting (AQAC) for additional input on the proposal from stakeholders. Their comments are also incorporated by reference in comments later submitted by Enable Midstream Partners, LP (*see below*).

**Comments specific to Chapter 4, Subchapter 7**

1. **COMMENT:** The Petroleum Alliance of Oklahoma (hereafter "The Alliance") requested clarification that based on the proposed language in OAC 252:4-7-13(g)(7)-(9) it is ODEQ's responsibility to publish the 30-day Public Notices for draft individual permits that are based on Tier I applications and not the applicant's responsibility.

**RESPONSE:** Under the proposal, it will be the Department's responsibility to publish all Air Quality-related Tier I public notices on its web site.

2. **COMMENT:** The Alliance requested that the 30-day public review period under proposed OAC 252:4-7-13(g)(7) & (9) be changed to 14-days to allow the regulated entities more flexibility and to obtain permits more expeditiously. The Alliance cited excerpts from 85 FR 26641 for EPA's proposed approval of portions of the State of Florida's SIP that would allow a 14-day public review period for Federally Enforceable State Operating Permits (FESOPs).

**RESPONSE:** The Department believes that a 30-day public review period is generally a reasonable length of time to afford interested parties the opportunity to evaluate a proposed action and to provide comments to the Department, without causing an undue delay or burden on applicants. It is the minimum public review period specified for many proposed actions under federal and state statutes and program rules. Cases can be made for both flexibility and consistency in many aspects of environmental programs.

The Department notes that any NSR-type modifications that could be made to the FESOP (but which would not require a construction permit under Oklahoma rules) would still

require 30-day public review. For example, an increase in the throughput limit for tanks could be accomplished as a modification to the FESOP with 30-day public review but would not also require a construction permit (minor NSR permit).

The Department recognizes that the federal requirements for FESOPs are not as well-defined as they might be. However, the Department is hesitant to base its policy on a Florida FESOP rule change for which EPA approval is only at the proposed stage of the process at the time the Department is developing its version of the rules. In addition, the Department believes that the proposed *FESOP enhanced NSR process* it is proposing for Oklahoma facilities will expedite issuance of modifications to FESOPs without requiring *any* public review of those operating permit modifications. That is, the incorporation of the requirements established in a minor NSR permit into the FESOP (as a permit modification) will not require another round of public review under *FESOP enhanced NSR*. In this way, the Department's proposal offers more flexibility than does Florida's.

In short, the Department believes that a consistent 30-day web-based comment period for Subchapter 7 individual facility construction permits (minor NSR permits), the initial FESOP, and any FESOP modification that does *not* follow a construction permit that uses the FESOP enhanced NSR process is the most appropriate path forward, combining flexibility and SIP approvability.

**UPDATE TO RESPONSE:** It was brought to the Department's attention that EPA approved Florida's rule change that would allow a 14-day public review period for FESOPs. The Department's response otherwise remains unchanged.

3. **COMMENT:** The Alliance submitted the following comment: "OAC 252:4-7-31 sets forth timelines ODEQ must meet for issuance of air quality permits. The Alliance is aware of ODEQ tolling permits in order to circumvent these codified permit issuance timelines. With the proposed rule changes in this rule package, more air quality permits will be undergoing public review, thus increasing the time that it will take to issue these permits. In the case of construction permits, the Alliance is concerned that projects could be delayed due to ODEQ unnecessarily tolling the permit in order to avoid current timelines already codified. The Alliance respectfully requests that OAC 252:4-7-31 be opened and changes be made to limit the number of times that a permit can be tolled by ODEQ."

**RESPONSE:** The Department does not agree that the changes recommended by the Alliance are necessary or appropriate. OAC 252:4-7-9 limits the circumstances when application review time is tolled, primarily to allow the applicant to address and correct administrative and technical deficiencies, so that staff can complete the review of a complete permit application. The Department understands the frustration that applicants feel when their permits are not issued as expeditiously as all parties would like, particularly when timelines are affected by agency workload and staffing constraints, especially when construction activities are booming. The Department prioritizes resources, where it can, to ensure that applicants' higher priority permitting actions are reviewed and issued as quickly as practicable, even if that may slow down the issuance of a permit whose delayed issuance will not slow down facility construction activities. For example, the issuance of a Title V renewal may be delayed to prioritize issuance of a construction permit. The Department tries to work with each applicant to get a technically complete permit application in place



as quickly as possible to ensure prompt permit issuance. The Department encourages applicants to reach out for feedback from the assigned permit writer early in the process, to ensure the application is administratively and technically complete. Further, if an applicant is concerned that an application is moving through the system too slowly, the applicant may reach out to AQD permitting managers to request assistance in expediting the process.

4. **COMMENT:** The Alliance requested clarification that it is the Department's intent that all Title V minor modifications are required to undergo public review. The Alliance stated that if this is the case, then no Title V minor modifications can be classified as Tier I applications; therefore, OAC 252:4-7-32(b)(2)(B) was inadvertently not revised or removed.

**RESPONSE:** Previously, a Title V minor modification did not require either a construction permit or public review. As such, the corresponding operating permit modification was considered to be a Tier I permitting action. The reason for part of the proposed rulemaking is that some facility changes that qualify as minor modifications under Title V (and 252:100-8-7.2(b)(1)) are required to undergo NSR (get a construction permit), including public review, to satisfy federal rules. The subsequent modification of the Part 70 operating permit would still be considered a Tier I action, and that action would not be required to undergo public review. The Department's existing three-tiered public review system was set up by Oklahoma statute, which accommodates additional provisions needed to satisfy federal program requirements. These new Tier I permitting actions, which will require public review on the web, would not typically be classified as Tier II under Oklahoma statutes, but *are* required to undergo public review to satisfy federal rules. To satisfy both state and federal requirements while minimizing the burden on the facility, the Department is proposing to, in effect, create a subcategory of Tier I applications for those that are required to undergo public review exclusively due to federal requirements. The advantage for the applicant is that the subcategory does not need full Oklahoma Tier II processing (e.g., publication in a newspaper). Tier II applications will still require publication in the newspaper, but for Tier I applications (including construction permits for projects that are considered minor modifications to Title V permits) that require public notice, only the web notice, prepared and posted by the Department, will be required. That is one of the reasons why the proposal retains the Tier I classification in OAC 252:4-7-32(b)(2)(B). The Department would also note (as discussed in more detail in response to a later question) the minor modification to the Title V operating permit will still require no public review. It is the construction permit (minor NSR permit) that will require public review.

The Department recognizes that these new public notice and new construction permit requirements will add to facilities' regulatory burden. Staff has and will continue to work on solutions to address this concern. For instance, following the July 22 Special AQAC meeting, the proposal was updated to allow that, for projects that would be minor modifications, those that fall below proposed emissions thresholds would be exempt from the requirement to get minor NSR permits. The Department will discuss this proposal in more detail later in response to another question.

For these reasons, the Department does not concur with the Alliance's conclusion regarding Tier I classification and the need for a corresponding revision or removal of OAC 252:4-7-32(b)(2)(B).

### **Comments specific to Chapter 100, Subchapter 7**

5. **COMMENT:** The Alliance requested that the wording in the proposed definition of "FESOP Enhanced NSR process" in OAC 252:100-7-1.1 be clarified, in that the proposal improperly "... use[s] a definition to codify procedural requirements" that should be located in a more appropriate place in Subchapter 7.

**RESPONSE:** Much of the language included in the proposed definition of "FESOP Enhanced NSR process" was adapted from EPA's description of the enhanced NSR process. The key point is that under FESOP enhanced NSR, both the public and EPA review will occur only during the issuance of the construction (NSR) permit. There will be no further public or EPA review when the requirements are incorporated into an existing FESOP as a permit modification. That is, the EPA and public will have one 30-day period to comment on NSR issues specifically, and also how the NSR and operating requirements will be integrated into the operating permit. All of that review will occur exclusively during the 30-day review of the construction permit. The Department believes that the language used in the proposed definition is explanatory, and that the actual requirements are properly established in other parts of the rules.

6. **COMMENT:** The Alliance requested that the proposal clarify whether Subchapter 7 is intended to include a "traditional NSR process" for minor facilities, similar to the "traditional NSR process" for Part 70 Sources, as proposed for Subchapter 8.

**RESPONSE:** The Department does intend to allow both the traditional NSR process and the FESOP enhanced NSR process as options for permitting actions under Subchapter 7. In response to the Alliance's comment, the Department intends to supplement the posted proposal when it is brought to the October AQAC meeting by adding a formal definition of "traditional NSR process" to OAC 252:100-7-1.1 that describes what has been our regular process.

As you pointed out, the Department is allowing both traditional NSR and enhanced NSR as options for permitting actions in Subchapter 8.

The Department would like to go over the comparative advantages of traditional versus enhanced NSR for major source permitting actions before it addresses the comparison for minor sources. For Subchapter 8, the traditional NSR process requires a shorter review period, because the 30-day NSR review for the public and EPA are one and the same. Enhanced NSR adds 45-day Title V review – EPA's review for implications of incorporating the new NSR requirements into the existing operating permit – onto the review of the construction permit. If an applicant requests "concurrent review," and no substantive public comments are received, the *draft* permit is deemed to be the *proposed* permit and the EPA has an additional 15 days beyond the 30-day public review period to complete their review. If substantive public comments are received during the 30-day public comment period, AQD reviews and answers the comments (making changes to the

permit if warranted) and issues a *proposed* permit for EPA review. At that point, EPA has the full 45 days for their review of the proposed permit. Because enhanced NSR combines review of both the NSR permit and the Title V permit implications, the process is at least 15 days longer than traditional NSR and, perhaps, 45-days longer, not including the additional time needed to address substantive comments. The benefit of enhanced NSR to the applicant is that the public review occurs only once.

For Subchapter 7, there is no 45-day EPA review period. Therefore, it would seem that FESOP enhanced NSR would almost always be preferable to traditional NSR. However, there may be a case where the equipment or limitations established in the construction permit need to be changed in a manner that necessitates another 30-day review period when the FESOP permit is modified. Or there may be other advantages to the applicant that may make traditional NSR more appealing. In any event, the Department has chosen to retain both options: traditional NSR and FESOP enhanced NSR for flexibility. Further, traditional NSR will be required for a facility that does not already have an operating permit.

7. **COMMENT:** The Alliance noted that the definition of "FESOP Enhanced NSR process" in OAC 252:100-7-1.1 states that the "process is only available for facilities already operating under a FESOP permit," and requested that the Department clarify what process new minor source facilities that have never been constructed follow if they cannot use the FESOP Enhanced NSR process.

The Alliance asked if these proposed changes are approved:

- A. Will all current minor source operating permits be considered FESOPs?
  - a. If not, what process will they need to undergo if they have to obtain a construction permit?
  - b. What would be the basis for stating existing permits are not FESOP, since Oklahoma has a SIP approved minor source permitting program?
  - c. What is the risk to industry with synthetic minor source facilities if the Department states the current permits are not FESOPs?
- B. Will General Permits be considered FESOPs?
  - a. If so, what process will someone need to go through if they obtain a NOI to Construct under a General Permit and then instead of applying for a NOI to Operate under the General Permit, they apply for a minor source operating permit?
  - b. If not, what is the process if an applicant obtains an NOI to Construct under a General Permit, and then instead of applying for a NOI to Operate under the General Permit, they apply for a minor source operating permit?

**RESPONSE:**

- A. The Department believes that all existing Subchapter 7 individual facility operating permits are federally enforceable, and thus have been, in effect, FESOPs. As the Alliance noted, language currently in the SIP includes approval of older agency rules covering minor facility operating permits, making them federally enforceable. However, EPA has raised concerns about our process, and believes that the Department needs to formalize the process – particularly by adding a public review component for minor facilities. To that end, our permitting group is developing an approach and a

schedule to public notice all current individual facility Subchapter 7 operating permits for 30-day public review on the web, followed by re-issuance of those permits with a formal FESOP designation. Again, the Department would note that, for Subchapter 7 permits, the 30-day public review also represents an opportunity for EPA to comment on a permit. For Subchapter 7 permits, there is no separate EPA review that takes place after the public comment period closes.

If the proposal is approved and goes into effect, a modification for a facility with a Subchapter 7 operating permit that has not yet undergone this formal upgrade to official FESOP status, will be required to undergo Traditional NSR for new construction. A facility that requests a modification to a current operating permit – that does not first require a construction permit – will undergo 30-day public review on the web after which the modified version of the operating permit will be issued, formally, as a FESOP.

A new minor facility that will not pursue a GP or PBR would be required to undergo traditional NSR. That is, the facility will need to obtain a Subchapter 7 individual facility construction permit. That permit will undergo Tier I 30-day public review on the web. Within 180 days after startup, the facility will need to submit an application for the operating permit (the FESOP). The FESOP will also undergo Tier I 30-day public review on the web.

A facility that is currently operating, but was never required to obtain a construction permit, would need to undergo Tier I 30-day public review to obtain a FESOP for the existing equipment if the facility chooses to obtain a permit. (Some previously permit exempt facilities may desire to have permits even if not required to have them.)

**UPDATE TO RESPONSE:** As stated in our original response, the Department believes that all existing Subchapter 7 individual facility operating permits are federally enforceable. Additional discussion with EPA staff lends support to the Department's belief that the current rules incorporated into the SIP provide a foundation for the federal enforceability of all current Subchapter 7 operating permits. There are issues with some aspects of our program that could, should EPA choose to issue a finding of deficiency, imperil that status in the future. That element of risk will continue until the Department addresses all outstanding issues, both with regard to the minor NSR program and the Subchapter 7 operating permit program. Further, EPA staff has clarified that if DEQ submits and EPA approves a FESOP program in Oklahoma's SIP, the approval would be "date forward." That is, EPA would approve DEQ's FESOP issuance process, and would then consider all minor facilities to be FESOPs that are issued under the process after the effective date of the SIP approval. Paragraphs 2 through 4 of our original response remain unchanged.

- B. Yes, PBRs and General Permits (GPs) will be considered FESOPs if the proposed rules are adopted. They have already undergone public and EPA review, so that is not a concern. Registration under PBRs and Notices of intent to construct and operate under GPs do not need to undergo additional public review, because they signify that the facility in question will abide by an already established FESOP (the PBR or GP). Our

current rule changes are intended to formalize that definition and to make the process explicit.

A facility with a current operating permit may, therefore, not use the FESOP enhanced NSR process for any new individual facility construction permit.

All GPs are considered to be FESOPs, and our current process under which an applicant submits an NOI to construct under a GP will not be altered as a result of these rule changes. PBRs are also FESOPs and the registration process for PBRs will continue without any changes.

However, the approach where a facility with an individual Subchapter 7 operating permit submits an NOI to construct under a GP (to authorize construction activities) but then submits an application for an individual minor source operating permit once the new equipment is installed and operating is a different, more complicated process. The Department's current thinking is that, when the modified individual FESOP is to be issued, that permit would be required to undergo 30-day public review on the web. The NOI process used to authorize construction would not be impeded or slowed down by these new requirements, but for the facility to move out of the GP and back into an individual operating permit will require 30-day public review on the web.

**UPDATE TO RESPONSE:** Based on further discussions with EPA, the Department understands that "FESOP" is a *term of art* that will apply to permits that meet requirements established in EPA guidance (which the Department is adopting into the rules establishing the program) only after EPA has formally approved the incorporation of these rules into the Oklahoma SIP. All current PBRs and GPs are federally enforceable, but they will not be considered to be FESOPs, in a formal sense, until after the EPA finalizes approval of our SIP submission (including the PBR rules proper) and, subsequently, the Department issues an updated version of a particular GP or PBR, should the Department determine this action is warranted.

8. **COMMENT:** The Alliance requested that the Department replace all instances of the term "operating permit" in Subchapter 7 with "FESOP" to avoid confusion, since the proposed definition of FESOP in OAC 252:100-7-1.1 is "an operating permit issued under Subchapter 7 of this Chapter..."

**RESPONSE:** The Department does not believe that defining all Subchapter 7 operating permits as FESOPs introduces ambiguity, nor does the Department believe it is practical or necessary to open each section of Subchapter 7 that contains the term "operating permit" to make the requested change. If it is brought to the Department's attention that there is a particular provision where that change would be helpful in one of the sections that is currently open for rulemaking, the Department would consider recommending that change. The proposal has been updated to clarify in the definition that these terms are synonymous.

9. **COMMENT:** The Alliance requested that the Department revise the construction permit requirements in OAC 252:100-7-15(a)(2)(B) to align with the operational flexibility that is allowed in Subchapter 8 by changing agency guidance, and either removing OAC 252:100-7-15(a)(2)(B)(i), or revising the language of OAC 252:100-7-15(a)(2)(B)(i) as follows:

"to install a new piece of equipment or a new process that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) which is not already covered under an existing permit Specific Condition; or"

**RESPONSE:** The Department agrees that there are many cases where a construction permit is not warranted for simple replacement of an existing unit, as you and other stakeholders have suggested. The proposed rules posted on the web address these concerns by adding a definition for "replacement unit" in 252:100-7-1.1, and adding a provision in 252:100-7-15(a)(2) such that a "replacement unit" does not trigger a construction permit requirement.

**10. COMMENT:**

- A. If a regulated entity obtains a modified FESOP without utilizing the FESOP Enhanced NSR Process, because a construction permit is not required for the modification, is it ODEQ's intent that this modified FESOP is not required to undergo public review per OAC 252:4-7-13(g)(9)?
- B. If it is ODEQ's intent that the modified FESOP is not required to undergo public review per OAC 252:4-7-13(g)(9), the proposed OAC 252:100-7-15(h) creates regulatory uncertainty. The proposed OAC 252:100-7-15(h) states that only the authorization to construct or modify expires, but the permit requirements of the construction permit established under OAC 252:100-7-15(d) will remain in effect until the facility ceased operations, is not constructed, or the requirement is superseded under a subsequent construction permit or FESOP that has undergone public review. Regulatory uncertainty occurs if the modified FESOP has a requirement that differs from the construction permit that is NOT superseded because the modified FESOP is not required to undergo public review. The Alliance requests ODEQ eliminate the regulatory uncertainty by clearly stating that a modified FESOP that does not utilize the FESOP Enhanced NSR Process is required to undergo public review per OAC 252:4-7-13(g)(9).

**RESPONSE:**

- A. The Department's intent is that, under the scenario described in the comment (6A), modification of the existing individual FESOP would be required to undergo Tier I 30-day public review on the web. The exception would be administrative changes to the permit where no public review is required. And this discussion assumes that the facility will retain an individual facility FESOP and not seek coverage under a GP or PBR. Please see the earlier discussion regarding GPs and PBRs.

This position was reached after extensive internal staff discussions, with consideration of The Alliance's comment, and input from EPA staff. Note that the posted version of proposed paragraph OAC 252:4-7-13(g)(9) includes an exception to the 30-day public review on the web if the minor facility "... operating permit modification accommodates a change for which no construction permit is required under 100-7-15(a)(2) ...". The Department now believes that this exception is not appropriate or necessary. Therefore, the Department intends to supplement the posted proposal when it is brought to the October AQAC meeting by removing the phrase quoted above, and

inserting an explicit requirement that notices be posted "... for draft modifications of existing minor facility operating permits for Tier I applications." The proposed OAC 252:4-7-13(g)(9) would then read:

"(9) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft minor facility individual operating permits for Tier I applications and for draft modifications of existing minor facility operating permits for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of OAC 252:4-7-13(c), and may be posted in tabular form with appropriate links to additional information sources. A modification of an existing minor facility operating permit may be issued without further public review if the operating permit modification is based on a construction permit that was made available for review and comment under 252:4-7-13(g)(7)."

- B. The Department believes that the proposal, with the wording change discussed above, would remove the regulatory uncertainty of concern to The Alliance, and result in the following scenarios: Initial FESOPs will undergo 30-day public review. Modified FESOPs that follow construction permits using the FESOP enhanced NSR process will not need additional public review. In other cases, where the FESOP is modified without following FESOP enhanced NSR, the modified FESOP will undergo Tier I 30-day public review. For a facility that already has a FESOP, a 30-day public review will be required either at the construction phase or the operating phase for all subsequent actions.

### **Comments specific to Chapter 100, Subchapter 8**

11. **COMMENT:** The Alliance requests that the Department clearly state that the proposed changes to OAC 252:100-8-4(a)(1) will not change a permitted Title V source's ability to conduct replacements without having to obtain a construction permit as long as no new permit conditions are needed in order to comply with the applicable NSPS or NESHAP.

**RESPONSE:** The Department concurs that the proposed changes will not affect the operational flexibility under Title V as currently interpreted.

12. **COMMENT:** The Alliance recommended that OAC 252:100-8-4(b)(4) be removed and marked as [RESERVED], because the "Application Submittal Schedule" under OAC 252:100-8-4(b)(4) appears obsolete. The submittal dates under this section have passed, as this section was for the original implementation of the Title V permitting program.

**RESPONSE:** The Department agrees that the requirements are obsolete, and the posted proposal would remove the bulk of them. However, the Department believes that some part of the rule should remain in place to retain the requirement that all facilities that became subject to Title V permitting requirements when the program went into effect were to have submitted an application no later than March 6, 1999 (the final date where all applications were required to have been submitted). That will ensure that any facility that may have missed the deadline would have an ongoing requirement.

13. **COMMENT:** The proposed language in OAC 252:100-8-4(c) appears to be redundant and already covered under the definitions of "Enhanced NSR process" and "Traditional NSR process" in OAC 252:100-8-2. The Alliance recommends that OAC 252:100-8-4(c) be removed to avoid confusion.

**RESPONSE:** The Department does not concur. The two definitions are proposed because defining terms is important for clarity, but the proposed language in OAC 252:100-8-4(c) creates the formal requirement.

14. **COMMENT:** The Alliance requested clarification that it is the Department's intent that all Title V minor modifications are required to undergo public review. The Alliance stated that if this is the case, then no Title V minor modifications can be classified as Tier I applications; therefore, the reference to "Tier I under OAC 252:4-7" was inadvertently not revised or removed in OAC 252:100-8-7.2(b)(1)(B).

**RESPONSE:** The Department does not concur with the Alliance's conclusion regarding Tier I classification, and a corresponding revision or removal of the reference to "Tier I under OAC 252:4-7" in OAC 252:100-8-7.2(b)(1)(B). Please note that minor modifications to the Title V operating permit were not in the past required to undergo public review, and the current proposal would not change that. However, some actions that the Department previously allowed to go forward (as minor mods) without requiring a construction permit will, in the future, be required to undergo minor NSR. The Department has also added a threshold so that qualifying projects, with potential emissions increases no greater than 10 tons per year of any single regulated air pollutant, may go forward as minor modifications to the Title V operating permit without requiring a minor NSR construction permit. So, it is the minor NSR construction permit under Subchapter 8 that will undergo Tier I public review (for projects eligible to be, eventually, incorporated into the Title V operating permit as minor modifications). The minor mods themselves are not required to undergo public review.

The construction permit emissions increase threshold language in OAC 252:100-8-4(a)(1) is a change from the proposal that was presented at the July 22 Special AQAC meeting. The change also removes the phrase "... a minor modification under OAC 252:100-8-7.2(b)(1)" as a construction permit requirement criterion that was included in the July proposal. Please take a look at the updated proposed rule language on the web.

In addition, the Department would note that the new requirements for some Tier I permitting actions to undergo public review would do so exclusively on the web. There will be no requirement for public notices in the newspaper for these new requirements so the Department will consider them to be a new subset of Tier I. There will still be Tier I permitting actions that will not undergo public review.

**Enable Midstream Partners, LP** – Submitted as an attachment to an email received on September 18, 2020 from Mr. Sean Walker Senior Environmental Specialist, Air Quality, on behalf of Mr. Lance Lodes, Senior Manager, Air Compliance & Monitoring, Environmental, Health & Safety, Enable Midstream Partners, LP (hereafter "Enable Midstream"). Enable Midstream's comments endorsed and incorporated by reference the comments submitted by The Petroleum Alliance of Oklahoma (*see above*), and requested clarification for some different permitting scenarios.



### Comments specific to Chapter 100, Subchapter 7

15. **COMMENT:** If an applicant obtains a Notice of Intent (NOI) to Construct using the Air Quality Minor Source General Permit for Oil and Gas Facilities (GP-OGF) and then converts to an individual minor source operating permit, will the individual minor source operating permit need to undergo public review?

**RESPONSE:** Yes, the individual operating permit issued to a minor facility that constructed under an Authorization to Construct under the GP-OGF would need to undergo public review.

16. **COMMENT:** If an applicant reconstructs or modifies an engine/turbine, currently authorized under an individual permit, such that it becomes subject to a New Source Performance Standard (NSPS), would a construction permit be required or a modified operating permit? If a modified operating permit, would it be required to undergo public review?

**RESPONSE:** The change described would likely not require a new construction or modified operating permit if the reconstructed or modified engine or turbine would not need any changes made to the emission limits in the current permit. However, the reconstructed or modified unit would be subject to applicable requirements of the NSPS in question.

17. **COMMENT:** If an applicant modifies an existing individual minor source operating permit to increase the condensate throughput limit and therefore also increase volatile organic compound (VOC) emissions less than 5 TPY, will this modified permit be required to undergo public review?

**RESPONSE:** The described modification scenario would not require a construction permit. However, the applicant would need to obtain a modification to the operating permit to authorize an increase in the throughput limit and/or emission limit, before exceeding that limit. That permit modification would need to undergo 30-day public review on the web.

18. **COMMENT:** If an applicant replaces a 1.0 MMBTU reboiler with a 1.5 MMBTU reboiler and the emissions increases are less than 1 TPY for each pollutant, would a construction permit be required or a modified operating permit? If a modified operating permit, would it be required to undergo public review?

**RESPONSE:** The described modification scenario would not require a construction permit, unless the small increase would push the facility over the major source threshold. However, the applicant would need to obtain a modification to the operating permit to authorize an increase in the emission limit. That permit modification would need to undergo 30-day public review on the web.

### Comments specific to Chapter 100, Subchapter 8

19. **COMMENT:** What would be the permitting avenue to incorporate MSS activities into a Title V permit? We believe this can currently be accomplished under OAC 252:100-8-

6(f)(1) during the TV renewal permit application or during a construction permit application.

**RESPONSE:** Specific scenarios may require a case-by-case determination, but the facility would likely need to establish separate limits for MSS activities. The facility would need to obtain a construction permit as the vehicle for establishing those limits. Any such changes (to incorporate MSS activities) that require a construction permit should qualify to use the enhanced NSR process.

**Altamira-US, LLC** – Submitted as an attachment to an email received on October 9, 2020 from Ms. Adrienne Burchett, E.I., Project Manager, Altamira-US, LLC (hereafter "Altamira").

#### **Comments specific to Chapter 4, Subchapter 7**

20. **COMMENT:** The suggested changes to OAC 252:4-7-13(g)(4) includes a typographical error. The suggested change is highlighted:

*(4) ~~An~~ A modification of an existing Part 70 source operating permit may be issued to an applicant for a new Part 70 operating permit without further public review if the operating permit modification accommodates a change for which no construction permit is required under 100-8-4(a)(1), or is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B) 252:4-7-32(b)(2)(A) or (B). In the latter case, and the public notice for the construction permit ~~contains~~ shall contain the following language.*

**RESPONSE:** Thank you for bringing the error to our attention. The Department will include the correction in the supplement to the posted proposal when it is brought to the October AQAC meeting.

#### **Comments specific to Chapter 100, Subchapter 1**

21. **COMMENT:** The proposed definition in OAC 252:100-1-3 of "Title V permit" indicates it "means (unless the context suggests otherwise) an operating permit for a Part 70 source." Should this include a reference to a Title V construction permit as well? What is the significance of "(unless the context suggests otherwise)"?

**RESPONSE:** Your comment brought to our attention the fact that the posted proposal erroneously indicated that this was a proposed addition to OAC 252:100-1-3. In fact, this definition was adopted by the Department last year, and became effective on September 15, 2020. The Department will include the correction in the supplement to the posted proposal when it is brought to the October AQAC meeting.

In answer to the question posed: No, the definition of "Title V permit" intentionally refers only to operating permits. It was added because Title V permit is a commonly-used term for a major source operating permit throughout the U.S. To implement Oklahoma's Title V program, the Department created a new Subchapter 8, with major source operating permit program rules based on 40 CFR Part 70, with certain additional relevant operating permit

rules from the comprehensive permitting rules of Subchapter 7. Shortly thereafter, the Department moved construction permit requirements for major sources from Subchapter 7 to Subchapter 8. Requirements for PSD sources and for "Major Sources Affecting Nonattainment Areas" were moved to Parts 7 and 9 of Subchapter 8, respectively. Construction permit requirements for other major sources, which under EPA terminology would be Minor NSR permits, were integrated with the Part 70-based operating permit rules in Subchapter 8. The Department based the divide between major sources (Subchapter 8) and minor facilities (Subchapter 7) on whether or not they are, or would be following construction, subject to a "Part 70 operating permit," and thus chose to use the term "Part 70 permit" as the collective term for permits issued (i.e., to "Part 70 sources") under Subchapter 8. "Title V permit" would be synonymous with "Part 70 source operating permit," while a "minor NSR permit" (for a Subchapter 8 source) would be synonymous with "Part 70 source construction permit."

The phrase "unless the context suggests otherwise" was included in the definition of "Title V permit," as it has been included elsewhere, as a precaution. The Department is not aware of any specific use of the term that would be confusing.

#### **Comments specific to Chapter 100, Subchapter 7**

22. **COMMENT:** OAC 252:100-7-1.1 Definitions is proposed to be revised to include a definition for a "Replacement Unit" as follows:

"**Replacement unit**" means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

(A) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

Should section (A) include a reference to the definition of reconstruction in 40 CFR 63.2? By incorporating the definition of reconstruction in 40 CFR 63.2, those minor source emission units that are subject to an area source NESHAP would be included by this language in the event a subject emission unit is considered reconstructed under the area source NESHAP standard.

**RESPONSE:** The Department agrees that it is appropriate to include language in the definition for a "Replacement Unit" in OAC 252:100-7-1.1 to accommodate reconstruction of minor facility emission units that are subject to an area source NESHAP. Therefore, the Department intends to supplement the posted proposal when it is brought to the October

AQAC meeting by revising the proposed definition to add the highlighted phrase as follows:

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

(A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. Section 60.15(b)(1), the emissions unit is a reconstructed unit within the meaning of paragraph (1) in the definition of "Reconstruction" in 40 C.F.R. Section 63.2, or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

23. **COMMENT:** Should OAC 252:100-7-15(a)(2)(C) reference the definition of a replacement unit in OAC 252:100-7-1.1?

**RESPONSE:** The Department believes use of the defined term "replacement unit" in OAC 252:100-7-15(a)(2)(C) is adequate.

#### **Comments specific to Chapter 100, Subchapter 8**

24. **COMMENT:** Many permittees often use the Title V (TV) Minor Permit Modification Application option in OAC 252:100-8-7.2(b)(1) (Minor Mod) in order to accomplish changes to a facility that require a quick turnaround, but do not result in an emission increase above PSD significance levels. Oftentimes, these are important modifications due to safety or critical infrastructure concerns that will be delayed for three (3) to six (6) months due to permit review time, including the public and EPA review time periods, at the ODEQ. There appears to have been a substantial change between the July 2020 and October 2020 proposals, revising the revisions to OAC 252:100-8-4(a). This language appears to allow for some of those physical or operational changes that have an emissions increase less than 10 tpy. Is this correct? We anticipate this will allow for quick permitting mechanisms for changes that are due to safety and critical infrastructure concerns (i.e. fire pump replacements) or minimal changes such as tank replacements at the refineries, even though the equipment may be subject to NSPS or NESHAP regulations. Is this accurate?

**RESPONSE:** As you noted, staff made significant changes to the language (and structure) of the proposed revision to OAC 252:100-8-4(a)(1) following the July 22 Special AQAC meeting. This language does allow permittees to make some physical or operational changes that would increase PTE by less than 10 TPY without first undergoing NSR (i.e., obtaining a construction permit), provided the change would not fall under one of the other criteria listed in OAC 252:100-8-4(a)(1)(B). Under the same circumstances, this would be the case even if the newly installed unit is subject to an NSPS or NESHAP. Such changes would then be subject to the operating permit minor modification procedures under OAC 252:100-8-7.2(b)(1) (or under OAC 252:100-8-7.2(a) administrative amendment procedures).

25. **COMMENT:** The proposed definition of "Enhanced NSR process" in OAC 252:100-8-2 indicates that the 30-day public review period for a draft NSR permit can be concurrent with the 45-day EPA review period. This is currently an option for Title V sources. Does this just make the concurrent review process automatic when requested in the application? How will this impact facilities that request concurrent public and EPA review following submittal of the application? Is that no longer allowed? Will ODEQ forms be revised accordingly to indicate whether enhanced NSR review or traditional NSR review is requested OR will this need to be up to the permittees to include as part of the body of future applications?

**RESPONSE:** Under the proposed revisions, including the Enhanced NSR process for existing Part 70 sources, concurrent review will be typical for modifications for which a construction permit is required. The Enhanced NSR process fulfills multiple public participation requirements, including the 30-day public and EPA review of the draft construction permit to meet NSR requirements, and the 45-day EPA review on the operating permit modification implications of the project and construction permit requirements. The Department intends to revise the appropriate application forms to provide an item for the permittee to indicate its preference to use the Enhanced NSR process or the Traditional NSR process, as indicated by the proposed language in OAC 252:100-8-5(d)(3). However; the facility will be able to update its preference prior to publishing/posting of the public notice of the draft construction permit. [Note that the Enhanced NSR process is available only for modification of an existing permitted facility. The Traditional NSR process applies to a new Part 70 source, for both the construction permit and the operating permit. Under the Traditional NSR process, the construction permit's 30-day EPA and public reviews coincide. Then, the operating permit's 45-day EPA review follows the 30-day public review, unless concurrent review is requested by the applicant.]

26. **COMMENT:** The proposed revisions to OAC 252:100-8-4(a)(1)(B)(iv) indicate that a Title V construction permit would be required for physical changes or changes in the method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY. What is the basis of the 10 TPY limit proposed in this paragraph? Please confirm that, as currently proposed, permittees can still apply for and begin operations following submittal of a minor Title V permit modification that meets the requirements of OAC 252:100-8-7.2(b)(1) without any public or EPA review as long as the increase in emissions is below the PSD significance thresholds and an increase in the PTE of a single pollutant of 10 TPY.

**RESPONSE:** Yes, the Department can confirm that permittees may still apply for a minor modification and, with some risk (that, perhaps, the applicant's assessment of the project was incorrect and the project was not actually a minor modification), begin operation of units authorized under the minor modification on submission of a complete application as long as the project potential emission increases are below the thresholds noted.

With regard to the basis of the proposed 10 TPY threshold, the Department considered a number of factors in setting the threshold in OAC 252:100-8-4(a)(1)(B)(iv). Oklahoma's air quality permitting program has historically included an emissions increase threshold of one pound per hour for requiring a construction permit. This was later converted to a more

practical 5 TPY actual emissions increase threshold for minor facilities at the same time that the major source construction permit requirement for a modification was tied to a significant modification under Title V requirements, creating a de facto exemption from NSR for minor mods. It should be noted that this exemption was never explicitly adopted into the SIP. The current rulemaking effort was initiated in part because some changes that would qualify as a minor modification under Title V operating permit program requirements are, absent an explicit exemption adopted into the SIP, subject to minor NSR requirements. Following extensive staff discussions, the Department proposed that a major source construction permit be required for a modification that would increase potential to emit by more than 10 TPY. This threshold is proposed at a level that would allow many projects that will likely have minimal air quality impacts to proceed without the cost in time and resources that would accompany preparation (by the applicant) and review and issuance (by DEQ staff) of a minor NSR (construction) permit. The Department settled on the 10 TPY PTE increase for a number of reasons, including that this threshold correlates well with a 5 TPY actual emissions increase, and is easier to determine without recourse to project emissions accounting necessitated by a full PSD analysis and has practical advantages for both the facility and DEQ. In addition, this threshold (for a number of pollutants) was adopted in a similar manner by the EPA under the Tribal NSR Rule. The Department has received informal stakeholder inquiries regarding how best to calculate project emissions increases for comparison with this threshold, and in response to these inquiries, DEQ intends to supplement the posted proposal when it is brought to the October AQAC meeting adding a phrase to the end of OAC 252:100-8-4(a)(1)(B)(iv), so that it would read:

"(iv) commencement of any physical change or change in method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY, calculated using the approach in 40 C.F.R. Section 49.153(b)."

The Department has posted an Outline and Summary document for a CAA §110(l) Demonstration justifying the 10 TPY PTE threshold that DEQ will prepare and submit to EPA with the SIP submittal if the rule is adopted. The document notes that DEQ took a similar approach and reached a similar conclusion to other State and Federal programs in the adoption of minor NSR thresholds that exempt projects from NSR.

Returning to the final question, in the situation described in the comment, if a planned facility change does not trigger a PSD permit requirement, nor meet any of the criteria listed under OAC 252:100-8-4(a)(1)(B)(i)-(iv) as proposed, the project for a potential emissions increase less than 10 TPY would not require a construction permit. The permittee would still need to submit an application for a minor modification to the operating permit. On submission of a complete application, and assuming the assessment of the project (as a minor mod) was proper, the applicant could proceed with installation and operation of units authorized by the minor mod, without waiting for issuance of the minor modification of the Part 70 source operating permit. The Department would go through the process of project evaluation and would draft the minor modification. This permitting action is not subject to public review, but the proposed version of the permit would be sent to EPA for a 45-day review. If EPA does not object to the permit, it would then be issued by the Department.

27. **COMMENT:** While OAC 252:100-8 is open for rulemaking, Altamira requests the ODEQ consider incorporating the "reasonable possibility" language from 40 CFR 52.21(r) into OAC 252:100-8-36.2(c) source obligation requirements. This will reduce the reporting burden of subject facilities while maintaining compliance and consistency with federal regulations. The consulting cost of this additional reporting for facilities that would be otherwise exempt under the federal regulations can range from \$750 per year to \$3,000 per year for five years depending on the number of projects. Additionally, the preconstruction notice requirements cost approximately \$2,500 - \$7,500 depending on the project type for consulting fees, alone. These additional consulting costs are in addition to internal costs for permitted facilities. These costs associated with reporting could be reduced or eliminated by incorporating the federal "reasonable possibility" language.

The source obligation requirements under 40 CFR 52.21(r)(6)(vi) reduces the reporting burden if permittees can document the emissions increase using the PAE to BAE methodology is less than 50% of the PSD significance levels for each applicable NSR pollutant. If the increase in emissions is less than the 50% threshold, the preconstruction notice and annual reporting requirements are not required since there is no "reasonable possibility" that the PSD significance levels would be exceeded due to the project. Since the ODEQ air quality rules in OAC 252:100-8 do not include the "reasonable possibility" language, permittees regulated by the ODEQ are subject to more stringent reporting requirements than those permitted in nearby states. Altamira requests the following revised provisions be incorporated.

**(c) Requirements when using projected actual emissions.** Except as otherwise provided in paragraph (c)(8)(b), the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the method specified in (B)(i) through (iii) of the definition of "projected actual emissions" for calculating projected actual emissions in circumstances where there is a reasonable possibility, as defined in section (c)(8) of this section, that a project is not a part of a major modification that may result in a significant emissions increase.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the existing emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under (B)(iii) of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator shall provide a copy of the information set out in OAC 252:100-8-36.2(c)(1) to the Director. Nothing in OAC 252:100-8-36.2(c)(2) shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in OAC 252:100-8-36.2(c)(1)(B); and calculate and maintain a record of the annual emissions, in TPY on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(4) If the unit is an existing EUSGU, the owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under OAC 252:100-8-36.2(c)(3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an EUSGU, the owner or operator shall submit a report to the Director if the annual emissions, in TPY, from the project identified in OAC 252:100-8-36.2(c)(1), exceed the baseline actual emissions (as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C)) by an amount that is significant for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C). Such report shall be submitted to the Director within 60 days after the end of such year. The report shall contain the following:

(A) The name, address and telephone number of the major stationary source;

(B) The annual emissions as calculated pursuant to OAC 252:100-8-36.2(c)(3); and

(C) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) The owner or operator of the source shall make the information required to be documented and maintained pursuant to OAC 252:100-8-36.2(c) available for review upon request for inspection by the Director or the general public.

(7) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification based on any credible evidence, including but not limited to emissions data produced after the project is completed. In any such case, the owner or operator may be subject to enforcement for failure to obtain a PSD permit prior to beginning actual construction.

(8) If an owner or operator materially fails to comply with the provisions of OAC 252:100-8-36.2(c), then the calendar year emissions are presumed to equal the source's potential to emit.

(8) A "reasonable possibility" under paragraph (c) of this section occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as described in OAC 252:100-8-50(b) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded as an increase in utilization due to product demand growth as described in the definition of "projected actual emissions" (B)(iii) under OAC 252:100-8-31, sums to at least 50 percent of the amount that is a "significant



emissions increase," as described in OAC 252:100-8-50(b) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (c)(8)(b) of this section, and not also within the meaning of paragraph (c)(8)(a) of this section, then provisions (c)(2) through (c)(5) do not apply to the project.

**RESPONSE:** OAC 252:100-8-36.2 was not included the rulemaking notice, so it is not open for revision at this time. Regarding the comment itself, the Department believes that, as written, the rule is more protective of industry and the environment by requiring the recordkeeping.

The Department presented a proposed OAC 252:100-8-36.2 before the AQAC in October 2005 that included "reasonable possibility" language. At that time, the Department received comment from EPA on our proposed rule because the "reasonable possibility" language had been remanded back to EPA by the courts. Staff removed the language in question, and the proposed OAC 252:100-8-36.2 was approved by the Council in January 2006, adopted by the EQB in February 2006, and became effective June 15, 2006. These rules were then submitted for inclusion in our SIP in July 2010, and approved by EPA in September 2016. [[81 FR 66532](#), September 28, 2016] Note: In December 2007, EPA issued a final rule that provided additional explanation and more detailed criteria to clarify the "reasonable possibility" recordkeeping and reporting standard. [[72 FR 72607](#), December 21, 2007]

In conjunction with EPA's review of Oklahoma's SIP and related discussions, the Air Quality Division submitted a letter, dated February 8, 2016, demonstrating that the Department's recordkeeping requirements are as stringent as those in 40 CFR § 51.166(r)(6)(i) through (vi), which includes the "reasonable possibility" language that was omitted from OAC 252:100-8-36.2 when it was adopted. At that time, Staff believed that adding the "reasonable possibility" language to OAC 252:100-8-36.2 would not have provided any significant relief to Oklahoma's PSD sources.

The Department believes that determining whether the additional recordkeeping is more burdensome than protective is a complex issue that would require additional discussion with industry to determine if this needs to be brought forward separately in a future rulemaking.

**UPDATE TO RESPONSE:** Based on additional verbal comments received during the October 21, 2020 AQAC meeting, the Department is planning to move forward with a proposed rulemaking to address this issue at a future AQAC meeting.

**U.S. Environmental Protection Agency, Region 6** – Submitted as an attachment to an email received on October 15, 2020 from Ms. Adina Wiley, Environmental Engineer, on behalf of Mr. David Garcia, Director, Air and Radiation Division, U.S. EPA, Region 6 (hereafter "EPA").

- 28. COMMENT:** EPA supports the revisions to OAC 252:4 and 252:100 proposed on September 15, 2020. The revisions are the result of a multi-year collaborative effort between EPA Region 6 and DEQ to address areas of concern in the Oklahoma air permit

program. EPA believes the proposed revisions will meet the federal public notice requirements for minor NSR at 40 C.F.R. 51.160 - 51.164 by requiring electronic notice for all minor NSR permit actions. EPA also believes the proposed revisions will meet the federal Title V requirements in 40 C.F.R. 70.7 by requiring public notice for all initial title V permits. In addition, the proposed revisions establish the enhanced NSR process and clearly establish a federally enforceable state operating permit program.

**RESPONSE:** DEQ appreciates the collaborative process that has resulted in the proposed revisions that address outstanding SIP approvability concerns.

### **Oral Comments – October AQAC Meeting**

#### **Brian McQuown – Oklahoma Gas & Electric (OG&E)**

29. **COMMENT:** Mr. McQuown stated that OG&E supports Altamira's submitted comments that requested incorporating the "reasonable possibility" language from 40 CFR 52.21(r) into OAC 252:100-8-36.2(c) source obligation requirements for PSD sources. Mr. McQuown also acknowledged that the request was outside of scope of the rulemaking on the October AQAC meeting agenda.

**RESPONSE:** As stated in response to the referenced Altamira comment (#27), OAC 252:100-8-36.2 was not included the rulemaking notice, so it is not open for revision at this time. As the Department also stated, we believe that the issues involved in the requested change are complex. Based on the verbal comments received during the October 21, 2020 AQAC meeting in support of this change, the Department is planning to move forward with a proposal in a future rulemaking.

#### **Sean Walker– Enable Midstream Partners, LP (Enable Midstream)**

30. **COMMENT:** Mr. Walker requested clarification on a particular scenario, for a modification (e.g., increased condensate throughput limit) that did not trigger a construction permit requirement for a permitted minor facility. His question was whether the operating permit modification would be required to undergo a 30-day public review. Mr. Walker also made reference to the 14-day public review period used in Florida's FESOP program.

**RESPONSE:** The Department's intent is that when the rule proposal is implemented, the permit action in such a scenario would be required to undergo a 30-day public review. The resulting action would be issuance of a FESOP (if the existing operating permit had not previously undergone public review), or a modification of the existing FESOP. In either case, the facility would be eligible to use the FESOP Enhanced NSR process for future changes that require a construction permit. See response to Comment #2 regarding the 14-day public review period used in Florida's FESOP program.

#### **Adrienne Burchett – Altamira-US, LLC (Altamira)**

31. **COMMENT:** Ms. Burchett reiterated Altamira's submitted comment (Comment and Response #27), which requested that the DEQ consider incorporating the "reasonable

possibility" language from 40 CFR §52.21(r) into the PSD Source Obligation requirements of OAC 252:100-8-36.2(c). Ms. Burchett stated that the requested change would reduce the reporting burden of subject facilities while maintaining compliance and consistency with federal regulations. Ms. Burchett noted that Altamira's comments and the Department's responses were not included in the document posted on the DEQ website.

**RESPONSE:** As stated in response to Altamira's submitted (10-9-2020) Comment #27, OAC 252:100-8-36.2 was not included in the rulemaking notice, so it is not open for revision at this time. However, based on additional verbal comments received during the October 21, 2020 AQAC meeting, the Department is planning to move forward with a proposed rulemaking to address this issue at a future AQAC meeting.

The summary of comments and responses document posted on the DEQ website was inadvertently not updated to the October 20, 2020 version prior to the AQAC meeting. This oversight was corrected shortly after the meeting adjourned.

### **Oral Comments – November AQAC Meeting**

#### **Adrienne Burchett – Altamira-US, LLC (Altamira)**

32. **COMMENT:** Ms. Burchett asked for a clarification in response to discussion among AQAC members and AQD staff regarding the transition process for minor facilities from their existing individual operating permit to a FESOP. Ms. Burchett described a hypothetical case where a facility with a current Subchapter 7 operating permit chooses, after the proposed rule changes become operative, to undergo the FESOP process – including public and EPA review – resulting in an operating permit modification and the issuance of a FESOP. She further specified that the described case would not involve a physical or operational change (or other change) that would necessitate either a construction permit (NSR permit) or an operating permit modification. The permitting action would only be undertaken to convert the permit from a Subchapter 7 operating permit (issued under the current rules) into a FESOP (issued under the proposed rule modifications). Ms. Burchett asked if the regular application fee for a modification of a minor facility operating permit would apply in that case.

**RESPONSE:** The proposed Subchapter 7 rule changes would not alter the existing application fee structure. For individual minor facility permits, the construction permit application fee would apply if a construction permit is required, and the application fee for an operating permit modification would apply if an operating permit modification is required/requested. The application materials and operating permit fees would, therefore, be required for a permitting action whose sole purpose is the migration of the operating permit from the old format to the new FESOP designation.

THE AIR QUALITY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title: OAC 252:4

**OAC 4. Rules of Practice and Procedure  
Subchapter 7. Environmental Permit Process [AMENDED]**

On November 12, 2020, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

  X   permanent [take effect after legislative review]

       emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,



Chair or Designee:

Date Signed: 11/17/2020

	VOTING TO APPROVE	VOTING AGAINST	ABSTAIN	ABSENT
Matt Caves				✓
Gary Collins	✓			
Robert Delano	✓			
Gregory Elliott	✓			
Garry Keele II	✓			
Steve Landers				✓
John Privrat				✓
Jeffrey Taylor	✓			
Laura Lodes	✓			

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

252:100-1-3 [AMENDED]

252:100-1-4 [AMENDED]

Subchapter 7. Permits for Minor Facilities

Part 1. General Provisions

252:100-7-1.1 [AMENDED]

Part 3. Construction Permits

252:100-7-15 [AMENDED]

Part 4. Operating Permits

252:100-7-18 [AMENDED]

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

Part 5. Permits for Part 70 Sources

252:100-8-2 [AMENDED]

252:100-8-4 [AMENDED]

252:100-8-5 [AMENDED]

252:100-8-7.2 [AMENDED]

252:100-8-8 [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Air Quality Advisory Council; 27A O.S. Sections 2-2-201 and 2-5-107.

Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through 2-5-117.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

April 24, 2020

August 24, 2020

**COMMENT PERIOD:**

May 15, 2020 through June 17, 2020

September 15, 2020 through October 21, 2020

**PUBLIC HEARING:**

June 17, 2020, Air Quality Advisory Council

July 22, 2020, Air Quality Advisory Council

October 21, 2020, Air Quality Advisory Council

November 12, 2020, Air Quality Advisory Council

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The Department is proposing to amend and update various sections in OAC 252:100, Subchapters 1, 7, and 8, to better align the Department's construction and operating permit requirements and issuance processes for minor facilities and Part 70 sources (major sources) with the New Source Review (NSR) permit requirements and Title V operating permit requirements 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, respectively, and the guidance on Federally Enforceable State Operating Permits (FESOPs). The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules requiring public notice are not less stringent than the federal rules require. In addition, the formal adoption of the FESOP structure, the formal designation of the "enhanced" NSR procedure, and the new option to follow the "traditional" NSR procedure will ensure continued enforceability of permits issued by the Department while offsetting some new requirements with new alternatives to expedite the process of permit issuance. Changes made to the DEQ rules to bring them into alignment with federal requirements will remove an obstacle in obtaining approval from EPA for relevant portions of Oklahoma's State Implementation Plan (SIP), which will help ensure that the Department retains approval of the state NSR permit program and the Title V operating permit program.

**CONTACT PERSON:**

Melanie Foster, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) and 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**252:100-1-3. Definitions**

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"**Act**" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

"**Administrator**" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"**Air contaminant source**" means any and all sources of emission of air contaminants (pollutants), whether privately or publicly owned or operated, or person contributing to emission of air contaminants. Without limiting the generality of the foregoing, this term includes all types

of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

**"Air pollution abatement operation"** means any operation which has as its essential purpose a significant reduction in:

- (A) the emission of air contaminants, or
- (B) the effect of such emission.

**"Air pollution episode"** means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion. Other factors such as humidity may also affect the episode conditions.

**"Ambient air standards"** or **"Ambient air quality standards"** means levels of air quality as codified in OAC 252:100-3.

**"Atmosphere"** means the air that envelops or surrounds the earth.

**"Best available control technology"** or **"BACT"** means the best control technology that is currently available as determined by the Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

**"Building, structure, facility, or installation"** means:

(A) all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

(B) notwithstanding the provisions of subparagraph (A), for onshore activities under Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, all of the pollutant-emitting activities included in Major Group 13 that are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this definition, has the same meaning as in 40 CFR 63.761.

**"Carbon dioxide equivalent emissions"** or **"CO<sub>2</sub>e"** means an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions, for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a CO<sub>2</sub>e.

**"Catalytic cracking unit"** means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

**"Combustible materials"** means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

**"Commence"** means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

**"Commencement of operation"** or **"commencing operation"** means the owner or operator of the stationary source has begun, or caused to begin, emitting a regulated air pollutant from any activity for which the stationary source is designed and/or permitted.

**"Complete"** means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Director from requesting or accepting any additional information.

**"Construction"** means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

**"Crude oil"** means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

**"Direct fired"** means that the hot gasses produced by the flame or heat source come into direct contact with the material being processed or heated.

**"Division"** means Air Quality Division, Oklahoma State Department of Environmental Quality.

**"Dust"** means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

**"EPA"** means the United States Environmental Protection Agency.

**"Excess emissions"** means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

**"Existing source"** means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

**"Facility"** means all of the pollutant-emitting activities that meet all the following conditions:

(A) Are under common control.

(B) Are located on one or more contiguous or adjacent properties.

(C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

**"Federally enforceable"** means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

**"Fossil fuel"** means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

**"Fuel-burning equipment"** means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.



**"Fugitive dust"** means solid airborne particulate matter emitted from any source other than a stack or chimney.

**"Fugitive emissions"** means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**"Fume"** means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

**"Garbage"** means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

**"Greenhouse gas"** or **"GHG"** means the air pollutant defined in 40 CFR § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>).

**"Gross particulate matter"** or **"GPM"** means particulate matter with an aerodynamic diameter greater than 10 micrometers.

**"In being"** means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

**"Incinerator"** means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

**"Indirect fired"** means that the hot gasses produced by the flame or heat source do not come into direct contact with the material, excluding air, being processed or heated.

**"Installation"** means an identifiable piece of process equipment.

**"Lowest achievable emissions rate"** or **"LAER"** means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

**"Major source"** means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

**"Malfunction"** means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

**"Mist"** means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

**"Modification"** means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

**"National Emission Standards for Hazardous Air Pollutants"** or **"NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

**"New installation", "New source", or "New equipment"** means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

**"New Source Performance Standards"** or **"NSPS"** means those standards found in 40 CFR Part 60.

**"New source review"** or **"NSR"** means a process of evaluation performed by the DEQ to determine the applicable requirements that must be incorporated into a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source. DEQ's NSR program, at a minimum, must meet the requirements of 40 CFR Part 51, Subpart I.

**"Nonmethane organic compounds"** or **"NMOC"** means nonmethane organic compounds, as defined in 40 CFR 60.754.

**"NSR permit"** means a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source.

**"Opacity"** means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

**"Open burning"** means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

**"Organic compound"** means any chemical compound containing the element carbon.

**"Owner or operator"** means any person who owns, leases, operates, controls or supervises a source.

**"Part 70 permit"** means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

**"Part 70 program"** means a program approved by the Administrator under 40 CFR Part 70.

**"Part 70 source"** means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

**"PM<sub>10</sub> emissions"** means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less as measured by applicable reference methods, or an equivalent or alternative method.

**"PM<sub>10</sub>"** means particulate matter with an aerodynamic diameter of 10 micrometers or less.

**"PM<sub>2.5</sub>"** means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

**"Particulate matter"** or **"PM"** means any material that exists in a finely divided form as a liquid or a solid.

**"Particulate matter emissions"** means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

**"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

**"Prevention of significant deterioration"** or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

**"Process equipment"** means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

**"Process weight"** means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

**"Reasonably available control technology"** or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

**"Reconstruction"** means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

**"Refinery"** means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

**"Refuse"** means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

**"Refuse-burning equipment"** means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

**"Regulated air pollutant"** means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

**"Responsible official"** means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

**"Shutdown"** means the cessation of operation of any process, process equipment, or air pollution control equipment.

**"Smoke"** means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

**"Source operation"** means the last operation preceding the emission of an air contaminant, which operation:

(A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,

(B) is not an air pollution abatement operation.

**"Stack"** means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

**"Standard conditions"** means a gas temperature of 68 degrees Fahrenheit (20° Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

**"Startup"** means the setting into operation of any process, process equipment, or air pollution control equipment.

**"Stationary source"** means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

**"Temperature inversion"** means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

**"Title V permit"** means (unless the context suggests otherwise) an operating permit for a Part 70 source.

**"Total Suspended Particulates"** or **"TSP"** means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

**"Visible emission"** means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

**"Volatile organic compound"** or **"VOC"** means any organic compound that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, tert-butyl acetate and compounds listed in 40 CFR 51.100(s)(1) are presumed to have negligible photochemical reactivity and are not considered to be VOC.

#### **252:100-1-4. Units, abbreviations, and acronyms**

(a) Abbreviations and symbols of units of measure.

- (1) Btu - British thermal unit
- (2) cm/sec - centimeter per second
- (3) CO<sub>2</sub>e - carbon dioxide equivalent
- (4) dscf - dry cubic feet at standard conditions
- (5) dscm - dry cubic meter at standard conditions
- (6) ft/min - feet per minute
- (7) gal - gallon
- (8) gal/d - gallons per day
- (9) gal/yr - gallons per year
- (10) gr/dscf - grains per dry standard cubic foot
- (11) hr - hour
- (12) Hg - mercury
- (13) hp - horsepower
- (14) H<sub>2</sub>O - water
- (15) H<sub>2</sub>S - hydrogen sulfide

- (16) H<sub>2</sub>SO<sub>4</sub> - sulfuric acid
  - (17) kg - kilogram
  - (18) kg/metric ton - kilograms per metric ton
  - (19) kPa - kilopascals
  - (20) l - liter
  - (21) l/yr - liters per year
  - (22) LT/D - long tons per day
  - (23) lb/wk - pounds per week
  - (24) lb - pound
  - (25) lbs/hr - pounds per hour
  - (26) m<sup>3</sup> - cubic meter
  - (27) mg/dscm - milligrams per dry standard cubic meter
  - (28) MMBTU/hr - million british thermal units per hour
  - (29) Mg - megagram - 10<sup>6</sup> gram
  - (30) Mg/yr - megagrams per year
  - (31) mg/l - milligrams per liter
  - (32) m/min - meter per minute
  - (33) ng/dscm - nanograms per dry standard cubic meter
  - (34) ng/J - nanograms per Joule
  - (35) oz/in<sup>2</sup> - ounce per square inch
  - (36) ppm - parts per million
  - (37) psia - pounds per square inch absolute
  - (38) psig - pounds per square inch gage
  - (39) ppmv - parts per million by volume
  - (40) SO<sub>2</sub> - sulfur dioxide
  - (41) TPY - tons per year
  - (42) µg/m<sup>3</sup> - micrograms per cubic meter
- (b) Acronyms.
- (1) A.I.S.I. - American Iron and Steel Institute
  - (2) A.S.M.E. - American Society of Mechanical Engineers
  - (3) A.S.T.M. - American Society for Testing and Materials
  - (4) BACT - Best Available Control Technology
  - (5) CEM - Continuous Emission Monitor
  - (6) CFR - Code of Federal Regulations
  - (7) COM - Continuous Opacity Monitor
  - (8) DEQ - Department of Environmental Quality
  - (9) EPA - Environmental Protection Agency
  - (10) GHG - Greenhouse Gas
  - (11) HAP - Hazardous Air Pollutants
  - (12) HMIWI - Hospital/Medical/Infectious Waste Incinerator
  - (13) MACT - Maximum Achievable Control Technology
  - (14) MSW - Municipal Solid Waste
  - (15) MWC - Municipal Waste Combustors
  - (16) NAAQS - National Ambient Air Quality Standards
  - (17) NESHAP - National Emissions Standards for Hazardous Air Pollutants
  - (18) NSPS - New Source Performance Standards
  - (19) NSR - New Source Review

- ~~(20)~~ ~~(19)~~ OAC - Oklahoma Administrative Code  
~~(21)~~ ~~(20)~~ PBR - Permit by Rule  
~~(22)~~ ~~(21)~~ PM - Particulate Matter  
~~(23)~~ ~~(22)~~ PSD - Prevention of Significant Deterioration  
~~(24)~~ ~~(23)~~ SIC - Standard Industrial Classification  
~~(25)~~ ~~(24)~~ SIP - State Implementation Plan  
~~(26)~~ ~~(25)~~ TSP - Total Suspended Particulates  
~~(27)~~ ~~(26)~~ VOC - Volatile Organic Compound  
~~(28)~~ ~~(27)~~ 27A O.S. - Title 27A Oklahoma Statutes

## SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

### PART 1. GENERAL PROVISIONS

#### 252:100-7-1.1. Definitions

The following words and terms when used in this Subchapter shall have the following meaning unless the context clearly indicates otherwise:

**"Actual emissions"** means the total amount of any regulated air pollutant actually emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

**"Best Available Control Technology"** or **"BACT"** means the best control technology that is currently available as determined by the Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs.

**"Commence"** means, as applied to the construction or modification of a minor facility to which neither a NSPS or NESHAP applies, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

**"De minimis facility"** means a facility that meets the requirements contained in paragraphs (A) and (B) of this definition.

(A) All the air pollutant emitting activities at the facility are on the de minimis list contained in Appendix H or the facility meets all of the following de minimis criteria:

(i) The facility has actual emissions of 5 ~~tpy~~ TPY or less of each regulated air pollutant, except that fraction of particulate matter that exhibits an aerodynamic particulate diameter of more than 10 micrometers ( $\mu\text{m}$ ).

(ii) The facility is not a "major source" as defined in OAC 252:100-8-2.

(iii) The facility is not a "major stationary source" as defined in OAC 252:100-8-31 for facilities in attainment areas.

(iv) The facility is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas.

(v) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(vi) The facility has not opted to obtain or retain an Air Quality Division permit.

(B) The facility is not subject to the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63).

**"Emergency engine"** means a stationary engine used to resume essential operations or ensure safety during sudden and unexpected occurrences including but not limited to loss of electrical power, fire, and/or flood.

**"Facility"** means all of the pollutant-emitting activities that meet all the following conditions:

- (A) Are under common control.
- (B) Are located on one or more contiguous or adjacent properties.
- (C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

**"Federally Enforceable State Operating Permit" or "FESOP"** means an operating permit issued under Subchapter 7 of this Chapter, including operating permits issued under the provisions of 252:4-7-33(a)(2). As such, for the purposes of this subchapter, "FESOP" and "operating permit" are synonymous.

**"FESOP Enhanced NSR process"** means a process under which the evaluation of requirements applicable under NSR is integrated with a determination of procedural and compliance requirements under the DEQ's FESOP program. This process is only available for facilities already operating under a FESOP permit. Under a FESOP enhanced NSR process, the 30-day public and EPA review period of a draft NSR permit is integrated with the review of the draft FESOP modification, and results in the issuance of a minor source 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 source operating permit modification process, without further public or EPA review, as authorized in OAC 252:4-7-13(g)(9) and OAC 252:100-7-18(f).

**"Gasoline dispensing facility"** means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment, as these terms are used in 40 CFR Part 63 Subpart CCCCCC.

**"Hazardous Air Pollutant" or "HAP"** means any hazardous air pollutant regulated under Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412, and subject to NESHAP.

**"Minor facility"** means a facility which is not a Part 70 source.

**"National Emission Standards for Hazardous Air Pollutants" or "NESHAP"** means those standards as published by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412.

**"New portable source"** means a portable source that has never operated within the State of Oklahoma. This includes sources that are initially constructed and existing facilities that are relocating into Oklahoma from another state.

**"New Source Performance Standards" or "NSPS"** means those standards found in 40 CFR Part 60.

**"Permit exempt facility"** means a facility that:

- (A) has actual emissions in every calendar year that are 40 ~~tpy~~ TPY or less of each regulated air pollutant;
- (B) is not a de minimis facility as defined in OAC 252:100-7-1.1;
- (C) is not a "major source" as defined in OAC 252:100-8-2 for Part 70 sources;
- (D) is not a "major stationary source" as defined in OAC 252:100-8-31 for PSD facilities in attainment areas;
- (E) is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas;
- (F) is not operated in conjunction with another facility or source that is subject to air quality permitting;



(G) is not subject to an emission standard, equipment standard, or work practice standard in the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63); and

(H) is not subject to the requirements of OAC 252:100-39-47.

**"Portable source"** means a source with design and intended use to allow disassembly or relocation.

**"Relocate"** means to move a source from one geographical location to another. The term does not include minimal moves within the facility boundaries.

**"Regulated air pollutant"** means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

(A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. Section 60.15(b)(1), the emissions unit is a reconstructed unit within the meaning of paragraph (1) in the definition of "Reconstruction" in 40 C.F.R. Section 63.2, or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**"Traditional NSR process"** means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the FESOP program. This process is required for facilities that have not yet received a FESOP, but it may also be used (as an alternative to the FESOP Enhanced NSR process) for facilities that have already received a FESOP. The traditional NSR process provides a 30-day public and EPA review period on the draft construction (NSR) permit, as described in OAC 252:100-7-17 and OAC 252:4-7. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified FESOP that also includes a 30-day public and EPA review period, as described in OAC 252:100-7-18 and OAC 252:4-7.

### **PART 3. CONSTRUCTION PERMITS**

#### **252:100-7-15. Construction permit**

(a) **Construction permit required.** A construction permit is required to commence construction or installation of a new facility or the modification of an existing facility as specified in OAC 252:100-7-15(a)(1) and (2).

(1) **New Facility.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit.

(2) **Modification of an existing facility.**

(A) A construction permit is required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category.

(B) A construction permit is required for an existing facility covered by an individual permit:

(i) to add a piece of equipment or a process that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) or

(ii) to add or physically modify a piece of equipment or a process that results in an permitted emissions increase in actual emissions of any one regulated air pollutant by more than 5 TPY.

(C) The requirement to obtain a construction permit under OAC 252:100-7-15(a)(2)(B)(i) does not apply to replacement of a piece of equipment, provided the replacement unit does not require a change in any emission limit in the existing permit, and the owner or operator notifies the DEQ in writing within fifteen (15) days of the startup of the replacement unit, and/or as otherwise specified by the permit.

(b) **Permit categories.** Three types of construction permits are available: permit by rule, general permit, and individual permit. A permit by rule may be adopted or a general permit may be issued for an industry if there are a sufficient number of facilities that have the same or substantially similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements.

(1) **Permit by rule.** An owner or operator of a minor facility may apply for registration under a permit by rule if the following criteria are met:

(A) The facility has actual emissions of 40 TPY or less of each regulated air pollutant, except HAPs.

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has established a permit by rule for the industry in Part 9 of this Subchapter.

(D) The owner or operator of the facility certifies that it will comply with the applicable permit by rule.

(E) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(2) **General permit.** Minor facilities may qualify for authorization under a general permit if the following criteria are met:

(A) The facility has actual emissions less than 100 TPY of each regulated air pollutant, except for HAPs.

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has issued a general permit for the industry.

(3) **Individual permit.** The owners or operators of minor facilities requiring permits under this Subchapter which do not qualify for permit by rule or a general permit shall obtain individual permits. An owner or operator may apply for an individual permit even if the facility qualifies for a permit by rule or a general permit.

(c) **Content of construction permit application.** Construction permit applications shall contain at least the data and information listed in OAC 252:100-7-15(c)(1) and (2).

(1) **Individual permit.** An applicant for an individual construction permit shall provide data and information required by this Chapter on an application form available from the DEQ. Such data and information should include but not be limited to:

- (A) site information,
- (B) process description,
- (C) emission data,
- (D) BACT when required,
- (E) sampling point data and
- (F) modeling data when required.

(2) **General permit.** An applicant for authorization under a general permit shall provide data and information required by that permit on a form available from the DEQ. For general permits that provide for application through the filing of a notice of intent (NOI), authorization under the general permit is effective upon receipt of the NOI.

(d) **Permit contents.** The construction permit:

- (1) Shall require the permittee to comply with all applicable air pollution rules.
- (2) Shall prohibit the exceedance of ambient air quality standards contained in OAC 252:100-3.
- (3) May establish permit conditions and limitations as necessary to assure compliance with all rules.

(e) **Duty Failure to comply with a the construction permit.** The permittee shall comply with all limitations and conditions of the construction permit. A violation of the limitations or conditions contained in the construction permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules. No operating permit will be issued until the violation has been resolved to the satisfaction of the DEQ.

(f) **Cancellation of authority to construct or modify.** ~~A duly issued permit~~ The authority to construct or modify granted by a duly issued construction permit will terminate ~~and become null and void~~ (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.

(g) **Extension of authorization to construct or modify.**

(1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

- (A) one extension of 18 months or less or
- (B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

(h) **Expiration of authorization to construct or modify.** The authorization to construct or modify under the construction permit shall expire upon completion of the construction or modification, or as otherwise provided in (e), (f), or (g). However, the requirements established

under (d) shall continue in effect until and unless the facility or affected unit ceases operations, was never constructed in the first place, or the requirement is superseded under a subsequently-issued construction permit or a FESOP that has undergone public review.

## **PART 4. OPERATING PERMITS**

### **252:100-7-18. Operating permit**

(a) **Permit required.** An operating permit is required for a minor facility as specified in OAC 252:100-7-18(a)(1) and (2).

(1) **New facility.** No person shall cause or authorize the operation of a new minor facility for more than a 180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit.

(2) **Modification of an existing facility.** No person shall cause or authorize the operation of a minor facility modified pursuant to OAC 252:100-7-15(a)(2) for more than a 180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit or for modification of the facility's existing operating permit.

(b) **Administrative permit amendment.** An administrative permit amendment to an operating permit does not require a prior construction permit. Except for correction of typographical errors, application for an administrative permit amendment shall be made to the DEQ in writing within 30 days of the date the change occurred. Application for correction of typographical errors can be made at anytime. An administrative permit amendment can be made to:

- (1) correct typographical errors;
- (2) identify a change in name, address, or phone number of any person identified in the permit, or provide a similar minor administrative change at the facility;
- (3) require more frequent monitoring or reporting by the permittee; and/or
- (4) allow other permit amendments that are not physical or operational changes and that do not result in an increase in emissions.

(c) **Denial or revocation of a permit to operate.** No owner or operator shall cause or authorize the operation of a minor facility if the DEQ denies or revokes a permit to operate.

(d) **Permit Categories.** Three types of operating permits are available: permit by rule, general permit, and individual permit. ~~See OAC 252:100-7-15(b) for a complete~~ The description of the permit categories in OAC 252:100-7-15(b) also applies to operating permits.

(e) **Permit application requirements.** An operating permit application shall meet the following requirements.

(1) **New or modified facility.** An operating permit application must contain the following information.

(A) **Application content.** Application shall be made on a form provided by the DEQ. An application shall contain:

- (i) The proposed operation start-up date, or phased dates when applicable.
- (ii) Revisions to the installation/construction, if any, that differed from the construction design and plan given in the permit application material, data and specifications.

(B) **Emission tests.** Before a permit to operate a new or modified minor facility is granted, the applicant, if required by the DEQ, shall conduct emission tests in accordance with methods approved by the DEQ with the tests being made at the expense of the applicant. The DEQ shall be given advance notice of the tests, may monitor performance tests conducted by the applicant, and may also conduct emissions tests. The results of any required test must be provided to the DEQ along with supporting information as required.

(2) **Contents of an application for an administrative permit amendment.** The application may be made on the DEQ application form or it may be in letter form. The application shall:

- (A) describe the change to be made to the permit,
- (B) include the date the change occurred,
- (C) identify the facility and source involved, and
- (D) be signed by the applicant.

(f) **Operating permit conditions.**

(1) Emission limitations and other permit conditions established and made a part of the construction permit are incorporated into and become enforceable ~~limitations~~ requirements of the subsequently issued operating permit.

(2) Permit limitations in adjustment of, or in addition to, the facility's construction permit limitations may be made a condition of the facility's operating permit issuance.

(3) For a minor facility modified under a construction permit issued pursuant to OAC 252:100-7-15(a)(2), the operating permit may be modified using the FESOP enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(7)-(9) to incorporate the operating permit conditions described in paragraphs (1) and (2).

(g) **Duty to comply with the operating permit.** The permittee shall comply with all limitations and conditions of the operating permit. A violation of the limitations or conditions contained in the operating permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules.

## **SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES**

### **PART 5. PERMITS FOR PART 70 SOURCES**

#### **252:100-8-2. Definitions**

The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this Section, terms used in this Part retain the meaning accorded them under the applicable requirements of the Act.

**"Administratively complete"** means an application that provides:

- (A) All information required under OAC 252:100-8-5(c), (d), or (e);
- (B) A landowner affidavit as required by OAC 252:4-7-13(b);
- (C) The appropriate application fees as required by OAC 252:100-8-1.7; and
- (D) Certification by the responsible official as required by OAC 252:100-8-5(f).

**"Affected source"** means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

**"Affected states"** means:

- (A) all states:
  - (i) That are one of the following contiguous states: Arkansas, Colorado, Kansas, Missouri, New Mexico and Texas, and
  - (ii) That in the judgment of the DEQ may be directly affected by emissions from the facility seeking the permit, permit modification, or permit renewal being proposed; or
- (B) all states that are within 50 miles of the permitted source.

**"Affected unit"** means the same as the meaning given to it in the regulations promulgated under Title IV (acid rain) of the Act.

**"Applicable requirement"** means all of the following as they apply to emissions units in a Part 70 source subject to this Chapter (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):

- (A) Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act;
- (C) Any standard or other requirement under section 111 of the Act, including section 111(d);
- (D) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including the contents of any risk management plan required under 112(r) of the Act;
- (E) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;
- (G) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
- (H) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
- (I) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
- (J) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit; and
- (K) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

**"Begin actual construction"** means for purposes of this Part, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

**"Designated representative"** means with respect to affected units, a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

**"Draft permit"** means the version of a permit for which the DEQ offers public participation under 27A O.S. §§ 2-14-101 through 2-14-401 and OAC 252:4-7 or affected State review under OAC 252:100-8-8.

**"Emergency"** means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An

emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

**"Emissions allowable under the permit"** means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

**"Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. Fugitive emissions from valves, flanges, etc. associated with a specific unit process shall be identified with that specific emission unit. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act.

**"Enhanced NSR process"** means a process under which the evaluation of requirements applicable under NSR is integrated with a full determination of procedural and compliance requirements under the Part 70 source (Title V) operating permit program. This process is an alternative to traditional NSR process, and is only available for facilities already operating under a Title V permit. Under the enhanced NSR process, the 30-day public review period for a draft NSR permit is integrated with the 45-day EPA review of the Title V permit and would allow for the issuance of a major source construction permit whose applicable Title V implications have also been reviewed. Therefore, the applicable requirements of the construction permit may later be incorporated as a modification to the Title V operating permit using the administrative amendment process of OAC 252:100-8-7.2(a) – without further public or EPA review, as authorized in OAC 252:4-7-13(g)(4).

**"Final permit"** means the version of a part 70 permit issued by the DEQ that has completed all review procedures required by OAC 252:100-8-7 through 252:100-8-7.5 and OAC 252:100-8-8.

**"Fugitive emissions"** means those emissions of regulated air pollutants which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**"General permit"** means a part 70 permit that meets the requirements of OAC 252:100-8-6.1.

**"Insignificant activities"** means individual emissions units that are either on the list approved by the Administrator and contained in Appendix I, or whose actual calendar year emissions do not exceed any of the limits in (A) and (B) of this definition. Any activity to which a State or federal applicable requirement applies is not insignificant even if it meets the criteria below or is included on the insignificant activities list.

(A) 5 tons per year (TPY) of any one criteria pollutant.

(B) 2 tons per year for any one hazardous air pollutant (HAP) or 5 tons per year for an aggregate of two or more HAPs, or 20 percent of any threshold less than 10 tons per year for single HAP that the EPA may establish by rule.

**"MACT"** means maximum achievable control technology.

**"Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in subparagraph (A), (B), or (C) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major

Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987. For onshore activities belonging to Standard Industrial Classification (SIC) Major Group 13: Oil and Gas Extraction, pollutant emitting activities shall be considered adjacent if they are located on the same surface site; or if they are located on surface sites that are located within 1/4 mile of one another (measured from the center of the equipment on the surface site) and they share equipment. Shared equipment includes, but is not limited to, produced fluids storage tanks, phase separators, natural gas dehydrators, or emissions control devices. Surface site, as used in this definition, has the same meaning as in 40 CFR 63.761.

(A) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 TPY or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 TPY or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 TPY or more of any air pollutant (except gross particulate matter) subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary sources:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;



- (xviii) Sintering plants;
  - (xix) Secondary metal production plants;
  - (xx) Chemical process plants (not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
  - (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
  - (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
  - (xxiii) Taconite ore processing plants;
  - (xxiv) Glass fiber processing plants;
  - (xxv) Charcoal production plants;
  - (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
  - (xxvii) All other stationary source categories which, as of August 7, 1980, are being regulated by a standard promulgated under section 111 or 112 of the Act.
- (C) A major stationary source as defined in part D of Title I of the Act, including:
- (i) For ozone nonattainment areas, sources with the potential to emit 100 TPY or more of volatile organic compounds or oxides of nitrogen in areas classified or treated as classified as "Marginal" or "Moderate," 50 TPY or more in areas classified or treated as classified as "Serious," 25 TPY or more in areas classified or treated as classified as "Severe," and 10 TPY or more in areas classified or treated as classified as "Extreme"; except that the references in this paragraph to 100, 50, 25, and 10 TPY of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;
  - (ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 TPY or more of volatile organic compounds;
  - (iii) For carbon monoxide nonattainment areas:
    - (I) that are classified or treated as classified as "Serious"; and
    - (II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 TPY or more of carbon monoxide; and
  - (iv) For particulate matter (PM<sub>10</sub>) nonattainment areas classified or treated as classified as "Serious," sources with the potential to emit 70 TPY or more of PM<sub>10</sub>.

**"Maximum capacity"** means the quantity of air contaminants that theoretically could be emitted by a stationary source without control devices based on the design capacity or maximum production capacity of the source and 8,760 hours of operation per year. In determining the maximum theoretical emissions of VOCs for a source, the design capacity or maximum production capacity shall include the use of raw materials, coatings and inks with the highest VOC content used in practice by the source.

**"Permit"** means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

**"Permit modification"** means a revision to a Part 70 source construction or operating permit that meets the requirements of OAC 252:100-8-7.2(b).

**"Permit program costs"** means all reasonable (direct and indirect) costs required to develop and administer a permit program, as set forth in OAC 252:100-5-2.2 (whether such costs are

incurred by the DEQ or other State or local agencies that do not issue permits directly, but that support permit issuance or administration).

**"Permit revision"** means any permit modification or administrative permit amendment.

**"Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder.

**"Proposed permit"** means the version of a permit that the DEQ proposes to issue and forwards to the Administrator for review in compliance with OAC 252:100-8-8.

**"Regulated air pollutant"** means the following:

(A) Nitrogen oxides or any volatile organic compound (VOC), including those substances defined in OAC 252:100-1-3, 252:100-37-2, and 252:100-39-2, except those specifically excluded in the EPA definition of VOC in 40 CFR 51.100(s);

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II ozone-depleting substance subject to a standard promulgated under or established by Title VI of the Act;

(E) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Act (Hazardous Air Pollutants), including sections 112(g) (Modifications), (j) (Equivalent Emission Limitation by Permit, and (r) (Prevention of Accidental Releases), including the following:

(i) any pollutant subject to the requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act (Schedule for Standards and Review), any pollutant for which a subject source would be major shall be considered to be regulated as to that source on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and,

(ii) any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement; or

(F) Any other substance for which an air emission limitation or equipment standard is set by an existing permit or regulation.

**"Renewal"** means the process by which a permit is reissued at the end of its term.

**"Section 502(b)(10) changes"** means changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

**"Small unit"** means a fossil fuel fired combustion device which serves a generator with a name plate capacity of 25 MWe or less.

**"State-only requirement"** means any standard or requirement pursuant to Oklahoma Clean Air Act (27A O.S. §§ 2-5-101 through 2-5-118, as amended) that is not contained in the State Implementation Plan (SIP).

**"State program"** means a program approved by the Administrator under 40 CFR Part 70.

**"Stationary source"** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act as it existed on January 2, 2006.

**"Subject to regulation"** means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the EPA Administrator in subchapter C of Chapter I of 40 CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(A) Greenhouse gases (GHG) shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 TPY CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e) and are otherwise subject to regulation as previously described in this definition.

(B) The term TPY CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e) shall represent an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions (TPY), for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, and summing the resultant value for each to compute a TPY CO<sub>2</sub>e.

(C) If federal legislation or a federal court stays, invalidates, delays the effective date, or otherwise renders unenforceable by the EPA, in whole or in part, the EPA's tailoring rule (75 FR 31514, June 3, 2010), endangerment finding (74 FR 66496, December 15, 2009), or light-duty vehicle greenhouse gas emission standard (75 FR 25686, May 7, 2010), this definition shall be enforceable only to the extent that it is enforceable by the EPA.

**"Traditional NSR process"** means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the Part 70 source (Title V) operating permit program. This process is required for facilities that have not yet received a Part 70 source operating permit, but it may also be used (as an alternative to the enhanced NSR process) for facilities that have already received a Part 70 source operating permit. Under the traditional NSR process, the EPA has an opportunity to review a draft construction permit during the 30-day public review period. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified Part 70 source operating permit that includes a 30-day public review period and a separate 45-day EPA review period, as described in OAC 252:100-8-8 and OAC 252:4-7.

**"Trivial activities"** means any individual or combination of air emissions units that are considered inconsequential and are on a list approved by the Administrator and contained in Appendix J.

**"Unit"** means, for purposes of Title IV, a fossil fuel-fired combustion device.

#### **252:100-8-4. Requirements for construction and operating permits**

##### **(a) Construction permits.**

###### **(1) Construction permit required.**

**(A) Facilities without Part 70 operating permits.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit under Part 5 of OAC 252:100-8.

**(B) Facilities with Part 70 operating permits.** A construction permit is also required prior to

- (i) reconstruction of a major affected source under 40 CFR Part 63,
- (ii) reconstruction of a major source if it would then become a major affected source under 40 CFR Part 63, ~~or~~
- (iii) ~~for commencement of any physical change or change in method of operation that would be a significant modification under OAC 252:100-8-7.2(b)(2), or~~
- (iv) commencement of any physical change or change in method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY, calculated using the approach in 40 C.F.R. Section 49.153(b).

**(C) Additional Requirements.** In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

**(2) Requirement for case-by-case MACT determinations.**

**(A) Applicability.** The requirement for case-by-case MACT determinations apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998, unless the source has been specifically regulated or exempted from regulation under a subpart of 40 CFR Part 63, or the owner or operator has received all necessary air quality permits for such construction or reconstruction before June 29, 1998.

**(B) Exclusions.** The following sources are not subject to this subsection.

- (i) Electric utility steam generating units unless and until these units are added to the source category list.
- (ii) Stationary sources that are within a source category that has been deleted from the source category list.
- (iii) Research and development activities as defined in 40 CFR § 63.41.

**(C) MACT determinations.** If subject to this subsection, an owner or operator may not begin actual construction or reconstruction of a major source of HAP until obtaining from the DEQ an approved MACT determination in accordance with the following regulations: 40 CFR 63.41, 40 CFR 63.43 and 40 CFR 63.44, which are hereby incorporated by reference as they exist on July 1, 2000.

**(b) Operating permits.**

**(1) Operating permits required.** Except as provided in subparagraphs (A) and (B) of this paragraph, no Part 70 source subject to this Chapter may operate after the time that it is required to file a timely application with the DEQ, except in compliance with a DEQ-issued permit.

**(A)** If the owner or operator of a source subject to the requirement to obtain a Part 70 permit submits a timely application for Part 70 permit issuance or renewal, that source's failure to have a Part 70 permit shall not be a violation of the requirement to have such a permit until the DEQ takes final action on the application. This protection shall cease to apply if the applicant fails to submit, by the deadline specified in writing by the DEQ or OAC 252:100-8-4, any additional information identified as being reasonably required to process the application.

**(B)** If the owner or operator of a source subject to this Subchapter files a timely application that the DEQ determines to be administratively incomplete due to the applicant's failure to timely provide additional information requested by the DEQ, the applicant loses the protection granted under paragraph (A) of this Section. The source's failure to have a Part 70 permit shall be deemed a violation of this Subchapter.

**(C)** Filing an operating permit application shall not affect the requirement, if any, that a source have a construction permit.

(2) **Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application on forms supplied by the DEQ in accordance with this section.

(3) **Timely application.** Sources that are subject to the operating permit program established by this Chapter as of March 6, 1996, shall file applications on the following schedules outlined in ~~OAC 252:100-8-4(b)(4)~~. A timely application is one that is postmarked on or before the relevant date listed in ~~OAC 252:100-8-4(b)~~ below. In the event a major source consists of operations under multiple SIC codes, the primary activity shall form the basis for the initial permit application.

(4) **Application submittal schedule.** The following sources are subject to the operating permit program and shall submit initial permit applications according to the following schedule:

(A) No later than September 5, 1996:

(i) ~~Affected sources under the acid rain provisions of the Act shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file an application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the DEQ no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides, pursuant to the Act, §407.~~

(ii) ~~Any owner or operator shall submit no less than one third of their total applications for Part 70 sources located at sources classified by the following Source Standard Industrial Classification Codes and which belong to a single major industrial grouping other than 28 (Chemicals and allied products) or 29 (Petroleum refining and related industries):~~

~~(I) Petroleum and Natural Gas, 1311;~~

~~(II) Natural Gas Liquids, 1321;~~

~~(III) Electric Services, 4911, 4961;~~

~~(IV) Natural Gas Transmission, 4922;~~

~~(V) Natural Gas Transmission and Distribution, 4923; and~~

~~(VI) Petroleum Bulk Stations and Terminals, 5171.~~

(B) ~~All remaining Part 70 sources identified in (b)(4)(A)(ii) of this Subsection shall be subject to the operating permit program and shall submit initial permit applications no later than March 5, 1997.~~

(C) No later than March 5, 1997, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

(i) ~~Metals, 3312, 3315, 3321, 3341, 3351, 3411, 3412, 3432, 3466,~~

~~(ii) Brick Plants, 3251, 3297,~~

~~(iii) Commercial Printing, 2752, 2761.~~

(D) No later than July 5, 1998, any owner or operator shall submit their applications for Part 70 sources located at sources classified by the following Standard Industrial Classification Codes:

(i) ~~Refineries, 2911;~~

(ii) ~~Cement Plants, 3241;~~

(iii) ~~Chemical/Carbon, 2819, 2821, 2851, 2861, 2869, 2891, 2895, 2899, 2999, 3053, 3086, 3089;~~

(iv) ~~Petroleum Transportation/Terminals/Storage, 4612, 4613;~~

(v) ~~Food Products, 2013, 2074, 2095.~~

~~(E) All remaining Part 70 sources shall be subject to the operating permit program and shall submit initial permit applications no later than March 6, 1999.~~

~~(5) **Newly regulated sources.** A source that becomes subject to the Part 70 operating permit program at any time on or after March 6, 1996, shall file an administratively complete operating permit application in accordance with the following schedule.~~

~~(A) A new source shall file an administratively complete operating permit application within 180 days of commencement of operation.~~

~~(B) An existing source that becomes subject to the Part 70 operating permit program due to modification shall file an administratively complete operating permit application within 180 days of commencement of operation of the modification.~~

~~(C) An existing source that becomes subject to the Part 70 operating permit program without undergoing physical or operational changes resulting in an increase in the emission of any air pollutant subject to regulation shall file an administratively complete operating permit application by March 6, 1999 or within 12 months after the date the source first becomes subject to the Part 70 operating permit program, whichever is later.~~

~~(4) [Reserved]~~

~~(5) [Reserved]~~

~~(6) **Application acceptability.** Notwithstanding the deadlines established in paragraph (4) of this subsection, an application filed prior to the above deadlines following submission of the state program to EPA for approval shall be accepted for processing.~~

~~(7) **112(g) applications.** A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of such Act, shall file an application to obtain an operating permit or permit amendment or modification within twelve months of commencing operation. Where an existing Part 70 operating permit would prohibit such construction or change in operation, the source must obtain a construction permit before commencing construction.~~

~~(8) **Application for renewal.** Sources subject to this Chapter shall file an application for renewal of an operating permit at least 180 days before the date of permit expiration, unless a longer period (not to exceed 540 days) is specified in the permit. Renewal periods greater than 180 days are subject to negotiation on a case-by-case basis.~~

~~(9) **Phase II acid rain permits.** Sources required to submit applications under the Acid Rain Program shall submit these applications as required by 40 CFR 72.30(b)(2)(i) through (viii).~~

~~(10) **Application completeness.** See Environmental Permit Process, OAC 252:4-7-7 and the definition of "administratively complete" in OAC 252:100-8-2.~~

(c) **Enhanced NSR process.** An existing Part 70 source covered by an operating permit issued under this subchapter may be eligible to utilize the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) for a construction permit for modification of the source.

#### **252:100-8-5. Permit applications**

(a) **Confidential information.** If a source submits information to the DEQ under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the DEQ requests that the source do so.

(b) **Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the

DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) **Standard application form and required information.** Sources that are subject to the Part 70 permit program established by this Chapter shall file applications on the standard application form that the DEQ makes available for that purpose. The application must include information needed to determine the applicability of any applicable requirement, or state-only requirement, or to evaluate the fee amount required under the schedule approved pursuant to OAC 252:100-5-2.2(b)(2). The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted. The source must provide a list of any insignificant activities that are exempted because of size or production rate. Trivial activities need not be listed. The standard application form and any attachments shall require that the information required by OAC 252:100-8-5(d) and/or (e) be provided.

(d) **Construction permit applications.**

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

(A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination will be made on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant.

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(3) Construction permit applications for existing source modifications that are eligible for the enhanced NSR process under 252:100-8-4(c) must indicate in the application whether they intend to utilize:

(A) the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) and the administrative amendment process for the ensuing operating permit modification, or

(B) the traditional NSR process.

(e) **Operating permit applications.**

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

- (2) A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.
- (3) The following emissions-related information:
- (A) All emissions of pollutants for which the source is major, and all emissions (including fugitive emissions) of regulated air pollutants. Fugitive emissions shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under OAC 252:100-8-5(c) or OAC 252:100-8-3(b).
  - (B) Identification and description of all points of emissions described in OAC 252:100-8-5(e)(3)(A) in sufficient detail to establish the basis for fees and applicability of the Act's requirements.
  - (C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard.
  - (D) The following information to the extent it is needed to determine or regulate emissions:
    - (i) fuels,
    - (ii) fuel use,
    - (iii) raw materials,
    - (iv) production rates, and
    - (v) operating schedules.
  - (E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.
  - (F) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source.
  - (G) Other information required by any applicable requirement, or state-only requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).
  - (H) Calculations on which the information in items (A) through (G) of this paragraph is based.
- (4) The following air pollution control requirements:
- (A) Citation and description of all applicable requirements and all state-only requirements.
  - (B) Description of or reference to any applicable test method for determining compliance with each applicable requirement and state-only requirement.
- (5) Other specific information required under the DEQ's rules and statutes to implement and enforce other applicable requirements of the Act or of this Chapter or to determine the applicability of such requirements.
- (6) An explanation of any proposed exemptions from otherwise applicable requirements and state-only requirements.
- (7) Additional information as determined to be necessary by the DEQ to define alternative operating scenarios identified by the source pursuant to OAC 252:100-8-6(a)(9) or to define permit terms and conditions implementing OAC 252:100-8-6(f) or 252:100-8-6(a)(10).
- (8) A compliance plan for all covered sources that contains all the following:
- (A) A description of the compliance status of the source with respect to all applicable requirements and state-only requirements as follows:



- (i) For applicable requirements and state-only requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
  - (ii) For applicable requirements and state-only requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
  - (iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
- (B) For sources not in complete compliance, a compliance schedule as follows:
- (i) A schedule of compliance for sources that are not in compliance with all applicable requirements and state-only requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements and state-only requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.
  - (ii) A schedule for submission of certified progress reports no less frequently than every 6 months.
- (C) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.
- (9) Requirements for compliance certification, including the following:
- (A) A certification of compliance with all applicable requirements and state-only requirements by a responsible official consistent with OAC 252:100-8-5(f) and section 114(a)(3) of the Act;
  - (B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
  - (C) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement state-only requirements or by the permitting authority; and
  - (D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.
- (10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.
- (f) **Certification.** Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Chapter shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

## **252:100-8-7.2. Administrative permit amendments and permit modifications**

### **(a) Administrative permit amendments.**

#### **(1) An administrative permit amendment:**

- (A) Corrects typographical errors;
- (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- (C) Requires more frequent monitoring or reporting by the permittee;
- (D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;
- (E) Incorporates into ~~the~~ an existing Part 70 source operating permit the requirements from preconstruction review permits issued by the DEQ under this Part and the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4).

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

(3) An administrative permit amendment shall be made by the DEQ in accordance with the following:

- (A) The DEQ shall take final action on a request for an administrative permit amendment within 60 days from the date of receipt of such a request, and may incorporate the proposed changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.
- (B) The DEQ shall submit a copy of the revised permit to the Administrator.
- (C) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The DEQ shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAC 252:100-8-6(d) for administrative permit amendments made pursuant to OAC 252:100-8-7.2(a)(1)(E).

(b) **Permit modification.** A permit modification is any revision to a permit that cannot be accomplished under OAC 252:100-8-7.2(a). A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR Part 72.

#### **(1) Minor permit modification procedures.**

##### **(A) Criteria.**

- (i) Minor permit modification procedures may be used only for those permit modifications that:
  - (I) Do not violate any applicable requirement, or state-only requirements;
  - (II) Do not involve significant changes to existing monitoring, reporting or recordkeeping requirements in the permit;
  - (III) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
  - (IV) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include federally-enforceable emissions caps assumed to avoid classification as a modification under any provision of Title I and alternative

emissions limits approved pursuant to regulations promulgated under § 112(i)(5) of the Act; and

(V) Are not modifications under any provision of Title I of the Act.

(ii) Notwithstanding OAC 252:100-8-7.2(b)(1)(A)(i) and 252:100-8-7.2(b)(2)(A), minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State's implementation plan or in applicable requirements promulgated by EPA.

(B) **Application.** To use the minor permit modification procedures, a source shall submit an application requesting such use which shall meet the permit application requirements of Tier I under OAC 252:4-7 and shall include the following:

- (i) A description of the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs;
- (ii) The source's suggested modification language;
- (iii) Certification by a responsible official, that the application and the proposed modification meet the criteria for use of minor permit modification procedures; and
- (iv) Completed forms for any notices required by OAC 252:4-7 and OAC 252:100-8-7.2(b)(1)(C).

(C) **EPA and affected state notification.** If the proposed minor modification is of a permit that underwent EPA review in accordance with OAC 252:100-8-8, the provisions of that section shall apply to the minor modification application.

(D) **Timetable for issuance.** Within 90 days of the DEQ's receipt of a complete application under OAC 252:4-7 the DEQ shall:

- (i) Issue the minor permit modification as approved;
- (ii) Deny the minor permit modification application; or
- (iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures or administrative amendment procedures.

(E) **Source's ability to make change.** Immediately after filing an application meeting the requirements of these minor permit modification procedures, the source is authorized to make the change or changes proposed in the application. After the source makes the change and until the DEQ takes any of the actions specified in OAC 252:100-8-7.2(b)(1)(D)(i) through (iii), the source must comply with the applicable requirements and state-only requirements governing the change and the proposed permit terms and conditions. During this period, the source need not comply with the existing terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(F) **Permit shield.** The permit shield under OAC 252:100-8-6(d) will not extend to minor permit modifications.

(G) **Permittee's risk in commencing construction.** 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 DEQ will not consider the possibility of the permittee suffering financial loss due to such investment when deciding whether to approve, deny, or approve in modified form a minor permit amendment.

(2) **Significant modification procedures.**

(A) **Criteria.** Significant modification procedures shall be used for applications requesting permit modifications that:

- (i) Involve any significant changes in existing monitoring requirements in the permit;
- (ii) Relax any reporting or recordkeeping requirements.
- (iii) Change any permit condition that is required to be based on a case-by-case determination of an emission limitation or other standard, on a source-specific determination of ambient impacts, or on a visibility or increment analysis;
- (iv) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement or state-only requirement which the source has assumed to avoid some other applicable requirement or state-only requirement to which the source would otherwise be subject. Such terms and conditions include:
  - (I) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I;
  - (II) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Act; and
- (v) Are modifications under any provision of Title I of the Act; and,
- (vi) Do not qualify as minor permit modifications or administrative amendments.

(B) **Procedures for processing.** Significant permit modifications shall meet all requirements of these rules that are applicable to Tier II applications. The application for the modification shall describe the change, the emissions resulting from the change, and any new applicable requirements or state-only requirements that will apply if the change occurs.

(C) **Issuance.** The DEQ shall complete review of significant permit modifications within nine months after receipt of a complete application, but shall be authorized to extend that date by up to three months for cause.

#### **252:100-8-8. Permit review by EPA and affected states**

(a) **Applicability.** This Section applies to all Subchapter 8 permit actions except administrative permit amendments.

(b) **Format.** To the extent practicable, information provided to the EPA by applicants shall be in computer-readable format compatible with EPA's national database management system.

(c) **Recordkeeping.** The DEQ will keep for 5 years records required by this Section and will submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of the Act or of this Chapter.

(d) **Transmission of information to EPA.** The DEQ shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit, unless waived by the Administrator for a category of sources other than major sources. In the alternative, the DEQ may require an applicant upon filing to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the DEQ may submit a permit application summary form and any relevant portion of the permit application and compliance plan, in place thereof.

(e) **Transmission of notice of draft permit to affected states.** The DEQ shall give notice of each draft permit to any affected State on or before the time that this notice is provided to the public under 27A O.S. § 2-14-302, except to the extent that paragraph 8-7.2(b)(1) regarding minor permit modification applications, and 40 CFR § 70.7(e)(3)(iii) regarding group processing of minor permit modifications, requires the timing of the notice to be different.

(f) **Timelines for submission of EPA-draft or proposed permit review copy to EPA.** ~~The For~~ the categories specified in (1), (2), and (3), below, the DEQ shall review public comments, revise the draft permit as appropriate and submit the proposed permit to EPA for review no later than 60 days before the issuance deadline established in OAC 252:4-7-31, except as provided in OAC 252:4-7-9 through 4-7-11, which stop the review timeline and provide additional time for permit review.

(1) Operating permit applications for Part 70 sources that are not currently covered by a Part 70 source operating permit,

(2) Applications to modify existing Part 70 operating permits where the associated construction permit application underwent the traditional NSR process or where a construction permit was not required, and

(3) Construction permit applications eligible to utilize the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4).

(g) **Notice of non-acceptance.** The DEQ shall notify the Administrator and any affected State in writing of any refusal by the DEQ to accept all recommendations for the proposed permit that the Administrator or the affected State submitted during the review period. The notice will include the DEQ's reasons for not accepting any such recommendation. The DEQ is not required to accept recommendations that are not based on applicable requirements of the Oklahoma Clean Air Act or 40 CFR Part 70, as applicable.

(h) **EPA Part 70 source operating permit review and non-objection.** Upon expiration of EPA's 45-day review period or receipt of notice from the EPA that it will not object to a proposed Part 70 source operating permit (or construction permit processed under the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4)), the DEQ shall issue the proposed permit as final unless an administrative permit hearing has been timely and properly requested. [See Tier III procedures under 27A O.S. §2-14-304]

(i) **EPA Part 70 source operating permit review and objection.**

(1) **Timing.** No Part 70 source operating permit for which an application must be transmitted to the Administrator under subsection (a) of this Section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) **Form of objection.** An EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections.

(3) **Additional grounds.** Failure of the DEQ to do any of the following also shall constitute grounds for an objection:

(A) Comply with subsections (d) or (e) of this Section;

(B) Submit any information necessary to review adequately the proposed permit; or

(C) Process the permit application according to the uniform permitting requirements of OAC 252:4-7 Part 1.

(4) **Copy.** The Administrator will provide the permit applicant a copy of the objection.

(5) **DEQ response.** The DEQ shall consult with EPA and the applicant and shall amend the permit and submit for approval an amended proposed permit to EPA within 90 days after the date of EPA's objection. If the Administrator objects to issuance of a Part 70 source operating permit modification associated with a construction permit initially processed under the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4), the Director may choose to notify the Administrator of DEQ's intent to complete the construction permit

application review under the traditional NSR process while working to resolve EPA's objection.

(6) **Failure of DEQ to respond.** If the DEQ fails, within 90 days after the date of the EPA objection, to amend and resubmit the amended proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of EPA's Part 71 regulations.

(j) **Public petitions to the Administrator.** If the Administrator does not object in writing to issuance of a Part 70 source operating permit under subsection ~~(h)~~ (i) of this Section, any person that meets the requirements of this subsection may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in 27A O.S. § 2-14-302.A.2., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the DEQ shall not issue the Part 70 source operating permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the DEQ has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances. If the DEQ revokes the permit, it may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(k) **Effect on administrative permit hearing.** When a public petition or an EPA objection is registered on a proposed permit on which an administrative permit hearing has been requested in accordance with the Oklahoma Uniform Environmental Permitting Act, 27A O.S. §§ 2-14-101 through 2-14-401, the DEQ may stay the evidentiary part of the hearing involving cross-examination until EPA objections are resolved.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

Before the Air Quality Advisory Council on June 17, 2020; July 22, 2020; October 21, 2020;  
and November 12, 2020

Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 1. General Provisions

252:100-1-3 [AMENDED]

252:100-1-4 [AMENDED]

Subchapter 7. Permits for Minor Facilities

Part 1. General Provisions

252:100-7-1.1 [AMENDED]

Part 3. Construction Permits

252:100-7-15 [AMENDED]

Part 4. Operating Permits

252:100-7-18 [AMENDED]

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

Part 5. Permits for Part 70 Sources

252:100-8-2 [AMENDED]

252:100-8-4 [AMENDED]

252:100-8-5 [AMENDED]

252:100-8-7.2 [AMENDED]

252:100-8-8 [AMENDED]

**DESCRIPTION:** The Department of Environmental Quality (Department or DEQ) is proposing to amend and update various sections in OAC 252:100, Subchapters 1, 7, and 8, to better align the Department's permit requirements and issuance process for minor source construction and operating permits as well as Part 70 source (major source) construction and operating permits with the New Source Review (NSR) permit requirements, the guidance on Federally Enforceable State Operating Permits (FESOPs), and Title V operating permit requirements 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. The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules requiring public notice are not less stringent than the federal rules require. In addition, the formal adoption of the FESOP structure will ensure continued enforceability of minor source operating permits issued by the Department. This will remove an obstacle in obtaining approval from EPA for relevant portions of Oklahoma's State Implementation Plan (SIP), which will help ensure that the Department retains approval of the state NSR permit program and the Title V operating permit program.

**CLASSES OF PERSONS AFFECTED:** Classes of persons affected are the owners and operators of facilities that are subject to the permitting requirements in OAC 252:100-7 (minor sources) and OAC 252:100-8 (major sources).

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** The owners and operators of facilities that are subject to the permitting requirements in OAC 252:100-7 and OAC 252:100-8 will bear the costs.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The Department has received no information on cost impacts from private or public entities pertaining to the proposed rule.

**CLASSES OF PERSONS BENEFITTED:** The proposed changes will benefit the citizens of Oklahoma and owners and operators of the facilities subject to these regulations. By ensuring that the updated rules are consistent with EPA program requirements, the Department can continue to implement and enforce the requirements rather than EPA, which will benefit owners and operators of minor sources subject to permitting and Part 70 sources (major sources), all of which are subject to permitting requirements.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** The Department anticipates no significant economic impact as a result of the proposed changes.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The Department anticipates no economic impact on political subdivisions as a result of the proposed changes.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** The Department expects negligible adverse effect on small business as a result of the proposed changes.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** No fee changes are included in the proposed amendment.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** The Department anticipates there will be minimal costs associated with the implementation and enforcement of these proposed amendments. The Department will benefit from the proposal because it will allow state implementation and enforcement of these requirements.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** There are none. No other agencies will be implementing or enforcing the proposed rule.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Federal grants and fees will continue to be used as the sources of revenue to implement and enforce the proposed rule.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The proposed revision should have little effect on net revenues for the Department and/or other agencies.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** Cooperation of political subdivisions will not be required to implement or enforce the proposed rule.



**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** The Department has worked extensively with EPA to make changes in a manner that would minimize the cost to the regulated community, while achieving the purpose of the proposed rule.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** The proposed changes will establish state program requirements that are neither more nor less stringent than those prescribed by the federal program requirements. The compliance costs for affected sources under the state rule should be similar to those under the federal program.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The proposed revision will have a positive effect on public health, safety, and the environment by clarifying and updating requirements to keep the public informed of permitting actions.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed changes will help keep the public informed of permitting actions that could affect public health, safety, and the environment.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** If the proposed changes are not implemented, the Department's program may not be fully approvable by EPA, which could ultimately result in its being implemented and enforced by the federal government rather than the State.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** There will be minimal impact on business entities since the proposed changes will better align state requirements with the current federal requirements. The owners or operators of businesses subject to federal requirements will benefit from consistent state and federal standards.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** May 15, 2020  
**MODIFIED ON:** September 15, 2020, November 12, 2020

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**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**

**EXECUTIVE SUMMARY:**

The Department of Environmental Quality (Department or DEQ) is proposing to amend and update various sections in OAC 252:100, Subchapters 1, 7, and 8, to better align the Department's construction and operating permit requirements and issuance processes for minor facilities and Part 70 sources (major sources) with the New Source Review (NSR) permit requirements and Title V operating permit requirements 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, respectively, and the guidance on Federally Enforceable State Operating Permits (FESOPs). The gist of the proposed rule and the underlying reason for these revisions is to ensure that the State's rules requiring public notice are not less stringent than the federal rules require. In addition, the formal adoption of the FESOP structure, the formal designation of the "enhanced" NSR procedure, and the new option to follow the "traditional" NSR procedure will ensure continued enforceability of permits issued by the Department while offsetting some new requirements with new alternatives to expedite the process of permit issuance. Changes made to the DEQ rules to bring them into alignment with federal requirements will remove an obstacle in obtaining approval from EPA for relevant portions of Oklahoma's State Implementation Plan (SIP), which will help ensure that the Department retains approval of the state NSR permit program and the Title V operating permit program.

**DIFFERENCES FROM ANALOGOUS FEDERAL RULES:**

The federal rules establish basic air quality management program components that must be adopted by a state to run its state permitting program. Most of the proposed rule changes incorporate minimum requirements needed to meet federal rules. The exception is the transformation of the current minor facility state air quality operating permit program into a FESOP program. There is no federal requirement for a state to provide a minor facility operating permit program, but states that elect to have such a program must meet certain minimum federal requirements. Oklahoma has employed a minor facility operating permit program for decades to the benefit of its regulated community and the proposed rule changes, once adopted, will bring the current state operating program into alignment with the minimum federal requirements for a FESOP program.

**ENVIRONMENTAL BENEFIT STATEMENT:**

An Environmental Benefit Statement is not required.

**SUMMARY OF COMMENTS AND RESPONSES:**

See the attached response-to-comments document which addresses proposed changes to both Chapter 4 and Chapter 100.

**DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

**SUMMARY OF COMMENTS AND STAFF RESPONSES FOR PROPOSED REVISIONS  
TO  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE, SUBCHAPTER 7  
AND  
CHAPTER 100. AIR POLLUTION CONTROL RULES, SUBCHAPTERS 1, 7, AND 8**

**COMMENTS RECEIVED PRIOR TO AND DURING THE *OCTOBER 21, 2020*  
AIR QUALITY ADVISORY COUNCIL MEETING AND DURING THE *NOVEMBER 12,*  
*2020* CONTINUED AIR QUALITY ADVISORY COUNCIL MEETING**

**Written Comments**

**The Petroleum Alliance of Oklahoma** – Submitted as an attachment to an email received on August 31, 2020 from Mr. Howard L. (Bud) Ground, Director of Regulatory Affairs. Note that these comments were submitted in response to the Department's request during the July 22, 2020 Air Quality Advisory Council Special Meeting (AQAC) for additional input on the proposal from stakeholders. Their comments are also incorporated by reference in comments later submitted by Enable Midstream Partners, LP (*see below*).

**Comments specific to Chapter 4, Subchapter 7**

1. **COMMENT:** The Petroleum Alliance of Oklahoma (hereafter "The Alliance") requested clarification that based on the proposed language in OAC 252:4-7-13(g)(7)-(9) it is ODEQ's responsibility to publish the 30-day Public Notices for draft individual permits that are based on Tier I applications and not the applicant's responsibility.

**RESPONSE:** Under the proposal, it will be the Department's responsibility to publish all Air Quality-related Tier I public notices on its web site.

2. **COMMENT:** The Alliance requested that the 30-day public review period under proposed OAC 252:4-7-13(g)(7) & (9) be changed to 14-days to allow the regulated entities more flexibility and to obtain permits more expeditiously. The Alliance cited excerpts from 85 FR 26641 for EPA's proposed approval of portions of the State of Florida's SIP that would allow a 14-day public review period for Federally Enforceable State Operating Permits (FESOPs).

**RESPONSE:** The Department believes that a 30-day public review period is generally a reasonable length of time to afford interested parties the opportunity to evaluate a proposed action and to provide comments to the Department, without causing an undue delay or burden on applicants. It is the minimum public review period specified for many proposed actions under federal and state statutes and program rules. Cases can be made for both flexibility and consistency in many aspects of environmental programs.

The Department notes that any NSR-type modifications that could be made to the FESOP (but which would not require a construction permit under Oklahoma rules) would still require 30-day public review. For example, an increase in the throughput limit for tanks could be accomplished as a modification to the FESOP with 30-day public review but would not also require a construction permit (minor NSR permit).

The Department recognizes that the federal requirements for FESOPs are not as well-defined as they might be. However, the Department is hesitant to base its policy on a Florida FESOP rule change for which EPA approval is only at the proposed stage of the process at the time the Department is developing its version of the rules. In addition, the Department believes that the proposed *FESOP enhanced NSR process* it is proposing for Oklahoma facilities will expedite issuance of modifications to FESOPs without requiring *any* public review of those operating permit modifications. That is, the incorporation of the requirements established in a minor NSR permit into the FESOP (as a permit modification) will not require another round of public review under *FESOP enhanced NSR*. In this way, the Department's proposal offers more flexibility than does Florida's.

In short, the Department believes that a consistent 30-day web-based comment period for Subchapter 7 individual facility construction permits (minor NSR permits), the initial FESOP, and any FESOP modification that does *not* follow a construction permit that uses the FESOP enhanced NSR process is the most appropriate path forward, combining flexibility and SIP approvability.

**UPDATE TO RESPONSE:** It was brought to the Department's attention that EPA approved Florida's rule change that would allow a 14-day public review period for FESOPs. The Department's response otherwise remains unchanged.

3. **COMMENT:** The Alliance submitted the following comment: "OAC 252:4-7-31 sets forth timelines ODEQ must meet for issuance of air quality permits. The Alliance is aware of ODEQ tolling permits in order to circumvent these codified permit issuance timelines. With the proposed rule changes in this rule package, more air quality permits will be undergoing public review, thus increasing the time that it will take to issue these permits. In the case of construction permits, the Alliance is concerned that projects could be delayed due to ODEQ unnecessarily tolling the permit in order to avoid current timelines already codified. The Alliance respectfully requests that OAC 252:4-7-31 be opened and changes be made to limit the number of times that a permit can be tolled by ODEQ."

**RESPONSE:** The Department does not agree that the changes recommended by the Alliance are necessary or appropriate. OAC 252:4-7-9 limits the circumstances when application review time is tolled, primarily to allow the applicant to address and correct administrative and technical deficiencies, so that staff can complete the review of a complete permit application. The Department understands the frustration that applicants feel when their permits are not issued as expeditiously as all parties would like, particularly when timelines are affected by agency workload and staffing constraints, especially when construction activities are booming. The Department prioritizes resources, where it can, to ensure that applicants' higher priority permitting actions are reviewed and issued as quickly

as practicable, even if that may slow down the issuance of a permit whose delayed issuance will not slow down facility construction activities. For example, the issuance of a Title V renewal may be delayed to prioritize issuance of a construction permit. The Department tries to work with each applicant to get a technically complete permit application in place as quickly as possible to ensure prompt permit issuance. The Department encourages applicants to reach out for feedback from the assigned permit writer early in the process, to ensure the application is administratively and technically complete. Further, if an applicant is concerned that an application is moving through the system too slowly, the applicant may reach out to AQD permitting managers to request assistance in expediting the process.

4. **COMMENT:** The Alliance requested clarification that it is the Department's intent that all Title V minor modifications are required to undergo public review. The Alliance stated that if this is the case, then no Title V minor modifications can be classified as Tier I applications; therefore, OAC 252:4-7-32(b)(2)(B) was inadvertently not revised or removed.

**RESPONSE:** Previously, a Title V minor modification did not require either a construction permit or public review. As such, the corresponding operating permit modification was considered to be a Tier I permitting action. The reason for part of the proposed rulemaking is that some facility changes that qualify as minor modifications under Title V (and 252:100-8-7.2(b)(1)) are required to undergo NSR (get a construction permit), including public review, to satisfy federal rules. The subsequent modification of the Part 70 operating permit would still be considered a Tier I action, and that action would not be required to undergo public review. The Department's existing three-tiered public review system was set up by Oklahoma statute, which accommodates additional provisions needed to satisfy federal program requirements. These new Tier I permitting actions, which will require public review on the web, would not typically be classified as Tier II under Oklahoma statutes, but *are* required to undergo public review to satisfy federal rules. To satisfy both state and federal requirements while minimizing the burden on the facility, the Department is proposing to, in effect, create a subcategory of Tier I applications for those that are required to undergo public review exclusively due to federal requirements. The advantage for the applicant is that the subcategory does not need full Oklahoma Tier II processing (e.g., publication in a newspaper). Tier II applications will still require publication in the newspaper, but for Tier I applications (including construction permits for projects that are considered minor modifications to Title V permits) that require public notice, only the web notice, prepared and posted by the Department, will be required. That is one of the reasons why the proposal retains the Tier I classification in OAC 252:4-7-32(b)(2)(B). The Department would also note (as discussed in more detail in response to a later question) the minor modification to the Title V operating permit will still require no public review. It is the construction permit (minor NSR permit) that will require public review.

The Department recognizes that these new public notice and new construction permit requirements will add to facilities' regulatory burden. Staff has and will continue to work on solutions to address this concern. For instance, following the July 22 Special AQAC meeting, the proposal was updated to allow that, for projects that would be minor

modifications, those that fall below proposed emissions thresholds would be exempt from the requirement to get minor NSR permits. The Department will discuss this proposal in more detail later in response to another question.

For these reasons, the Department does not concur with the Alliance's conclusion regarding Tier I classification and the need for a corresponding revision or removal of OAC 252:4-7-32(b)(2)(B).

### **Comments specific to Chapter 100, Subchapter 7**

5. **COMMENT:** The Alliance requested that the wording in the proposed definition of "FESOP Enhanced NSR process" in OAC 252:100-7-1.1 be clarified, in that the proposal improperly "... use[s] a definition to codify procedural requirements" that should be located in a more appropriate place in Subchapter 7.

**RESPONSE:** Much of the language included in the proposed definition of "FESOP Enhanced NSR process" was adapted from EPA's description of the enhanced NSR process. The key point is that under FESOP enhanced NSR, both the public and EPA review will occur only during the issuance of the construction (NSR) permit. There will be no further public or EPA review when the requirements are incorporated into an existing FESOP as a permit modification. That is, the EPA and public will have one 30-day period to comment on NSR issues specifically, and also how the NSR and operating requirements will be integrated into the operating permit. All of that review will occur exclusively during the 30-day review of the construction permit. The Department believes that the language used in the proposed definition is explanatory, and that the actual requirements are properly established in other parts of the rules.

6. **COMMENT:** The Alliance requested that the proposal clarify whether Subchapter 7 is intended to include a "traditional NSR process" for minor facilities, similar to the "traditional NSR process" for Part 70 Sources, as proposed for Subchapter 8.

**RESPONSE:** The Department does intend to allow both the traditional NSR process and the FESOP enhanced NSR process as options for permitting actions under Subchapter 7. In response to the Alliance's comment, the Department intends to supplement the posted proposal when it is brought to the October AQAC meeting by adding a formal definition of "traditional NSR process" to OAC 252:100-7-1.1 that describes what has been our regular process.

As you pointed out, the Department is allowing both traditional NSR and enhanced NSR as options for permitting actions in Subchapter 8.

The Department would like to go over the comparative advantages of traditional versus enhanced NSR for major source permitting actions before it addresses the comparison for minor sources. For Subchapter 8, the traditional NSR process requires a shorter review period, because the 30-day NSR review for the public and EPA are one and the same. Enhanced NSR adds 45-day Title V review – EPA's review for implications of

incorporating the new NSR requirements into the existing operating permit – onto the review of the construction permit. If an applicant requests "concurrent review," and no substantive public comments are received, the *draft* permit is deemed to be the *proposed* permit and the EPA has an additional 15 days beyond the 30-day public review period to complete their review. If substantive public comments are received during the 30-day public comment period, AQD reviews and answers the comments (making changes to the permit if warranted) and issues a *proposed* permit for EPA review. At that point, EPA has the full 45 days for their review of the proposed permit. Because enhanced NSR combines review of both the NSR permit and the Title V permit implications, the process is at least 15 days longer than traditional NSR and, perhaps, 45-days longer, not including the additional time needed to address substantive comments. The benefit of enhanced NSR to the applicant is that the public review occurs only once.

For Subchapter 7, there is no 45-day EPA review period. Therefore, it would seem that FESOP enhanced NSR would almost always be preferable to traditional NSR. However, there may be a case where the equipment or limitations established in the construction permit need to be changed in a manner that necessitates another 30-day review period when the FESOP permit is modified. Or there may be other advantages to the applicant that may make traditional NSR more appealing. In any event, the Department has chosen to retain both options: traditional NSR and FESOP enhanced NSR for flexibility. Further, traditional NSR will be required for a facility that does not already have an operating permit.

7. **COMMENT:** The Alliance noted that the definition of "FESOP Enhanced NSR process" in OAC 252:100-7-1.1 states that the "process is only available for facilities already operating under a FESOP permit," and requested that the Department clarify what process new minor source facilities that have never been constructed follow if they cannot use the FESOP Enhanced NSR process.

The Alliance asked if these proposed changes are approved:

- A. Will all current minor source operating permits be considered FESOPs?
  - a. If not, what process will they need to undergo if they have to obtain a construction permit?
  - b. What would be the basis for stating existing permits are not FESOP, since Oklahoma has a SIP approved minor source permitting program?
  - c. What is the risk to industry with synthetic minor source facilities if the Department states the current permits are not FESOPs?
- B. Will General Permits be considered FESOPs?
  - a. If so, what process will someone need to go through if they obtain a NOI to Construct under a General Permit and then instead of applying for a NOI to Operate under the General Permit, they apply for a minor source operating permit?
  - b. If not, what is the process if an applicant obtains an NOI to Construct under a General Permit, and then instead of applying for a NOI to Operate under the General Permit, they apply for a minor source operating permit?

**RESPONSE:**

- A. The Department believes that all existing Subchapter 7 individual facility operating permits are federally enforceable, and thus have been, in effect, FESOPs. As the Alliance noted, language currently in the SIP includes approval of older agency rules covering minor facility operating permits, making them federally enforceable. However, EPA has raised concerns about our process, and believes that the Department needs to formalize the process – particularly by adding a public review component for minor facilities. To that end, our permitting group is developing an approach and a schedule to public notice all current individual facility Subchapter 7 operating permits for 30-day public review on the web, followed by re-issuance of those permits with a formal FESOP designation. Again, the Department would note that, for Subchapter 7 permits, the 30-day public review also represents an opportunity for EPA to comment on a permit. For Subchapter 7 permits, there is no separate EPA review that takes place after the public comment period closes.

If the proposal is approved and goes into effect, a modification for a facility with a Subchapter 7 operating permit that has not yet undergone this formal upgrade to official FESOP status, will be required to undergo Traditional NSR for new construction. A facility that requests a modification to a current operating permit – that does not first require a construction permit – will undergo 30-day public review on the web after which the modified version of the operating permit will be issued, formally, as a FESOP.

A new minor facility that will not pursue a GP or PBR would be required to undergo traditional NSR. That is, the facility will need to obtain a Subchapter 7 individual facility construction permit. That permit will undergo Tier I 30-day public review on the web. Within 180 days after startup, the facility will need to submit an application for the operating permit (the FESOP). The FESOP will also undergo Tier I 30-day public review on the web.

A facility that is currently operating, but was never required to obtain a construction permit, would need to undergo Tier I 30-day public review to obtain a FESOP for the existing equipment if the facility chooses to obtain a permit. (Some previously permit exempt facilities may desire to have permits even if not required to have them.)

**UPDATE TO RESPONSE:** As stated in our original response, the Department believes that all existing Subchapter 7 individual facility operating permits are federally enforceable. Additional discussion with EPA staff lends support to the Department's belief that the current rules incorporated into the SIP provide a foundation for the federal enforceability of all current Subchapter 7 operating permits. There are issues with some aspects of our program that could, should EPA choose to issue a finding of deficiency, imperil that status in the future. That element of risk will continue until the Department addresses all outstanding issues, both with regard to the minor NSR program and the Subchapter 7 operating permit program. Further, EPA staff has clarified that if DEQ submits and EPA approves a FESOP program in Oklahoma's SIP, the approval would be "date forward." That is, EPA would approve DEQ's FESOP



issuance process, and would then consider all minor facilities to be FESOPs that are issued under the process after the effective date of the SIP approval. Paragraphs 2 through 4 of our original response remain unchanged.

- B. Yes, PBRs and General Permits (GPs) will be considered FESOPs if the proposed rules are adopted. They have already undergone public and EPA review, so that is not a concern. Registration under PBRs and Notices of intent to construct and operate under GPs do not need to undergo additional public review, because they signify that the facility in question will abide by an already established FESOP (the PBR or GP). Our current rule changes are intended to formalize that definition and to make the process explicit.

A facility with a current operating permit may, therefore, not use the FESOP enhanced NSR process for any new individual facility construction permit.

All GPs are considered to be FESOPs, and our current process under which an applicant submits an NOI to construct under a GP will not be altered as a result of these rule changes. PBRs are also FESOPs and the registration process for PBRs will continue without any changes.

However, the approach where a facility with an individual Subchapter 7 operating permit submits an NOI to construct under a GP (to authorize construction activities) but then submits an application for an individual minor source operating permit once the new equipment is installed and operating is a different, more complicated process. The Department's current thinking is that, when the modified individual FESOP is to be issued, that permit would be required to undergo 30-day public review on the web. The NOI process used to authorize construction would not be impeded or slowed down by these new requirements, but for the facility to move out of the GP and back into an individual operating permit will require 30-day public review on the web.

**UPDATE TO RESPONSE:** Based on further discussions with EPA, the Department understands that "FESOP" is a *term of art* that will apply to permits that meet requirements established in EPA guidance (which the Department is adopting into the rules establishing the program) only after EPA has formally approved the incorporation of these rules into the Oklahoma SIP. All current PBRs and GPs are federally enforceable, but they will not be considered to be FESOPs, in a formal sense, until after the EPA finalizes approval of our SIP submission (including the PBR rules proper) and, subsequently, the Department issues an updated version of a particular GP or PBR, should the Department determine this action is warranted.

8. **COMMENT:** The Alliance requested that the Department replace all instances of the term "operating permit" in Subchapter 7 with "FESOP" to avoid confusion, since the proposed definition of FESOP in OAC 252:100-7-1.1 is "an operating permit issued under Subchapter 7 of this Chapter..."

**RESPONSE:** The Department does not believe that defining all Subchapter 7 operating permits as FESOPs introduces ambiguity, nor does the Department believe it is practical or necessary to open each section of Subchapter 7 that contains the term "operating permit" to make the requested change. If it is brought to the Department's attention that there is a particular provision where that change would be helpful in one of the sections that is currently open for rulemaking, the Department would consider recommending that change. The proposal has been updated to clarify in the definition that these terms are synonymous.

9. **COMMENT:** The Alliance requested that the Department revise the construction permit requirements in OAC 252:100-7-15(a)(2)(B) to align with the operational flexibility that is allowed in Subchapter 8 by changing agency guidance, and either removing OAC 252:100-7-15(a)(2)(B)(i), or revising the language of OAC 252:100-7-15(a)(2)(B)(i) as follows:
- "to install a new piece of equipment or a new process that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) which is not already covered under an existing permit Specific Condition; or"

**RESPONSE:** The Department agrees that there are many cases where a construction permit is not warranted for simple replacement of an existing unit, as you and other stakeholders have suggested. The proposed rules posted on the web address these concerns by adding a definition for "replacement unit" in 252:100-7-1.1, and adding a provision in 252:100-7-15(a)(2) such that a "replacement unit" does not trigger a construction permit requirement.

10. **COMMENT:**
- A. If a regulated entity obtains a modified FESOP without utilizing the FESOP Enhanced NSR Process, because a construction permit is not required for the modification, is it ODEQ's intent that this modified FESOP is not required to undergo public review per OAC 252:4-7-13(g)(9)?
- B. If it is ODEQ's intent that the modified FESOP is not required to undergo public review per OAC 252:4-7-13(g)(9), the proposed OAC 252:100-7-15(h) creates regulatory uncertainty. The proposed OAC 252:100-7-15(h) states that only the authorization to construct or modify expires, but the permit requirements of the construction permit established under OAC 252:100-7-15(d) will remain in effect until the facility ceased operations, is not constructed, or the requirement is superseded under a subsequent construction permit or FESOP that has undergone public review. Regulatory uncertainty occurs if the modified FESOP has a requirement that differs from the construction permit that is NOT superseded because the modified FESOP is not required to undergo public review. The Alliance requests ODEQ eliminate the regulatory uncertainty by clearly stating that a modified FESOP that does not utilize the FESOP Enhanced NSR Process is required to undergo public review per OAC 252:4-7-13(g)(9).

**RESPONSE:**

- A. The Department's intent is that, under the scenario described in the comment (6A), modification of the existing individual FESOP would be required to undergo Tier I 30-day public review on the web. The exception would be administrative changes to the permit where no public review is required. And this discussion assumes that the facility will retain an individual facility FESOP and not seek coverage under a GP or PBR. Please see the earlier discussion regarding GPs and PBRs.

This position was reached after extensive internal staff discussions, with consideration of The Alliance's comment, and input from EPA staff. Note that the posted version of proposed paragraph OAC 252:4-7-13(g)(9) includes an exception to the 30-day public review on the web if the minor facility "... operating permit modification accommodates a change for which no construction permit is required under 100-7-15(a)(2) ...". The Department now believes that this exception is not appropriate or necessary. Therefore, the Department intends to supplement the posted proposal when it is brought to the October AQAC meeting by removing the phrase quoted above, and inserting an explicit requirement that notices be posted "... for draft modifications of existing minor facility operating permits for Tier I applications." The proposed OAC 252:4-7-13(g)(9) would then read:

"(9) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft minor facility individual operating permits for Tier I applications and for draft modifications of existing minor facility operating permits for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of OAC 252:4-7-13(c), and may be posted in tabular form with appropriate links to additional information sources. A modification of an existing minor facility operating permit may be issued without further public review if the operating permit modification is based on a construction permit that was made available for review and comment under 252:4-7-13(g)(7)."

- B. The Department believes that the proposal, with the wording change discussed above, would remove the regulatory uncertainty of concern to The Alliance, and result in the following scenarios: Initial FESOPs will undergo 30-day public review. Modified FESOPs that follow construction permits using the FESOP enhanced NSR process will not need additional public review. In other cases, where the FESOP is modified without following FESOP enhanced NSR, the modified FESOP will undergo Tier I 30-day public review. For a facility that already has a FESOP, a 30-day public review will be required either at the construction phase or the operating phase for all subsequent actions.

### **Comments specific to Chapter 100, Subchapter 8**

11. **COMMENT:** The Alliance requests that the Department clearly state that the proposed changes to OAC 252:100-8-4(a)(1) will not change a permitted Title V source's ability to conduct replacements without having to obtain a construction permit as long as no new permit conditions are needed in order to comply with the applicable NSPS or NESHAP.

**RESPONSE:** The Department concurs that the proposed changes will not affect the operational flexibility under Title V as currently interpreted.

12. **COMMENT:** The Alliance recommended that OAC 252:100-8-4(b)(4) be removed and marked as [RESERVED], because the "Application Submittal Schedule" under OAC 252:100-8-4(b)(4) appears obsolete. The submittal dates under this section have passed, as this section was for the original implementation of the Title V permitting program.

**RESPONSE:** The Department agrees that the requirements are obsolete, and the posted proposal would remove the bulk of them. However, the Department believes that some part of the rule should remain in place to retain the requirement that all facilities that became subject to Title V permitting requirements when the program went into effect were to have submitted an application no later than March 6, 1999 (the final date where all applications were required to have been submitted). That will ensure that any facility that may have missed the deadline would have an ongoing requirement.

13. **COMMENT:** The proposed language in OAC 252:100-8-4(c) appears to be redundant and already covered under the definitions of "Enhanced NSR process" and "Traditional NSR process" in OAC 252:100-8-2. The Alliance recommends that OAC 252:100-8-4(c) be removed to avoid confusion.

**RESPONSE:** The Department does not concur. The two definitions are proposed because defining terms is important for clarity, but the proposed language in OAC 252:100-8-4(c) creates the formal requirement.

14. **COMMENT:** The Alliance requested clarification that it is the Department's intent that all Title V minor modifications are required to undergo public review. The Alliance stated that if this is the case, then no Title V minor modifications can be classified as Tier I applications; therefore, the reference to "Tier I under OAC 252:4-7" was inadvertently not revised or removed in OAC 252:100-8-7.2(b)(1)(B).

**RESPONSE:** The Department does not concur with the Alliance's conclusion regarding Tier I classification, and a corresponding revision or removal of the reference to "Tier I under OAC 252:4-7" in OAC 252:100-8-7.2(b)(1)(B). Please note that minor modifications to the Title V operating permit were not in the past required to undergo public review, and the current proposal would not change that. However, some actions that the Department previously allowed to go forward (as minor mods) without requiring a construction permit will, in the future, be required to undergo minor NSR. The Department has also added a threshold so that qualifying projects, with potential emissions increases no greater than 10 tons per year of any single regulated air pollutant, may go forward as minor modifications to the Title V operating permit without requiring a minor NSR construction permit. So, it is the minor NSR construction permit under Subchapter 8 that will undergo Tier I public review (for projects eligible to be, eventually, incorporated into the Title V operating permit as minor modifications). The minor mods themselves are not required to undergo public review.

The construction permit emissions increase threshold language in OAC 252:100-8-4(a)(1) is a change from the proposal that was presented at the July 22 Special AQAC meeting. The change also removes the phrase "... a minor modification under OAC 252:100-8-7.2(b)(1)" as a construction permit requirement criterion that was included in the July proposal. Please take a look at the updated proposed rule language on the web.

In addition, the Department would note that the new requirements for some Tier I permitting actions to undergo public review would do so exclusively on the web. There will be no requirement for public notices in the newspaper for these new requirements so the Department will consider them to be a new subset of Tier I. There will still be Tier I permitting actions that will not undergo public review.

**Enable Midstream Partners, LP** – Submitted as an attachment to an email received on September 18, 2020 from Mr. Sean Walker Senior Environmental Specialist, Air Quality, on behalf of Mr. Lance Lodes, Senior Manager, Air Compliance & Monitoring, Environmental, Health & Safety, Enable Midstream Partners, LP (hereafter "Enable Midstream"). Enable Midstream's comments endorsed and incorporated by reference the comments submitted by The Petroleum Alliance of Oklahoma (*see above*), and requested clarification for some different permitting scenarios.

#### **Comments specific to Chapter 100, Subchapter 7**

- 15. COMMENT:** If an applicant obtains a Notice of Intent (NOI) to Construct using the Air Quality Minor Source General Permit for Oil and Gas Facilities (GP-OGF) and then converts to an individual minor source operating permit, will the individual minor source operating permit need to undergo public review?

**RESPONSE:** Yes, the individual operating permit issued to a minor facility that constructed under an Authorization to Construct under the GP-OGF would need to undergo public review.

- 16. COMMENT:** If an applicant reconstructs or modifies an engine/turbine, currently authorized under an individual permit, such that it becomes subject to a New Source Performance Standard (NSPS), would a construction permit be required or a modified operating permit? If a modified operating permit, would it be required to undergo public review?

**RESPONSE:** The change described would likely not require a new construction or modified operating permit if the reconstructed or modified engine or turbine would not need any changes made to the emission limits in the current permit. However, the reconstructed or modified unit would be subject to applicable requirements of the NSPS in question.

- 17. COMMENT:** If an applicant modifies an existing individual minor source operating permit to increase the condensate throughput limit and therefore also increase volatile organic compound (VOC) emissions less than 5 TPY, will this modified permit be required to undergo public review?

**RESPONSE:** The described modification scenario would not require a construction permit. However, the applicant would need to obtain a modification to the operating permit to authorize an increase in the throughput limit and/or emission limit, before exceeding that limit. That permit modification would need to undergo 30-day public review on the web.

18. **COMMENT:** If an applicant replaces a 1.0 MMBTU reboiler with a 1.5 MMBTU reboiler and the emissions increases are less than 1 TPY for each pollutant, would a construction permit be required or a modified operating permit? If a modified operating permit, would it be required to undergo public review?

**RESPONSE:** The described modification scenario would not require a construction permit, unless the small increase would push the facility over the major source threshold. However, the applicant would need to obtain a modification to the operating permit to authorize an increase in the emission limit. That permit modification would need to undergo 30-day public review on the web.

#### **Comments specific to Chapter 100, Subchapter 8**

19. **COMMENT:** What would be the permitting avenue to incorporate MSS activities into a Title V permit? We believe this can currently be accomplished under OAC 252:100-8-6(f)(1) during the TV renewal permit application or during a construction permit application.

**RESPONSE:** Specific scenarios may require a case-by-case determination, but the facility would likely need to establish separate limits for MSS activities. The facility would need to obtain a construction permit as the vehicle for establishing those limits. Any such changes (to incorporate MSS activities) that require a construction permit should qualify to use the enhanced NSR process.

**Altamira-US, LLC** – Submitted as an attachment to an email received on October 9, 2020 from Ms. Adrienne Burchett, E.I., Project Manager, Altamira-US, LLC (hereafter "Altamira").

#### **Comments specific to Chapter 4, Subchapter 7**

20. **COMMENT:** The suggested changes to OAC 252:4-7-13(g)(4) includes a typographical error. The suggested change is highlighted:

*(4) ~~An~~ A modification of an existing Part 70 source operating permit may be issued to an applicant for a new Part 70 operating permit without further public review if the operating permit modification accommodates a change for which no construction permit is required under 100-8-4(a)(1), or is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B) 252:4-7-32(b)(2)(A) or (B). In the latter case, and the public notice for the construction permit ~~contains~~ shall contain the following language.*

**RESPONSE:** Thank you for bringing the error to our attention. The Department will include the correction in the supplement to the posted proposal when it is brought to the October AQAC meeting.

### **Comments specific to Chapter 100, Subchapter 1**

21. **COMMENT:** The proposed definition in OAC 252:100-1-3 of "Title V permit" indicates it "means (unless the context suggests otherwise) an operating permit for a Part 70 source." Should this include a reference to a Title V construction permit as well? What is the significance of "(unless the context suggests otherwise)"?

**RESPONSE:** Your comment brought to our attention the fact that the posted proposal erroneously indicated that this was a proposed addition to OAC 252:100-1-3. In fact, this definition was adopted by the Department last year, and became effective on September 15, 2020. The Department will include the correction in the supplement to the posted proposal when it is brought to the October AQAC meeting.

In answer to the question posed: No, the definition of "Title V permit" intentionally refers only to operating permits. It was added because Title V permit is a commonly-used term for a major source operating permit throughout the U.S. To implement Oklahoma's Title V program, the Department created a new Subchapter 8, with major source operating permit program rules based on 40 CFR Part 70, with certain additional relevant operating permit rules from the comprehensive permitting rules of Subchapter 7. Shortly thereafter, the Department moved construction permit requirements for major sources from Subchapter 7 to Subchapter 8. Requirements for PSD sources and for "Major Sources Affecting Nonattainment Areas" were moved to Parts 7 and 9 of Subchapter 8, respectively. Construction permit requirements for other major sources, which under EPA terminology would be Minor NSR permits, were integrated with the Part 70-based operating permit rules in Subchapter 8. The Department based the divide between major sources (Subchapter 8) and minor facilities (Subchapter 7) on whether or not they are, or would be following construction, subject to a "Part 70 operating permit," and thus chose to use the term "Part 70 permit" as the collective term for permits issued (i.e., to "Part 70 sources") under Subchapter 8. "Title V permit" would be synonymous with "Part 70 source operating permit," while a "minor NSR permit" (for a Subchapter 8 source) would be synonymous with "Part 70 source construction permit."

The phrase "unless the context suggests otherwise" was included in the definition of "Title V permit," as it has been included elsewhere, as a precaution. The Department is not aware of any specific use of the term that would be confusing.

### **Comments specific to Chapter 100, Subchapter 7**

22. **COMMENT:** OAC 252:100-7-1.1 Definitions is proposed to be revised to include a definition for a "Replacement Unit" as follows:

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

(A) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

Should section (A) include a reference to the definition of reconstruction in 40 CFR 63.2? By incorporating the definition of reconstruction in 40 CFR 63.2, those minor source emission units that are subject to an area source NESHAP would be included by this language in the event a subject emission unit is considered reconstructed under the area source NESHAP standard.

**RESPONSE:** The Department agrees that it is appropriate to include language in the definition for a "Replacement Unit" in OAC 252:100-7-1.1 to accommodate reconstruction of minor facility emission units that are subject to an area source NESHAP. Therefore, the Department intends to supplement the posted proposal when it is brought to the October AQAC meeting by revising the proposed definition to add the highlighted phrase as follows:

**"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.**

(A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. Section 60.15(b)(1), the emissions unit is a reconstructed unit within the meaning of paragraph (1) in the definition of "Reconstruction" in 40 C.F.R. Section 63.2, or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

23. **COMMENT:** Should OAC 252:100-7-15(a)(2)(C) reference the definition of a replacement unit in OAC 252:100-7-1.1?

**RESPONSE:** The Department believes use of the defined term "replacement unit" in OAC 252:100-7-15(a)(2)(C) is adequate.



## Comments specific to Chapter 100, Subchapter 8

24. **COMMENT:** Many permittees often use the Title V (TV) Minor Permit Modification Application option in OAC 252:100-8-7.2(b)(1) (Minor Mod) in order to accomplish changes to a facility that require a quick turnaround, but do not result in an emission increase above PSD significance levels. Oftentimes, these are important modifications due to safety or critical infrastructure concerns that will be delayed for three (3) to six (6) months due to permit review time, including the public and EPA review time periods, at the ODEQ. There appears to have been a substantial change between the July 2020 and October 2020 proposals, revising the revisions to OAC 252:100-8-4(a). This language appears to allow for some of those physical or operational changes that have an emissions increase less than 10 tpy. Is this correct? We anticipate this will allow for quick permitting mechanisms for changes that are due to safety and critical infrastructure concerns (i.e. fire pump replacements) or minimal changes such as tank replacements at the refineries, even though the equipment may be subject to NSPS or NESHAP regulations. Is this accurate?

**RESPONSE:** As you noted, staff made significant changes to the language (and structure) of the proposed revision to OAC 252:100-8-4(a)(1) following the July 22 Special AQAC meeting. This language does allow permittees to make some physical or operational changes that would increase PTE by less than 10 TPY without first undergoing NSR (i.e., obtaining a construction permit), provided the change would not fall under one of the other criteria listed in OAC 252:100-8-4(a)(1)(B). Under the same circumstances, this would be the case even if the newly installed unit is subject to an NSPS or NESHAP. Such changes would then be subject to the operating permit minor modification procedures under OAC 252:100-8-7.2(b)(1) (or under OAC 252:100-8-7.2(a) administrative amendment procedures).

25. **COMMENT:** The proposed definition of "Enhanced NSR process" in OAC 252:100-8-2 indicates that the 30-day public review period for a draft NSR permit can be concurrent with the 45-day EPA review period. This is currently an option for Title V sources. Does this just make the concurrent review process automatic when requested in the application? How will this impact facilities that request concurrent public and EPA review following submittal of the application? Is that no longer allowed? Will ODEQ forms be revised accordingly to indicate whether enhanced NSR review or traditional NSR review is requested OR will this need to be up to the permittees to include as part of the body of future applications?

**RESPONSE:** Under the proposed revisions, including the Enhanced NSR process for existing Part 70 sources, concurrent review will be typical for modifications for which a construction permit is required. The Enhanced NSR process fulfills multiple public participation requirements, including the 30-day public and EPA review of the draft construction permit to meet NSR requirements, and the 45-day EPA review on the operating permit modification implications of the project and construction permit requirements. The Department intends to revise the appropriate application forms to provide an item for the permittee to indicate its preference to use the Enhanced NSR process or the Traditional NSR process, as indicated by the proposed language in OAC

252:100-8-5(d)(3). However; the facility will be able to update its preference prior to publishing/posting of the public notice of the draft construction permit. [Note that the Enhanced NSR process is available only for modification of an existing permitted facility. The Traditional NSR process applies to a new Part 70 source, for both the construction permit and the operating permit. Under the Traditional NSR process, the construction permit's 30-day EPA and public reviews coincide. Then, the operating permit's 45-day EPA review follows the 30-day public review, unless concurrent review is requested by the applicant.]

26. **COMMENT:** The proposed revisions to OAC 252:100-8-4(a)(1)(B)(iv) indicate that a Title V construction permit would be required for physical changes or changes in the method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY. What is the basis of the 10 TPY limit proposed in this paragraph? Please confirm that, as currently proposed, permittees can still apply for and begin operations following submittal of a minor Title V permit modification that meets the requirements of OAC 252:100-8-7.2(b)(1) without any public or EPA review as long as the increase in emissions is below the PSD significance thresholds and an increase in the PTE of a single pollutant of 10 TPY.

**RESPONSE:** Yes, the Department can confirm that permittees may still apply for a minor modification and, with some risk (that, perhaps, the applicant's assessment of the project was incorrect and the project was not actually a minor modification), begin operation of units authorized under the minor modification on submission of a complete application as long as the project potential emission increases are below the thresholds noted.

With regard to the basis of the proposed 10 TPY threshold, the Department considered a number of factors in setting the threshold in OAC 252:100-8-4(a)(1)(B)(iv). Oklahoma's air quality permitting program has historically included an emissions increase threshold of one pound per hour for requiring a construction permit. This was later converted to a more practical 5 TPY actual emissions increase threshold for minor facilities at the same time that the major source construction permit requirement for a modification was tied to a significant modification under Title V requirements, creating a de facto exemption from NSR for minor mods. It should be noted that this exemption was never explicitly adopted into the SIP. The current rulemaking effort was initiated in part because some changes that would qualify as a minor modification under Title V operating permit program requirements are, absent an explicit exemption adopted into the SIP, subject to minor NSR requirements. Following extensive staff discussions, the Department proposed that a major source construction permit be required for a modification that would increase potential to emit by more than 10 TPY. This threshold is proposed at a level that would allow many projects that will likely have minimal air quality impacts to proceed without the cost in time and resources that would accompany preparation (by the applicant) and review and issuance (by DEQ staff) of a minor NSR (construction) permit. The Department settled on the 10 TPY PTE increase for a number of reasons, including that this threshold correlates well with a 5 TPY actual emissions increase, and is easier to determine without recourse to project emissions accounting necessitated by a full PSD analysis and has practical advantages for both the facility and DEQ. In addition, this threshold (for a number of

pollutants) was adopted in a similar manner by the EPA under the Tribal NSR Rule. The Department has received informal stakeholder inquiries regarding how best to calculate project emissions increases for comparison with this threshold, and in response to these inquiries, DEQ intends to supplement the posted proposal when it is brought to the October AQAC meeting adding a phrase to the end of OAC 252:100-8-4(a)(1)(B)(iv), so that it would read:

"(iv) commencement of any physical change or change in method of operation that, for any one regulated air pollutant, would increase potential to emit by more than 10 TPY, calculated using the approach in 40 C.F.R. Section 49.153(b)."

The Department has posted an Outline and Summary document for a CAA §110(l) Demonstration justifying the 10 TPY PTE threshold that DEQ will prepare and submit to EPA with the SIP submittal if the rule is adopted. The document notes that DEQ took a similar approach and reached a similar conclusion to other State and Federal programs in the adoption of minor NSR thresholds that exempt projects from NSR.

Returning to the final question, in the situation described in the comment, if a planned facility change does not trigger a PSD permit requirement, nor meet any of the criteria listed under OAC 252:100-8-4(a)(1)(B)(i)-(iv) as proposed, the project for a potential emissions increase less than 10 TPY would not require a construction permit. The permittee would still need to submit an application for a minor modification to the operating permit. On submission of a complete application, and assuming the assessment of the project (as a minor mod) was proper, the applicant could proceed with installation and operation of units authorized by the minor mod, without waiting for issuance of the minor modification of the Part 70 source operating permit. The Department would go through the process of project evaluation and would draft the minor modification. This permitting action is not subject to public review, but the proposed version of the permit would be sent to EPA for a 45-day review. If EPA does not object to the permit, it would then be issued by the Department.

27. **COMMENT:** While OAC 252:100-8 is open for rulemaking, Altamira requests the ODEQ consider incorporating the "reasonable possibility" language from 40 CFR 52.21(r) into OAC 252:100-8-36.2(c) source obligation requirements. This will reduce the reporting burden of subject facilities while maintaining compliance and consistency with federal regulations. The consulting cost of this additional reporting for facilities that would be otherwise exempt under the federal regulations can range from \$750 per year to \$3,000 per year for five years depending on the number of projects. Additionally, the preconstruction notice requirements cost approximately \$2,500 - \$7,500 depending on the project type for consulting fees, alone. These additional consulting costs are in addition to internal costs for permitted facilities. These costs associated with reporting could be reduced or eliminated by incorporating the federal "reasonable possibility" language.

The source obligation requirements under 40 CFR 52.21(r)(6)(vi) reduces the reporting burden if permittees can document the emissions increase using the PAE to BAE methodology is less than 50% of the PSD significance levels for each applicable NSR pollutant. If the increase in emissions is less than the 50% threshold, the preconstruction

notice and annual reporting requirements are not required since there is no "reasonable possibility" that the PSD significance levels would be exceeded due to the project. Since the ODEQ air quality rules in OAC 252:100-8 do not include the "reasonable possibility" language, permittees regulated by the ODEQ are subject to more stringent reporting requirements than those permitted in nearby states. Altamira requests the following revised provisions be incorporated.

**(c) Requirements when using projected actual emissions.** Except as otherwise provided in paragraph (c)(8)(b), the following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) when the owner or operator elects to use the method specified in (B)(i) through (iii) of the definition of "projected actual emissions" for calculating projected actual emissions in circumstances where there is a reasonable possibility, as defined in section (c)(8) of this section, that a project is not a part of a major modification that may result in a significant emissions increase.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the existing emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under (B)(iii) of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing EUSGU, before beginning actual construction, the owner or operator shall provide a copy of the information set out in OAC 252:100-8-36.2(c)(1) to the Director. Nothing in OAC 252:100-8-36.2(c)(2) shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in OAC 252:100-8-36.2(c)(1)(B); and calculate and maintain a record of the annual emissions, in TPY on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(4) If the unit is an existing EUSGU, the owner or operator shall submit a report to the Director within 60 days after the end of each year during which records must be generated under OAC 252:100-8-36.2(c)(3) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an EUSGU, the owner or operator shall submit a report to the Director if the annual emissions, in TPY, from the project identified in OAC 252:100-8-36.2(c)(1), exceed the baseline actual emissions (as

documented and maintained pursuant to 252:100-8-36.2(c)(1)(C)) by an amount that is significant for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to 252:100-8-36.2(c)(1)(C). Such report shall be submitted to the Director within 60 days after the end of such year. The report shall contain the following:

- (A) The name, address and telephone number of the major stationary source;
- (B) The annual emissions as calculated pursuant to OAC 252:100-8-36.2(c)(3); and
- (C) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) The owner or operator of the source shall make the information required to be documented and maintained pursuant to OAC 252:100-8-36.2(c) available for review upon request for inspection by the Director or the general public.

(7) The requirements of OAC 252:100-8-34 through 252:100-8-36.2 shall apply as if construction has not yet commenced at any time that a project is determined to be a major modification based on any credible evidence, including but not limited to emissions data produced after the project is completed. In any such case, the owner or operator may be subject to enforcement for failure to obtain a PSD permit prior to beginning actual construction.

(8) If an owner or operator materially fails to comply with the provisions of OAC 252:100-8-36.2(c), then the calendar year emissions are presumed to equal the source's potential to emit.

(8) A "reasonable possibility" under paragraph (c) of this section occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as described in OAC 252:100-8-50(b) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded as an increase in utilization due to product demand growth as described in the definition of "projected actual emissions" (B)(iii) under OAC 252:100-8-31, sums to at least 50 percent of the amount that is a "significant emissions increase," as described in OAC 252:100-8-50(b) (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of paragraph (c)(8)(b) of this section, and not also within the meaning of paragraph (c)(8)(a) of this section, then provisions (c)(2) through (c)(5) do not apply to the project.

**RESPONSE:** OAC 252:100-8-36.2 was not included the rulemaking notice, so it is not open for revision at this time. Regarding the comment itself, the Department believes that, as written, the rule is more protective of industry and the environment by requiring the recordkeeping.

The Department presented a proposed OAC 252:100-8-36.2 before the AQAC in October 2005 that included "reasonable possibility" language. At that time, the Department received comment from EPA on our proposed rule because the "reasonable possibility" language had been remanded back to EPA by the courts. Staff removed the language in question, and the proposed OAC 252:100-8-36.2 was approved by the Council in January 2006, adopted by the EQB in February 2006, and became effective June 15, 2006. These rules were then submitted for inclusion in our SIP in July 2010, and approved by EPA in September 2016. [[81 FR 66532](#), September 28, 2016] Note: In December 2007, EPA issued a final rule that provided additional explanation and more detailed criteria to clarify the "reasonable possibility" recordkeeping and reporting standard. [[72 FR 72607](#), December 21, 2007]

In conjunction with EPA's review of Oklahoma's SIP and related discussions, the Air Quality Division submitted a letter, dated February 8, 2016, demonstrating that the Department's recordkeeping requirements are as stringent as those in 40 CFR § 51.166(r)(6)(i) through (vi), which includes the "reasonable possibility" language that was omitted from OAC 252:100-8-36.2 when it was adopted. At that time, Staff believed that adding the "reasonable possibility" language to OAC 252:100-8-36.2 would not have provided any significant relief to Oklahoma's PSD sources.

The Department believes that determining whether the additional recordkeeping is more burdensome than protective is a complex issue that would require additional discussion with industry to determine if this needs to be brought forward separately in a future rulemaking.

**UPDATE TO RESPONSE:** Based on additional verbal comments received during the October 21, 2020 AQAC meeting, the Department is planning to move forward with a proposed rulemaking to address this issue at a future AQAC meeting.

**U.S. Environmental Protection Agency, Region 6** – Submitted as an attachment to an email received on October 15, 2020 from Ms. Adina Wiley, Environmental Engineer, on behalf of Mr. David Garcia, Director, Air and Radiation Division, U.S. EPA, Region 6 (hereafter "EPA").

- 28. COMMENT:** EPA supports the revisions to OAC 252:4 and 252:100 proposed on September 15, 2020. The revisions are the result of a multi-year collaborative effort between EPA Region 6 and DEQ to address areas of concern in the Oklahoma air permit program. EPA believes the proposed revisions will meet the federal public notice requirements for minor NSR at 40 C.F.R. 51.160 - 51.164 by requiring electronic notice for all minor NSR permit actions. EPA also believes the proposed revisions will meet the federal Title V requirements in 40 C.F.R. 70.7 by requiring public notice for all initial title V permits. In addition, the proposed revisions establish the enhanced NSR process and clearly establish a federally enforceable state operating permit program.

**RESPONSE:** DEQ appreciates the collaborative process that has resulted in the proposed revisions that address outstanding SIP approvability concerns.

## **Oral Comments – October AQAC Meeting**

### **Brian McQuown – Oklahoma Gas & Electric (OG&E)**

29. **COMMENT:** Mr. McQuown stated that OG&E supports Altamira's submitted comments that requested incorporating the "reasonable possibility" language from 40 CFR 52.21(r) into OAC 252:100-8-36.2(c) source obligation requirements for PSD sources. Mr. McQuown also acknowledged that the request was outside of scope of the rulemaking on the October AQAC meeting agenda.

**RESPONSE:** As stated in response to the referenced Altamira comment (#27), OAC 252:100-8-36.2 was not included in the rulemaking notice, so it is not open for revision at this time. As the Department also stated, we believe that the issues involved in the requested change are complex. Based on the verbal comments received during the October 21, 2020 AQAC meeting in support of this change, the Department is planning to move forward with a proposal in a future rulemaking.

### **Sean Walker– Enable Midstream Partners, LP (Enable Midstream)**

30. **COMMENT:** Mr. Walker requested clarification on a particular scenario, for a modification (e.g., increased condensate throughput limit) that did not trigger a construction permit requirement for a permitted minor facility. His question was whether the operating permit modification would be required to undergo a 30-day public review. Mr. Walker also made reference to the 14-day public review period used in Florida's FESOP program.

**RESPONSE:** The Department's intent is that when the rule proposal is implemented, the permit action in such a scenario would be required to undergo a 30-day public review. The resulting action would be issuance of a FESOP (if the existing operating permit had not previously undergone public review), or a modification of the existing FESOP. In either case, the facility would be eligible to use the FESOP Enhanced NSR process for future changes that require a construction permit. See response to Comment #2 regarding the 14-day public review period used in Florida's FESOP program.

### **Adrienne Burchett – Altamira-US, LLC (Altamira)**

31. **COMMENT:** Ms. Burchett reiterated Altamira's submitted comment (Comment and Response #27), which requested that the DEQ consider incorporating the "reasonable possibility" language from 40 CFR §52.21(r) into the PSD Source Obligation requirements of OAC 252:100-8-36.2(c). Ms. Burchett stated that the requested change would reduce the reporting burden of subject facilities while maintaining compliance and consistency with federal regulations. Ms. Burchett noted that Altamira's comments and the Department's responses were not included in the document posted on the DEQ website.

**RESPONSE:** As stated in response to Altamira's submitted (10-9-2020) Comment #27, OAC 252:100-8-36.2 was not included in the rulemaking notice, so it is not open for

revision at this time. However, based on additional verbal comments received during the October 21, 2020 AQAC meeting, the Department is planning to move forward with a proposed rulemaking to address this issue at a future AQAC meeting.

The summary of comments and responses document posted on the DEQ website was inadvertently not updated to the October 20, 2020 version prior to the AQAC meeting. This oversight was corrected shortly after the meeting adjourned.

### **Oral Comments – November AQAC Meeting**

#### **Adrienne Burchett – Altamira-US, LLC (Altamira)**

32. **COMMENT:** Ms. Burchett asked for a clarification in response to discussion among AQAC members and AQD staff regarding the transition process for minor facilities from their existing individual operating permit to a FESOP. Ms. Burchett described a hypothetical case where a facility with a current Subchapter 7 operating permit chooses, after the proposed rule changes become operative, to undergo the FESOP process – including public and EPA review – resulting in an operating permit modification and the issuance of a FESOP. She further specified that the described case would not involve a physical or operational change (or other change) that would necessitate either a construction permit (NSR permit) or an operating permit modification. The permitting action would only be undertaken to convert the permit from a Subchapter 7 operating permit (issued under the current rules) into a FESOP (issued under the proposed rule modifications). Ms. Burchett asked if the regular application fee for a modification of a minor facility operating permit would apply in that case.

**RESPONSE:** The proposed Subchapter 7 rule changes would not alter the existing application fee structure. For individual minor facility permits, the construction permit application fee would apply if a construction permit is required, and the application fee for an operating permit modification would apply if an operating permit modification is required/requested. The application materials and operating permit fees would, therefore, be required for a permitting action whose sole purpose is the migration of the operating permit from the old format to the new FESOP designation.





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 6  
1201 ELM STREET, SUITE 500  
DALLAS, TEXAS 75270

November 6, 2020

Ms. Kendal Stegmann  
Director, Air Quality Division  
Oklahoma Department of Environmental Quality  
707 North Robinson Street  
P.O. Box 1677  
Oklahoma City, Oklahoma 73101-1677

RE: Clarifications to the Oklahoma SIP and Part 70 Permit Program

Dear Ms. Stegmann:

The United States Environmental Protection Agency Region 6 is writing to express our continued support of the revisions to the Oklahoma Administrative Code (OAC) at Title 252, Chapter 4, Sections 4-7-13, 4-7-32, and 4-7-33 and Chapter 100, Sections 100-1-3, 100-1-4, 100-2-3, 100-7-1.1, 100-7-15, 100-7-18, 100-8-2, 100-8-4, 100-8-5, 100-8-7.2, 100-8 and Appendix Q, as proposed on September 15, 2020. As stated in our October 15, 2020, comment letter, we believe the proposed revisions could address certain areas of concern in the Oklahoma air permitting program which have been identified through several years of discussions between the Oklahoma Department of Environmental Quality (ODEQ) and the EPA Region 6.

The EPA staff attended an October 21, 2020 meeting with the Oklahoma Air Quality Advisory Council (AQAC) in support of the proposed revisions. The AQAC did not approve the proposed revisions at this meeting; instead expressing significant concerns and doubts about the necessity of the proposed revisions.

This letter provides clarification of the scope of the existing Oklahoma construction permit program in the Oklahoma State Implementation Plan (SIP) and the EPA-approved Oklahoma Part 70 air permitting program and highlights the necessity for the proposed revisions. We have several pending Oklahoma SIP submittals and revisions to the Oklahoma Part 70 air permitting program that we have not yet acted upon, choosing to work with the ODEQ in an effort to develop State regulatory solutions designed to meet federal Clean Air Act (CAA) requirements for SIPs and Title V programs. If an acceptable regulatory solution is not adopted by Oklahoma, the EPA will proceed with actions on the pending submittals and revisions consistent with our CAA obligations. Enclosed are several clarifications regarding the Oklahoma SIP and the Oklahoma Part 70 air permitting program, as well as, the impact of the proposed regulatory revisions.

We hope the enclosed clarifications will be useful to the ODEQ in its effort to support the changes necessary to address our mutual concerns in the rulemaking process. Should you have questions, please reach out to me directly at 214-665-7593, or feel free to contact Ms. Cynthia Kaleri at 214-665-6772.

Sincerely,

11/6/2020

X 

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David F. Garcia, P.E.

Signed by: DAVID GARCIA

Director

Air and Radiation Division

Enclosure

cc: Melanie Foster, ODEQ

### Minor New Source Review (NSR) Public Notice Requirements

We would like to start by defining the scope of the approved minor NSR permit program in Oklahoma. The ODEQ staff explained during the October 21, 2020 public meeting that the minor NSR construction permitting program is covered under both OAC 252:100, Subchapter 7 and Subchapter 8. The EPA has SIP-approved the majority of the permit issuance mechanisms under Subchapters 7 and 8, but we have taken no action on the Tier I public notice provisions under OAC 252:4 and any cross-references to those provisions within OAC 252:100, Subchapters 7 and 8. The EPA’s May 15, 2017 final action to update Oklahoma’s minor NSR SIP provisions stated that all Tier I public notice provisions were outside the scope of that rulemaking. This means that revisions to the application requirements, including the permit application, the application content, and the issuance procedures were approved into the SIP, but the Tier I provisions allowing minor NSR permit actions to proceed without public notice were not SIP-approved.

During the October 21, 2020 public meeting, the ODEQ correctly stated that federal NSR requirements at 40 CFR 51.160 – 51.164 require public notice for minor NSR permitting actions. The September 15, 2020 proposed revisions would address the federal minor NSR public notice requirements by requiring electronic notice for all Tier I construction permit actions.

Currently, the EPA has before us in our SIP backlog, portions of several SIP submittals pertaining to Tier I. We have chosen to take no action on these submittals in the hope that we could work with the ODEQ to resolve concerns identified in the pending SIP submittals. The September 15, 2020 proposed revisions were the result of several years of collaborative efforts between the EPA and ODEQ to correctly incorporate federal minor NSR public notice requirements. If these revisions are not adopted and submitted as revisions to the Oklahoma SIP, the EPA will move forward with our review and action on the backlogged portions of these pending Oklahoma SIP submittals which may include proposed disapprovals.

Disapproval of minor NSR public notice requirements could have a ripple effect on the rest of the Oklahoma air program. The Oklahoma infrastructure SIP is required to show the existence of an approved permit program under Clean Air Act (CAA) section 110(a)(2)(C) sufficient to protect air quality; this includes minor NSR and all requirements of minor NSR. Disapproval of Oklahoma’s minor NSR SIP program on the basis of deficient public notice could result in approvability issues associated with future Oklahoma infrastructure SIP submittals.

### Initial Issuance of Title V Permits

The existing Part 70 air permitting program under OAC 252:100, Subchapter 8 does not require public notice of initial Title V permits as required under Title V of the CAA and 40 CFR 70.7(h). The EPA initially identified this concern in our December 5, 2001 final Title V program approval as a deficiency that would need to be corrected in the future through the EPA’s oversight capacity or through a Notice of Deficiency (NOD). *See* 66 FR 63170. More recently, the EPA has continued to note the lack of public notice for initial Title V permits through conversations with ODEQ during our monthly oversight conference calls, via comment letters on permits, and through a letter to Mr. Eddie Terrill, dated March 5, 2020.

The September 15, 2020 proposed revisions would amend the Oklahoma regulations and require all initial Title V permits to be public noticed via Tier II provisions. To date, the EPA has elected to work

with the ODEQ through our oversight capacity to address this lack of public notice. However, if these proposed revisions are not adopted and submitted as revisions to the Oklahoma Part 70 Air Operating Permits Program, the EPA may need to consider whether a NOD pursuant to 40 CFR 70.10(b)(1) is necessary to address the problem. A NOD would put the ODEQ on a timetable to correct the deficiency. If the deficiency is not corrected timely, the EPA could move, consistent with our regulations, to withdraw the EPA program approval of the Oklahoma Part 70 program and become the permitting authority under 40 CFR Part 71.

### Synthetic Minor Permit Issuance

For years, the ODEQ has allowed a source to move from the major source permit program under OAC 252:100, Subchapter 8 to the minor source permit program under OAC 252:100, Subchapter 7, through a process commonly referred to as “synthetic minor” permitting. This process is not currently provided for in the existing Oklahoma regulations, but is rather implemented through guidance. The EPA Region 6 has frequently raised concerns about this process and the Oklahoma authority to issue synthetic minor permits through both our oversight monthly calls and by issuing permit comment letters.

The September 15, 2020 proposed revisions provide a clear regulatory process for limiting potential to emit emissions through legally and practically enforceable permit limits and require public notice of this transition through the Tier II provisions. Synthetic minor permitting is not a requirement of the CAA nor the EPA’s federal air permitting regulations; therefore, the ODEQ is not required to develop or adopt regulations providing for synthetic minor permitting. However, at a minimum, a state that is issuing synthetic minor permits should have a SIP-approved regulatory framework that outlines the permitting process and requires public participation consistent with the requirements of 40 CFR 51.160 and 51.161.

### Conflation of Minor NSR and Minor Modifications under Title V

The Oklahoma permitting program for major sources under OAC 252:100, Subchapter 8 conflates the requirements of NSR and Title V permitting. The existing program enables minor construction activities to bypass minor NSR and be permitted directly in a Title V permit via a minor modification. This practice presents a two-fold problem. First, permitting construction activities without a valid NSR permit action could be considered circumvention of the NSR requirements. Second, the Title V minor modification procedures are separate and distinct from the minor NSR public notice requirements. Construction activities that are subject to minor NSR must undergo adequate minor NSR public notice.

The September 15, 2020 proposed revisions seek to address this conflation by requiring minor NSR construction activities to be completed under a construction permit with adequate minor NSR public notice. As mentioned above, minor NSR public notice is a federal requirement for all minor NSR permitting actions. Under Section 110(k)(5) of the Clean Air Act, should the EPA make a finding of substantial inadequacy in the Oklahoma SIP for failing to meet the Clean Air Act requirements for minor NSR SIPs, the EPA could consider a SIP call to address the deficiency in the minor NSR permit program and a NOD to address the misuse of the Title V permitting program to authorize construction permit activities.

### Enhanced NSR

The September 15, 2020 proposed revisions seek to establish permitting flexibility and streamlining through the creation of an enhanced NSR program. Under this type of program, a source with an

existing Title V permit may make a construction permit modification through an enhanced NSR permitting process under the SIP that also meets the criteria for a part 70 permitting actions. The modification may be added to the existing Title V permit through an administrative amendment. *See* 40 CFR 70.7(d)(1)(v). This flexibility has the potential to shorten the overall time the permit modification is available for public review and comment under the NSR and Title V programs. The ODEQ has also clarified that this type of flexibility is only available to sources with existing part 70 permits, thus maintaining consistency with the part 70 public notice requirements for initial permits as described above. We note that enhanced NSR is not a requirement of the NSR or Title V federal permitting requirements. However, if a state chooses to implement an enhanced NSR process, the EPA must act to approve the process in the SIP and part 70 programs.

#### Federally Enforceable State Operating Permit (FESOP) Program

As described in the EPA’s final rulemaking amending the definition of “federally enforceable” in 40 CFR 51.165(a)(1)(xiv), the EPA interprets CAA section 110(a)(2) to allow the EPA to approve certain state operating permit programs into a SIP. *See* 54 FR 27274, 27282 (June 28, 1989). Under the policy clarification expressed in that rulemaking, the EPA noted that all terms and conditions contained in a state operating permit would be considered “federally enforceable,” provided that the state’s operating permit program was approved by the EPA and incorporated into the applicable SIP under section 110 of the Act, and provided that the operating permit meets certain requirements. *Id.* at 27281. Such permits would be enforceable for NSR and other SIP purposes. As noted previously, portions of the Oklahoma minor source permitting program at OAC 252:100, Subchapter 7 have been SIP-approved, including some provisions related to the issuance mechanisms of minor operating permits. However, the EPA never took an affirmative action to review and approve the Subchapter 7 program, applying the criteria enumerated by the EPA for an approvable FESOP program *Id.* at 27282. Furthermore, the EPA believes that it may not be able to approve Oklahoma’s Subchapter 7 operating permits program into the SIP as a FESOP program because it does not provide an opportunity for public comment on the permit applications prior to issuance of the operating permit *Id.* Therefore, the Oklahoma SIP does not include a FESOP program at this time.

The September 15, 2020 proposed revisions establish a FESOP program by providing clear implementing processes and require public notice of Tier I actions. The revisions as proposed appear to satisfy the public participation requirements for an approvable FESOP program and could be included in a proposed revision to the Oklahoma SIP. Permits issued pursuant to the SIP-approved FESOP program could then be used by the ODEQ to demonstrate attainment of the NAAQS or a source could use the terms and conditions of the permit to “net out” of major NSR requirements.

#### Status of Existing Subchapter 7 Operating Permits

The October 21, 2020 discussion with the Oklahoma AQAC included many questions about the status of existing Subchapter 7 Operating Permits, and whether these permits are federally enforceable. While the Subchapter 7 regulations have not been approved by the EPA as meeting the requirements for an approvable FESOP program, the EPA acknowledges that many aspects of the state’s operating permit program under Subchapter 7 have been approved into the Oklahoma SIP. The EPA generally believes that terms and conditions in permits issued pursuant to the EPA-approved SIP are federally enforceable. Additionally, any terms of state operating permits that contain limitations that are the same as limitations under a NSPS, NESHAP or MACT are independently federally enforceable by virtue of the EPA’s authority to enforce the NSPS, NESHAP, or MACT.

However, as previously discussed, the EPA may decide to initiate a rulemaking, under CAA section 110(k)(5), to find the existing Subchapter 7 Operating Permits SIP provisions substantially inadequate to comply with the CAA requirements for SIPs (e.g., public participation requirements), and require Oklahoma to revise the SIP to correct the deficiency or withdraw its state operating permits program from the SIP.

If the ODEQ wishes to pursue the creation of a FESOP program as envisioned by the EPA in its 1989 action discussed above, then existing Subchapter 7 operating permits that Oklahoma may wish to use for SIP purposes or that a source is using to qualify as a minor source, to net out of NSR requirements, or to create external emissions offsets, should be authorized under a SIP-approved FESOP program. The issuance of operating permits under a SIP-approved FESOP program would allow the EPA to enforce noncompliance with the terms and conditions of such permits as violations of the SIP.

THE AIR QUALITY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title: **OAC 252:100**

**Chapter 100. Air Pollution Control**

**Subchapter 1. Definitions [AMENDED]**

**Subchapter 7. Permits for Minor Facilities [AMENDED]**

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

On November 12, 2020, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

    X     permanent [take effect after legislative review]

       emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,



Chair or Designee:

Date Signed: 11-17-2020

	VOTING TO APPROVE	VOTING AGAINST	ABSTAIN	ABSENT
Matt Caves				✓
Gary Collins	✓			
Robert Delano	✓			
Gregory Elliott	✓			
Garry Keele II	✓			
Steve Landers				✓
John Privrat				✓
Jeffrey Taylor	✓			
Laura Lodes	✓			

**DRAFT MINUTES**  
**AIR QUALITY ADVISORY COUNCIL**  
**November 12, 2020**  
**Department of Environmental Quality**  
**Oklahoma City, Oklahoma**

**Official AQAC Approved**  
**at June 16, 2021 meeting**

**Notice of Public Meeting** – The Air Quality Advisory Council (AQAC) convened for its Regular (Virtual) Meeting at 9:00 a.m. on November 12, 2020. During the October 21, 2020, rulemaking hearing, the Council voted to continue said rulemaking hearing on certain proposed rules in Chapter 4 and Chapter 100 to today's date, November 12, 2020. Notice of the meeting was forwarded to the Office of Secretary of State on October 21, 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, please use the raise-hand function and the host will identify you. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

**MEMBERS PRESENT**

Gary Collins  
Robert Delano  
Gregory Elliott  
Garry Keele  
Jeffrey Taylor  
Laura Lodes

**MEMBERS ABSENT**

Matt Caves  
Steve Landers  
John Privrat

**DEQ STAFF PRESENT**

Kendal Stegmann  
Beverly Botchlet-Smith  
Cheryl Bradley  
Madison Miller  
Brooks Kirlin  
Melanie Foster  
Tom Richardson  
Nancy Pearce  
Quiana Fields

**Chapter 4. Rules and Procedure**

**Subchapter 7. Environmental Permit Process [AMENDED]**

Mr. Tom Richardson, Professional Engineer of the AQD, stated the Department is proposing to amend the air quality portions of Chapter 4, Subchapter 7 to better align the Department's issuance process and public participation procedures for Part 70 source construction and operating permits with the New Source Review permit requirements and Title V operating permit requirements. Hearing no questions or comments by the Council or by the public, Mr. Elliott made a motion to postpone voting on Chapter 4, changes proposed by the DEQ, until after the presentation of Chapter 100 is concluded. Mr. Taylor made the second.

*See transcript pages 6 - 21*

Gary Collins	Yes	Garry Keele	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes



## **Chapter 100. Air Pollution Control**

### **Subchapter 1. Definitions [AMENDED]**

### **Subchapter 7. Permits for Minor Facilities [AMENDED]**

### **Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources [AMENDED]**

Mr. Richardson stated that the Department is proposing to amend definitions and permitting requirements in Subchapters 1, 7 and 8 to better align the Department's permit requirements and issuance process for construction and operating permits with the NSR permit requirements and Title V operation permit requirements and make other minor updates. Following a discussion by the Council and the public, Ms. Lodes called for a motion on Chapter 4. Mr. Elliott moved to approve Chapter 4 changes as proposed on November 12 and Mr. Keele made the second.

*See transcript pages 22 - 64*

Gary Collins	Yes	Garry Keele	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes

Mr. Collins moved to approve Chapter 100 changes as proposed on November 12 and Mr. Elliot made the second.

*See transcript page 65*

Gary Collins	Yes	Garry Keele	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes

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

*See transcript page 65*

**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. Mr. Taylor moved to approve and Dr. Delano made the second. The next scheduled regular meeting is on Wednesday, January 20, 2021 in Oklahoma City. Meeting adjourned at 10:18 a.m.

Gary Collins	Yes	Garry Keele	Yes
Robert Delano	Yes	Jeffrey Taylor	Yes
Gregory Elliott	Yes	Laura Lodes	Yes

**Transcript is an official part of these Minutes.**

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

CONTINUED MEETING/HEARING AGENDA

AIR QUALITY ADVISORY COUNCIL

NOVEMBER 12, 2020 - 9:00 A.M.

VIRTUAL MEETING

REPORTED BY: TAMMIE SHIPMAN, CSR

<p style="text-align: right;">Page 2</p> <p>1 COUNCIL MEMBERS PRESENT:</p> <p>2 MS. LAURA LODES, CHAIRMAN</p> <p>3 MR. GARY COLLINS, VICE CHAIRMAN</p> <p>4 DR. ROBERT DELANO</p> <p>5 MR. GREGORY ELLIOTT</p> <p>6 MR. JEFFREY TAYLOR</p> <p>7 MR. GARRY KEELE</p> <p>8</p> <p>9 Also Present:</p> <p>10 Ms. Quiana Fields, Secretary of Board and Council</p> <p>11 Ms. Kendal Stegmann, Division Director</p> <p>12 Ms. Beverly Botchlet-Smith, AD for AQD</p> <p>13 Mr. Tom Richardson, Engineer for AQD's R&amp;P</p> <p>14 Mr. Phillip Fielder, Chief Engineer for AQD</p> <p>15 Mr. Malcolm Zachariah</p> <p>16 Ms. Christina Hagens</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 (Meeting called to order at 9:00 a.m.)</p> <p>2 CHAIRMAN LODES: I'd like to call</p> <p>3 today's meeting of the Air Quality Advisory</p> <p>4 Council to order.</p> <p>5 The first item, Quiana, will you please</p> <p>6 call roll?</p> <p>7 MS. FIELDS: Mr. Caves is absent.</p> <p>8 Mr. Collins?</p> <p>9 MR. COLLINS: Here.</p> <p>10 MS. FIELDS: Dr. Delano?</p> <p>11 DR. DELANO: Here.</p> <p>12 MS. FIELDS: Mr. Elliott?</p> <p>13 MR. ELLIOTT: Here.</p> <p>14 MS. FIELDS: Mr. Keele?</p> <p>15 MR. KEELE: Here.</p> <p>16 MS. FIELDS: Mr. Landers is absent.</p> <p>17 Mr. Privrat is absent.</p> <p>18 Mr. Taylor?</p> <p>19 MR. TAYLOR: Here.</p> <p>20 MS. FIELDS: Ms. Lodes?</p> <p>21 CHAIRMAN LODES: Present.</p> <p>22 MS. FIELDS: We have a quorum.</p> <p>23 CHAIRMAN LODES: We will now enter the</p> <p>24 public rule making portion of this.</p> <p>25 Beverly.</p>
<p style="text-align: right;">Page 4</p> <p>1 MS. BOTCHLET-SMITH: Good morning. I'm</p> <p>2 Beverly Botchlet-Smith. I'm the Assistant</p> <p>3 Director of the Air Quality Division and, as</p> <p>4 such, I'll serve as the protocol officer for</p> <p>5 today's hearings. The hearings will be convened</p> <p>6 by the Air Quality Council in compliance with</p> <p>7 the Oklahoma Administrative Procedures Act and</p> <p>8 Title 40 of the Code of Federal Regulations,</p> <p>9 Part 51, as well as the authority of Title 27A</p> <p>10 of the Oklahoma Statutes, Section 2-2-201, and</p> <p>11 Sections 2-5-101 through 2-5-117.</p> <p>12 During the October 21st, 2020, rule</p> <p>13 making hearing, the Council voted to continue</p> <p>14 said rule making hearing on certain proposed</p> <p>15 rules in Chapter 4 and Chapter 100 to today's</p> <p>16 date, November 12th, 2020. Only agenda items</p> <p>17 that were continued may be brought before the</p> <p>18 Council during today's hearing.</p> <p>19 Notice of the October 21st, 2020,</p> <p>20 virtual hearings was advertised in the Oklahoma</p> <p>21 Register for the purpose of receiving comments</p> <p>22 pertaining to the proposed OAC 252, Chapter 4,</p> <p>23 Chapter 100 and Chapter 110 rules, as listed on</p> <p>24 the agenda, and will be entered into each record</p> <p>25 along with the Oklahoma Register filing.</p>	<p style="text-align: right;">Page 5</p> <p>1 Notice of the meeting for the</p> <p>2 October 21st, 2020, meeting was filed with the</p> <p>3 Secretary of State on August 25th of 2020. The</p> <p>4 agenda and links access the continued virtual</p> <p>5 meeting were posted on the website at least 24</p> <p>6 hours prior to this meeting, pursuant to Title</p> <p>7 25 of the Oklahoma Statutes section.</p> <p>8 If you wish to make a statement today,</p> <p>9 when it is time for public comment, please use</p> <p>10 the "raise hand" function that is found either</p> <p>11 at the bottom of your screen or under the</p> <p>12 "participants," depending on your device. If</p> <p>13 you're attending this meeting by calling in,</p> <p>14 then you will raise your hand by pressing *9 on</p> <p>15 your keypad.</p> <p>16 When it is your turn to speak, the host</p> <p>17 will identify you by announcing your displayed</p> <p>18 name or the last four digits of your phone</p> <p>19 number, and then your line will be unmuted. You</p> <p>20 must first identify yourself by stating your</p> <p>21 name and your affiliation, and then you'll have</p> <p>22 three minutes to make your comment on the</p> <p>23 record. When your time expires, you'll be</p> <p>24 notified and your line will be muted as we move</p> <p>25 on to the next person requesting to speak.</p>

<p style="text-align: right;">Page 6</p> <p>1 At this time, we'll proceed with our 2 agenda, what is marked Agenda Item 3A. This is 3 Chapter 4, Rules and Practice of Procedure, and 4 Subchapter 7, Environmental Permit Practice, 5 Part 1 and Part 4. 6 The presentation for this will be given 7 by Mr. Tom Richardson of our staff. He is one 8 of our professional engineers. 9 Tom. 10 MR. RICHARDSON: Thank you, Beverly. 11 Good morning, Madam Chair, members of 12 the Council, ladies and gentlemen. I am Tom 13 Richardson, an engineer in the Air Quality 14 Division's rules and planning section. My 15 purpose today is to continue the discussion of 16 our plans to amend our state permitting rules, 17 the purpose of which is to better bring them 18 into alignment with federal rules and statutes. 19 In addition, I will review proposed changes to 20 the rule language, including updates offered 21 since the last Council meeting on October 21st. 22 Next slide. 23 Because today's meeting is a 24 continuation of the council meeting on 25 October 21st, I have retained the presentation</p>	<p style="text-align: right;">Page 7</p> <p>1 slides that I shared in October. If needed, we 2 can refer back to those slides during the 3 discussion. At this point, please skip forward 4 to slide 31 for the continuation of the 5 presentation. 6 We are now on slide 31. At this point 7 I would like to continue the presentation by 8 addressing some of the issues that came up for 9 discussion in October. Next slide. 10 Before addressing additional topics, I 11 would like to take a brief detour into the 12 contents of Oklahoma's State Implementation 13 Plan, or SIP, to take note of some of the 14 elements that are or not included in the SIP. 15 Next slide. 16 The next four slides show snapshots 17 from the table in Subpart LL of 40 CFR Part 52. 18 The first column in the table shows the state 19 citation. Notable on this slide, the 1.4.x 20 citation refers to Oklahoma State Health 21 Department rules that were submitted in the 22 1980s and early 1990s. None of these rules are 23 currently on the books in the old format. 24 Current air quality rules have migrated to Title 25 252 of the Oklahoma Administrative Code or OAC.</p>
<p style="text-align: right;">Page 8</p> <p>1 However, the old rules continue to undergird the 2 air quality permitting program. Next slide. 3 Slide 34 shows some of the sections 4 from Chapter 4, while identifying elements that 5 are not incorporated into the SIP. One notable 6 element not included in the SIP, Chapter 4, 7 Subchapter 7, Section 13(g) (4) is our current, 8 enhanced NSR process for Title V permits. 9 Section 32(a), (b), and (c) (1) allow 10 Tier I processing without public review for 11 minor facility permits, minor mods to Title V 12 permits, and other authorizations including 13 those for certain major source general permits. 14 These elements are not in the SIP. 15 Section 33(c) (4) refers to alternative 16 emission reduction authorizations which may be 17 subject to state SIP requirements. Next slide. 18 Appendix C to Chapter 4 provides a 19 table listing requirements for notices of 20 filing, administrative completeness review, and 21 other steps in the permitting process. The Tier 22 I column has not been incorporated into the SIP. 23 Next slide. 24 The second sentence in Chapter 100, 25 Subchapter 7, Section 2(a) points to the</p>	<p style="text-align: right;">Page 9</p> <p>1 procedure specified in Chapter 4. That sentence 2 is not in the SIP. Next slide. 3 We reached out to one of the managers 4 in the Air Division of the Florida Department of 5 Environmental Protection or DEP to ask about 6 their minor NSR public comment period and their 7 FESOP program. The Florida minor NSR program 8 does have a 14-day public review period, but 9 that component was withdrawn from the SIP 10 submission and now constitutes a SIP gap. 11 Florida's FESOP program was developed 12 primarily for facilities constructed prior to 13 the requirement for minor NSR permits. While 14 that program has been adopted into the Florida 15 SIP and there is a 14-day public review period 16 for Florida FESOPs, the manager said that their 17 FESOP program is, essentially, a dead program at 18 this time. For these reasons, we do not feel 19 that Florida's program works well as a template 20 for ours. Next slide. 21 After receiving feedback from the 22 Council and stakeholders on our plans concerning 23 current Subchapter 7 operating permits, we 24 reached out to EPA Region 6 for additional 25 feedback. This slide highlights three key</p>

<p style="text-align: right;">Page 10</p> <p>1 points.</p> <p>2 First, EPA legal staff concurs with the</p> <p>3 Department's belief that the current rules</p> <p>4 incorporated into the SIP provide a foundation</p> <p>5 for the federal enforceability of all current</p> <p>6 Subchapter 7 operating permits.</p> <p>7 Second, there are issues with some</p> <p>8 aspects of our program that could, should EPA</p> <p>9 choose to issue a finding of deficiency, imperil</p> <p>10 that status in the future. That element of risk</p> <p>11 will continue until the Department addresses all</p> <p>12 outstanding issues, both with regard to the</p> <p>13 minor NSR program and the Subchapter 7 operating</p> <p>14 permit program.</p> <p>15 Third, EPA staff has clarified that if</p> <p>16 DEQ submits and EPA approves a FESOP program in</p> <p>17 Oklahoma's SIP, that approval will be date</p> <p>18 forward. These points were echoed in a letter</p> <p>19 EPA issued on November 6. I will discuss that</p> <p>20 letter shortly. Next slide.</p> <p>21 After receiving feedback from EPA and</p> <p>22 after digesting the concerns raised by the</p> <p>23 Council and other stakeholders, we would like to</p> <p>24 share our future plans concerning the currently</p> <p>25 issued Subchapter 7 individual facility</p>	<p style="text-align: right;">Page 11</p> <p>1 operating permits. All current Subchapter 7</p> <p>2 operating permits will continue in their present</p> <p>3 status. There is no plan for a batch public</p> <p>4 notice of these permits.</p> <p>5 After adoption of the proposed rules,</p> <p>6 any new construction permit for a minor facility</p> <p>7 will go through traditional NSR. The subsequent</p> <p>8 operating permit will be a FESOP. If an owner</p> <p>9 or operator applies for a modification to an</p> <p>10 existing facility's permit, the draft of the</p> <p>11 modified operating permit will undergo public</p> <p>12 review and will be issued as a FESOP. If an</p> <p>13 owner or operator wishes to move to a FESOP, the</p> <p>14 owner or operator will need to submit an</p> <p>15 application for a permit modification. Next</p> <p>16 slide.</p> <p>17 Reasonable Possibility Language. We</p> <p>18 have received requests to incorporate the</p> <p>19 reasonable possibility language from 40 CFR</p> <p>20 52.21(r) into the Subchapter 8, Section 36.2(c)</p> <p>21 source obligation requirements. Our intention</p> <p>22 is to bring proposed language to the Council for</p> <p>23 consideration during the January meeting. Next</p> <p>24 slide.</p> <p>25 As I mentioned previously, EPA issued a</p>
<p style="text-align: right;">Page 12</p> <p>1 letter offering support of our work updating</p> <p>2 the rules and clarifying their position on a</p> <p>3 number of issues. At this time I would like to</p> <p>4 read the letter into the record.</p> <p>5 The letter is dated November 6th, 2020,</p> <p>6 and is addressed to Ms. Kendal Stegmann,</p> <p>7 Director of the Air Quality Division of the</p> <p>8 Oklahoma DEQ.</p> <p>9 Regarding clarifications to the</p> <p>10 Oklahoma SIP and part 70 Permit Program.</p> <p>11 Dear Ms. Stegmann. Next slide.</p> <p>12 The United States Environmental</p> <p>13 Protection Agency Region 6 is writing to express</p> <p>14 our continued support of the revisions to the</p> <p>15 Oklahoma Administrative Code (OAC) at Title 252,</p> <p>16 Chapter 4, Sections 4-7-13, 4-7-32, and 4-7-33</p> <p>17 and Chapter 100, Sections 100-1-3, 100-1-4,</p> <p>18 100-2-3, 100-7-1.1, 100-7-15, 100-7-18, 100-8-2,</p> <p>19 100-8-4, 100-8-5, 100-8-7.2, 100-8 and Appendix</p> <p>20 Q, as proposed on September 15, 2020. As stated</p> <p>21 in our October 15, 2020, comment letter, we</p> <p>22 believe the proposed revisions could address</p> <p>23 certain issues and areas of concern in the</p> <p>24 Oklahoma air permitting program which have been</p> <p>25 identified through several years of discussions</p>	<p style="text-align: right;">Page 13</p> <p>1 between the Oklahoma Department of Environmental</p> <p>2 Quality (ODEQ) and the EPA Region 6.</p> <p>3 The staff attended an October 21, 2020,</p> <p>4 meeting with the Oklahoma Air Quality Advisory</p> <p>5 Council (AQAC) in support of the proposed</p> <p>6 revisions. The AQAC did not approve the</p> <p>7 proposed revisions at this meeting; instead</p> <p>8 expressing significant concerns and doubts about</p> <p>9 the necessity of the proposed revisions.</p> <p>10 This letter provides clarification of</p> <p>11 the scope of the existing Oklahoma construction</p> <p>12 permit program in the Oklahoma State</p> <p>13 Implementation Plan (SIP) and the EPA-approved</p> <p>14 Oklahoma Part 70 air permitting program and</p> <p>15 highlights the necessity for the proposed</p> <p>16 revisions. We have several pending Oklahoma SIP</p> <p>17 submittals and revisions to the Oklahoma Part 70</p> <p>18 air permitting program that we have not yet</p> <p>19 acted upon, choosing to work with the ODEQ in an</p> <p>20 effort to develop State regulatory solutions</p> <p>21 designed to meet federal Clean Air Act (CAA)</p> <p>22 requirements for SIPs and Title V programs.</p> <p>23 If an acceptable regulatory solution is</p> <p>24 not adopted by Oklahoma, the EPA will proceed</p> <p>25 with actions on the pending submittals and</p>

<p style="text-align: right;">Page 14</p> <p>1 revisions consistent with our CAA obligations. 2 Enclosed are several clarifications regarding 3 the Oklahoma SIP and the Oklahoma Part 70 air 4 permitting program, as well as the impact of the 5 proposed regulatory revisions. Next slide. 6 We hope the enclosed clarifications 7 will be useful to the ODEQ in its effort to 8 support the changes necessary to address our 9 mutual concerns in the rulemaking process. 10 Should you have questions, please reach out to 11 me directly at 214-665-7593, or please feel free 12 to contact Ms. Cynthia Kaleri at 214-665-6772. 13 Sincerely, David F. Garcia, P.E., 14 Director of the Air and Radiation Division. 15 Please note the enclosure mentioned in 16 this letter. I will not be reading it into the 17 record; it is available for review in the 18 meeting packet and on the web. Next slide. 19 Our Path Forward. We posted an updated 20 version of the proposed rule changes on the web 21 on November 9. As I go through the proposed 22 changes to the rule text, I plan to show the 23 date on which a particular change was first 24 presented and whether the rule was updated 25 recently.</p>	<p style="text-align: right;">Page 15</p> <p>1 But before I start going over the 2 details, as I have done previously, I would like 3 to acknowledge the work Brooks Kirlin has done 4 as the primary author of the changes to the 5 rules we are presenting. 6 Thank you, Brooks. 7 And I would also like to thank Adina 8 Wiley and her colleagues from EPA Region 6 for 9 their input and collaboration. 10 I would also like to note, in advance, 11 that staff will recommend that Council adopt the 12 proposed rule changes shared today. With that, 13 we would like to turn to the specific rule 14 language, starting with Chapter 4. Next slide. 15 If you are not able to view the 16 presentation, please turn in your packets to the 17 proposed amendments to the rule text in Chapter 18 4, Subchapter 7. Next slide. 19 Please note that, in this presentation, 20 much of the rule language not being changed has 21 been omitted. The complete text of each section 22 is included in the rule text documents included 23 in the packet and on the web. In addition, the 24 slides have been marked to show the date 25 particular rule changes were first presented,</p>
<p style="text-align: right;">Page 16</p> <p>1 and new changes will be labeled as such. 2 The changes shown on this slide include 3 an additional reference to the enabling statute 4 and new language first presented today, intended 5 to clarify that only Tier II and III 6 applications require public notices in the 7 newspaper. Next slide. 8 The changes shown on this slide state 9 that enhanced NSR may only be used to modify an 10 existing Title V permit. With these changes in 11 place, the initial Title V permit will require 12 Tier II public review. Next slide. 13 EPA requires us to pick one consistent 14 noticing method for public review. New 15 paragraph 6 states that our official method will 16 be publication on the web. Oklahoma Statute 17 also requires public noticing of various 18 permitting actions and requires public notices 19 to be published in the newspaper. Paragraph 6 20 will have no effect on those requirements. 21 New paragraph 7 states that all new 22 requirements for Tier I public review will be 23 noticed exclusively on the web. These 24 permitting actions are not required by Oklahoma 25 Statute to be published in the newspaper. The</p>	<p style="text-align: right;">Page 17</p> <p>1 highlighted changes were made to properly cite 2 the statute. Next slide. 3 Paragraph 8 allows minor source 4 facilities to use the FESOP enhanced NSR process 5 to incorporate requirements from a minor NSR 6 permit, which went through public and EPA 7 review, into an existing FESOP through a 8 Subchapter 7 operating permit modification 9 without additional public or EPA review. If a 10 minor source facility does not already have a 11 FESOP, it will need to go through traditional 12 NSR for the first issuance of a FESOP. 13 Paragraph 9 states that DEQ will post 14 draft Tier I individual minor source operating 15 permits on the web for public review. The 16 highlighted text clarifies that, if the facility 17 already has a FESOP and the construction permit 18 follows the FESOP enhanced NSR process, the 19 modified FESOP need not go through another round 20 of public review. 21 Paragraph 10 states that additional 22 notices may be published on the web at the 23 Director's discretion. Next slide. 24 The deletions in Section 32, Air 25 quality applications - Tier I, paragraph (b)</p>

<p style="text-align: right;">Page 18</p> <p>1 codify the requirement that initial Title V 2 permits must undergo Tier II public review. 3 Enhanced NSR will no longer be available for the 4 initial Title V operating permit. Next slide. 5 The modified language in subparagraph 6 (A) notes that some Subchapter 8 minor NSR 7 permits issued after adoption of these rules 8 will undergo Tier I public review on the web. 9 Additional changes allow these minor NSR permits 10 to use enhanced NSR. Next slide. 11 The added text shown in subsection (a), 12 paragraph (2), formally incorporates the 13 requirement for a permit incorporating limits to 14 move the facility from a Title V permit to a 15 synthetic minor permit to go through Tier II 16 public review. The changes to subsection (b) 17 codify the change in policy requiring an initial 18 Title V permit to undergo Tier II public review. 19 Next slide. 20 That concludes my presentation on our 21 proposed changes to Chapter 4. 22 I would like to restate the staff's 23 recommendations: 24 AQD staff recommends the Council pass 25 Chapter 4. However, given the</p>	<p style="text-align: right;">Page 19</p> <p>1 interrelatedness of Chapter 4 with the 2 Chapter 100 proposed changes that 3 follow, it may behoove the Council to 4 vote to postpone to discussion by the 5 Council and comment from the public 6 until after I have completed my 7 Chapter 100 presentation. 8 Thank you. I will now ask Beverly 9 Botchlet-Smith, our protocol officer for today's 10 meeting, to discuss the next steps in the 11 process. Thank you, Beverly. 12 MS. BOTCHLET-SMITH: Thanks, Tom. To 13 ensure the public is able to listen to the 14 Council's deliberation on this rule, all 15 questions from the Council will be made audibly 16 and chat features in Zoom will not be used. AQD 17 is recommending the discussion by the Council 18 and the public be postponed, along with a 19 potential vote of Chapter 4, until after Tom 20 concludes his full permit rulemaking 21 presentation. 22 Do we have questions by the Council or 23 discussion? Do you want to make a motion to do 24 this? And please remember to unmute yourself. 25 Laura?</p>
<p style="text-align: right;">Page 20</p> <p>1 CHAIRMAN LODES: I don't have any 2 questions at this time. Does the Council have 3 any questions? 4 MR. COLLINS: I do not. 5 DR. DELANO: I don't either. 6 MS. BOTCHLET-SMITH: So Laura, I guess 7 the next step here is either a motion to pass or 8 a motion to postpone until you hear the 9 remainder of his presentation. 10 CHAIRMAN LODES: Council, what would 11 you all like to do? Should we go ahead and pass 12 Subchapter 4 as is or do we want to hear how it 13 interrelates with Subchapter 100 -- or sorry, 14 Chapter 4, and see how it relates with Chapter 15 100? 16 MR. KEELE: This is Garry. I'd like to 17 hear how it relates. 18 CHAIRMAN LODES: Okay. And I believe 19 -- go ahead. 20 MR. ELLIOTT: This is Greg Elliott. I 21 would like to make a motion to postpone voting 22 on approval of Subchapter 4 until after the 23 presentation on Subchapter 100. 24 MS. BOTCHLET-SMITH: Do you want to 25 correct your motion? Because it's Chapter 4.</p>	<p style="text-align: right;">Page 21</p> <p>1 MR. ELLIOTT: Chapter. 2 MS. BOTCHLET-SMITH: We all misspeak on 3 that. 4 MR. ELLIOTT: Sorry. I would like to 5 make a motion to postpone voting on Chapter 4, 6 changes proposed by the DEQ, until after the 7 presentation of Chapter 100 is concluded. 8 MR. TAYLOR: I'll second that. 9 MR. KEELE: The is Garry Keele. I'll 10 second, yea. 11 CHAIRMAN LODES: Quiana, I have a 12 motion and a second. Will you please call roll? 13 MS. FIELDS: Mr. Collins? 14 MR. COLLINS: Yes. 15 MS. FIELDS: Dr. Delano? 16 DR. DELANO: Yes. 17 MS. FIELDS: Mr. Elliott? 18 MR. ELLIOTT: Yes. 19 MS. FIELDS: Mr. Keele? 20 MR. KEELE: Yes. 21 MS. FIELDS: Mr. Taylor? 22 MR. TAYLOR: Yes. 23 MS. FIELDS: Ms. Lodes? 24 CHAIRMAN LODES: Yes. 25 MS. FIELDS: Motion passed.</p>

<p style="text-align: right;">Page 22</p> <p>1 MS. BOTCHLET-SMITH: Okay. At this</p> <p>2 time, we'll proceed with what's marked as Agenda</p> <p>3 Item 3(b) on the hearing agenda. This is</p> <p>4 Chapter 100, Air Pollution Control, Subchapter</p> <p>5 1, Definitions; Subchapter 7, Permits for Minor</p> <p>6 Facilities; and Subchapter 8, Permits for Part</p> <p>7 70 sources and major New Source Review, NSR</p> <p>8 sources.</p> <p>9 And, once again, Mr. Tom Richardson</p> <p>10 will give the staff presentation.</p> <p>11 Tom.</p> <p>12 MR. RICHARDSON: Thank you, Beverly.</p> <p>13 We are now on slide 58. If you are not</p> <p>14 able to follow the presentation, please turn in</p> <p>15 your packets to the proposed amendments to the</p> <p>16 rule text in Chapter 100, Subchapters 1, 7 and</p> <p>17 8. Next slide.</p> <p>18 This slide shows the definitions for</p> <p>19 New Source Review or NSR and NSR permit that</p> <p>20 will be added to Subchapter 1. And NSR is added</p> <p>21 to the list of acronyms. The version initially</p> <p>22 posted showed the definition of Title V permit</p> <p>23 to be underlined. That was an error. That</p> <p>24 definition was added in the rule changes that</p> <p>25 became effective September 15, 2020. We are not</p>	<p style="text-align: right;">Page 23</p> <p>1 proposing any changes to this definition. Next</p> <p>2 slide.</p> <p>3 The next set of slides present changes</p> <p>4 that we are proposing to Subchapter 7. The tons</p> <p>5 per year or TPY acronym should be upper case.</p> <p>6 This slide shows this correction. Next slide.</p> <p>7 On this slide, new definitions for</p> <p>8 FESOP and FESOP enhanced NSR permit process are</p> <p>9 added to Section 1.1. All Subchapter 7 minor</p> <p>10 source operating permits issued after these</p> <p>11 rules become operative will be considered to be</p> <p>12 FESOPs.</p> <p>13 FESOP enhanced NSR, in Subchapter 7, is</p> <p>14 similar to enhanced NSR in Subchapter 8, in that</p> <p>15 it allows changes from an NSR permit, which has</p> <p>16 undergone public review and EPA review, to be</p> <p>17 incorporated into an existing FESOP without</p> <p>18 undergoing another round of public and EPA</p> <p>19 review. The difference is that in FESOP</p> <p>20 enhanced NSR there is no 45-day EPA review</p> <p>21 period. EPA is given an opportunity to review</p> <p>22 the NSR permit along with the public. The</p> <p>23 highlighted text clarifies that it is the draft</p> <p>24 version of the permit that is subject to review.</p> <p>25 Next slide.</p>
<p style="text-align: right;">Page 24</p> <p>1 Again, the acronym TPY should be upper</p> <p>2 case. Next slide.</p> <p>3 This slide shows two additional</p> <p>4 definitions added to Subchapter 7: Replacement</p> <p>5 unit and traditional NSR process. Next slide.</p> <p>6 This slide shows changes to the</p> <p>7 requirements for a construction permit under</p> <p>8 Subchapter 7. The first change clarifies that</p> <p>9 it is modification of a unit resulting in a</p> <p>10 permitted emissions increase greater than five</p> <p>11 tons per year that triggers the requirement to</p> <p>12 get a Subchapter 7 construction permit.</p> <p>13 The second change exempts replacements</p> <p>14 units from the requirement for a construction</p> <p>15 permit, as long as the replacement unit does not</p> <p>16 require a change in an emission limit. In spite</p> <p>17 of this exemption, the permittee will be</p> <p>18 required to notify the Department within 15 days</p> <p>19 of startup of the replacement unit or as</p> <p>20 specified in the permit. A typo was corrected,</p> <p>21 thanks to Stakeholder feedback. Next slide.</p> <p>22 Subsection (e) was altered to conform</p> <p>23 with duty to comply language added later for</p> <p>24 operating permits. Next slide.</p> <p>25 Subsection (f) language includes</p>	<p style="text-align: right;">Page 25</p> <p>1 stating that the NSR permits do not technically</p> <p>2 expire. They are superseded by later permits.</p> <p>3 However, the authority to construct under an NSR</p> <p>4 permit will expire under certain circumstances,</p> <p>5 primarily over long delays in the initiation of</p> <p>6 construction. In addition, problematic null and</p> <p>7 void language has been removed.</p> <p>8 Subsection (h) was added to clarify</p> <p>9 when the authorization to construct expires.</p> <p>10 The correction noted was a formatting change. A</p> <p>11 hard return was removed after the word modify,</p> <p>12 because there was no formatted paragraph to</p> <p>13 follow, just continued text. Next slide.</p> <p>14 Section 18, Subsection (a), paragraph</p> <p>15 (2) states that the requirement to apply for an</p> <p>16 operating permit or a modified operating permit</p> <p>17 is triggered 100 days after startup of any</p> <p>18 emission unit authorized by a construction</p> <p>19 permit. The highlighted text shows a correction</p> <p>20 of a typo. A space was added between "a" and</p> <p>21 "100."</p> <p>22 Subsection (d) adds mention of the</p> <p>23 three types of operating permit available to</p> <p>24 better mirror the language related to types of</p> <p>25 construction permits.</p>



<p style="text-align: right;">Page 26</p> <p>1 Subsection (f), paragraph (3) states 2 that facilities that already have FESOPs may use 3 the FESOP enhanced NSR process for additional 4 modifications to the facility. Next slide. 5 The duty to comply language for 6 operating permits was added based on input from 7 EPA Region 6. Next slide. 8 The next set of slides show proposed 9 changes to Subchapter 8. This slide shows the 10 new definitions which will be added to 11 Subchapter 8: Enhanced NSR process, traditional 12 NSR process. 13 As we have noted a number of times now, 14 the enhanced NSR process is the process we have 15 been using in Oklahoma for years. However, we 16 now require a facility to already have a Title V 17 operating permit to be eligible for the enhanced 18 NSR process. 19 The traditional NSR process will also 20 be provided as an option. Under traditional 21 NSR, EPA and the public share a 30-day review 22 window for an NSR permit. Under traditional 23 NSR, when those requirements are incorporated 24 into the Title V operating permit, there is both 25 a 30-day public and a 45-day EPA review period,</p>	<p style="text-align: right;">Page 27</p> <p>1 except for minor modifications, which have no 2 public review requirement when the operating 3 permit is modified. The traditional NSR process 4 speeds up issuance of the NSR permit, compared 5 to the enhanced NSR process, but there is 6 another round of public review, except for minor 7 mods, and EPA review when the requirements are 8 incorporated into the Title V permit. Next 9 slide. 10 The additional text in subsection (a) 11 makes significant changes to the requirements 12 for minor NSR permits under Subchapter 8. The 13 "or change in the method of operation" language 14 brings our requirement for a construction permit 15 more formally in line with EPA's requirements 16 for New Source Review or NSR. 17 The new language in subparagraph (B), 18 unit (iv) states that a construction permit will 19 be required for a minor modification to allow a 20 physical change or a change in the method of 21 operation that results in a potential emissions 22 increase of more than 10 tons per year of any 23 regulated air pollutant. The reference to the 24 calculation approach in 40 CFR Section 49.153(b) 25 is meant to clarify how project emission</p>
<p style="text-align: right;">Page 28</p> <p>1 increases will be determined. We are basing our 2 approach on EPA's calculation method in the 3 Tribal NSR Rule. We intend to offer guidance to 4 clarify how we will apply that approach. Next 5 slide. 6 The deletions on slide 71 and 72 were 7 made based on stakeholder request. The deleted 8 rule text set up the original schedule for the 9 submission of the initial Title V applications 10 for facilities that were operating and became 11 subject to Title V permitting requirements when 12 the program was established. Next slide. 13 Slide 72 shows additional deletions, 14 but also text that will be retained to establish 15 the ongoing requirement for any facility that 16 slipped through unnoticed to abide by this 17 requirement, or for a facility that becomes 18 newly subject and will need to obtain a Title V 19 operating permit. Next slide. 20 New Subsection (c) states that the 21 enhanced NSR process is available for facilities 22 with existing Title V permits. Next slide. 23 In Section 5, Subsection (d), paragraph 24 (3), language will be added requiring the 25 applicant to choose between traditional NSR and</p>	<p style="text-align: right;">Page 29</p> <p>1 enhanced NSR when applying for a major source 2 construction permit, if the facility already has 3 a Title V operating permit. However, a facility 4 may change that initial request up to the date 5 that the notice is published. Next slide. 6 The changes to subsection (a), 7 paragraph (1), subparagraph (e), clarify that an 8 administrative amendment may be used to 9 incorporate applicable requirements from a Tier 10 II construction permit into an existing, though 11 not an initial, Title V permit. Next slide. 12 Changes shown to Section 8, subsection 13 (f), clarify the types of permits that undergo 14 public review, have comments addressed, and then 15 are submitted to EPA for the 45-day review 16 period. Paragraphs (1) and (2) refer to the 17 initial and modified Title V operating permits 18 under traditional NSR. Paragraph (3) refers to 19 construction permits undergoing enhanced NSR, 20 where EPA performs a review of both the NSR 21 issues and the procedural and compliance 22 requirements under the Title V operating permit 23 program at the same time. The formatting update 24 changed paragraphs (A), (B) and (C) to 25 paragraphs (1), (2) and (3).</p>

<p style="text-align: right;">Page 30</p> <p>1 Subsection (g) provides the additional 2 clarification of the requirement that the DEQ 3 notify EPA and any affected state if the DEQ 4 refuses to accept recommendations submitted 5 during the review period.</p> <p>6 Subsection (h) clarifies that, if the 7 45-day EPA review period expires and EPA has not 8 submitted comments, or if EPA provides notice to 9 the DEQ that EPA has no objection to either a 10 Title V permit or a permit undergoing enhanced 11 NSR, the DEQ will issue the permit unless an 12 administrative hearing has been requested 13 following DEQ Tier III procedures. Next slide.</p> <p>14 Subsection (i), paragraph (1) clarifies 15 that DEQ may not issue a Title V permit to which 16 EPA has objected during the 45-day EPA review 17 period. The rules governing such an objection 18 are specific to Title V operating permits. 19 Because enhanced NSR provides EPA with an 20 opportunity to review both the NSR permit and 21 the procedural and compliance requirements under 22 the Title V operating permit program, EPA may 23 issue an objection with regard to the Title V 24 permit modification which would otherwise be 25 issued as an administrative amendment.</p>	<p style="text-align: right;">Page 31</p> <p>1 Paragraph (5) requires the DEQ to 2 consult with the EPA to try to resolve issues 3 associated with any objection. The new language 4 allows the DEQ to, at the Director's discretion, 5 issue an NSR permit under the traditional NSR 6 process in spite of an objection EPA has made 7 during the 45-day review of the permit under the 8 enhanced NSR process. The DEQ would still need 9 to work with EPA to resolve the dispute prior to 10 the issuance of the Title V operating permit 11 modification. Next slide.</p> <p>12 The language added to subsection (j) 13 clarifies that the petition process is 14 associated with the issuance of the Title V 15 operating permit. There are other 16 administrative remedies available to parties who 17 object to an NSR permit, but the petition 18 process is exclusively associated with 40 CFR 19 Part 70, the Title V operating permit process. 20 Next slide.</p> <p>21 That concludes my presentation on our 22 proposed changes to Chapter 100, Subchapters 1, 23 7 and 8. Please note that the staff is 24 recommending that the Council adopt the proposed 25 rule changes to both Chapter 4 and Chapter 100</p>
<p style="text-align: right;">Page 32</p> <p>1 during today's meeting. Thank you.</p> <p>2 Once again, I will ask Beverly 3 Botchlet-Smith to discuss the next steps in the 4 process.</p> <p>5 MS. BOTCHLET-SMITH: Thank you, Tom.</p> <p>6 Again, just for the record, I would 7 like to mention, to ensure the public is able to 8 listen to the Council's deliberation on this 9 rule, all questions from the Council will be 10 made audibly. Chat features in Zoom are not 11 being used.</p> <p>12 So we will start, at this point, with 13 any questions or discussions from the Council on 14 either Chapter 4 or Subchapter 100. And I would 15 ask to, please --</p> <p>16 I don't think you picked that up. I 17 hit mute. Please remember to unmute yourself 18 when you speak.</p> <p>19 CHAIRMAN LODES: Do we have any 20 questions or comments from the Council?</p> <p>21 MR. KEELE: So this is Garry Keele. So 22 if I understand it right, instead of looking 23 backwards now, we're only looking forwards, is 24 that correct, on these rule changes?</p> <p>25 MR. RICHARDSON: Yes. So there was</p>	<p style="text-align: right;">Page 33</p> <p>1 quite a bit of discussion, especially with 2 regard to Subchapter 7 operating permits that 3 are currently in place, and we had initially 4 discussed the option of batch public noticing 5 all of those, to convert those to FESOPs.</p> <p>6 Based on the feedback that Council and 7 the various stakeholders provided, we decided 8 that that isn't the best way to go. And so 9 instead what we're planning on doing is from 10 date forward all new permits will follow that 11 FESOP process, our existing subchapter 7 12 operating permits will continue in that state. 13 So these rules will be forward looking. The 14 existing permits will rely on the existing 15 justification and the aspects of the permitting 16 rules that are currently in the SIP to create 17 the federal enforceability of those 18 requirements. So any new permitting action and 19 new construction permit will go through the 20 traditional NSR process, and that will require 21 public review.</p> <p>22 And then the operating permit will 23 undergo public review, and then that will result 24 in the creation of a FESOP. After that, any 25 additional construction may go through FESOP</p>

<p style="text-align: right;">Page 34</p> <p>1 enhanced NSR. And then all existing permits 2 will continue as they are, unless there's a 3 modification of the permit, either through the 4 construction process or a direct modification to 5 the operating permit. 6 MR. KEELE: Okay. So that looks like 7 we'll just address any existing permits as they 8 come up for any changes that they may want to 9 make at their facilities. 10 MR. RICHARDSON: Yes, that's exactly 11 right. 12 MR. KEELE: Okay. So with that 13 being -- all that being said, what is the 14 agency's view of the existing facilities? 15 Obviously, it would come to some sort of 16 decision to just go forward. Is there a view 17 that those permits are kind of hanging out in 18 the wind, not being particularly protected? Or 19 are they considered to be okay under previous 20 versions of the SIP approvals? 21 MR. RICHARDSON: The latter. We 22 believe that they are federally enforceable; 23 that they are undergirded by the existing state 24 rules and the components that are incorporated 25 into the SIP. And we have received feedback</p>	<p style="text-align: right;">Page 35</p> <p>1 from EPA that those permits are considered to be 2 federally enforceable. So we believe that they 3 are -- that they're undergirded by both statute 4 and state rules in the SIP. 5 The only possible concern we have in 6 the future, is that should EPA move in some way 7 to imperil that status, we would then need to 8 address those issues. But unless something is 9 done affirmatively, unless a step is taken that 10 would -- that would work to undermine that 11 status, those permits will continue to be 12 protective of the environment and protective of 13 the facilities that have those permits. 14 MR. KEELE: Thank you. 15 MR. FOSTER: Garry, this is Melanie 16 Foster. I would just also add, Tom did not read 17 all of the EPA enclosure into the record, as he 18 stated. And one of the particular things that 19 they addressed in their enclosure is status of 20 existing Subchapter 7 operating permits. And in 21 it they mentioned that they acknowledge that 22 many aspects, you know, of the State operating 23 permit program, under subchapter 7, have been 24 approved into the Oklahoma SIP, and that they 25 generally believe that terms and conditions and</p>
<p style="text-align: right;">Page 36</p> <p>1 permits issued pursuant to the EPA approved SIP 2 are federally enforceable. 3 So you might take a look at that and 4 see how that -- what comfort level, obviously, 5 that gives to everyone. So we're appreciative 6 of EPA putting that thought and belief into 7 their support letter. 8 And I'll also mention that we didn't 9 change anything in the rules that were presented 10 to you about this process. Because, as we said, 11 the rules themselves don't speak to this 12 process, the rules themselves only put the FESOP 13 in place, in the future. And so addressing the 14 existing individual operating permits under 15 Subchapter 7 is just a process that we have to 16 do kind of outside of the rules, to shore it up 17 with what the rules are going to say. 18 MR. KEELE: Yeah. Thank you, Melanie. 19 I appreciate that. I have read it. It does 20 look -- I appreciate the clarifications that 21 were put into the letter from EPA, but it's also 22 useful to hear you guys explain what you think 23 about it. So I appreciate that. That's it for 24 me. 25 CHAIRMAN LODS: Do existing minor</p>	<p style="text-align: right;">Page 37</p> <p>1 sources -- I know we're not going to do a batch, 2 but if they want to go ahead and put their 3 permit through a public notice process now so 4 that they have a FESOP down the road, that is 5 something that we can do? 6 MR. RICHARDSON: Yes. So, Laura, you 7 know initially we planned on just doing them in 8 large groups. Our current thinking is that the 9 permit will stay in its present state, unless 10 the applicant submits a complete application for 11 modification. So that will be a process that 12 would have to be initiated by the 13 owner/operator. We will not initiate that 14 process ourselves. 15 CHAIRMAN LODS: Okay. 16 MS. BOTCHLET-SMITH: Any other 17 questions from the Council? 18 DR. DELANO: Well, I, for one, like 19 what you've done. I think that's an 20 improvement, and I think that way you don't 21 catch anybody by surprise. I commend you. 22 MS. STEGMANN: Thank you. 23 MS. BOTCHLET-SMITH: We'd like to give 24 the public an opportunity to comment on both 25 Chapter 4 and Subchapter 100. So at this point,</p>

<p style="text-align: right;">Page 38</p> <p>1 if the public does have any questions, we want 2 to remind you to do so, you should use the 3 "raise hand" function on your device or press *9 4 on your telephone keypad. 5 And as a reminder, the host will unmute 6 your line when it's your turn to speak. You may 7 also need to unmute yourself using the 8 microphone icon or *6 on your keypad. I'd also 9 ask for you to remember to state your name and, 10 please, also state your affiliation before 11 beginning your comment. And you may be asked to 12 actually spell your name for the record. 13 The host can now proceed with calling 14 on anyone from the public wishing to comment. 15 Christina or Malcolm? 16 MS. HAGENS: Yes. Currently we do not 17 have any hands raised, so we will give people a 18 few seconds to navigate to that in case they're 19 not familiar with the controls. 20 So as Beverly stated, the "raise hand" 21 feature can be found either at the bottom of the 22 participant's tab once you open that up, or it 23 can be found under "more meeting" settings at 24 the top right-hand corner of your screen, 25 depending on your device.</p>	<p style="text-align: right;">Page 39</p> <p>1 I'm still not seeing any hands raised. 2 We'll give it a few more seconds. 3 MR. ZACHARIAH: There are also keyboard 4 shortcuts of Alt Y or option Y, depending on 5 your device -- 6 MS. HAGENS: I see one hand raised from 7 Adrienne Burchett. 8 So, Adrienne, I will ask to unmute you, 9 and you will state your name and affiliation for 10 the record, and then we will turn the timer on 11 for three minutes. You should now be unmuted. 12 MS. BURCHETT: Yes, this is Adrienne 13 Burchett, A-D-R-I-E-N-N-E, B-U-R-C-H-E-T-T. I 14 have one question regarding -- I'm with 15 Altamira. I apologize -- regarding Laura's 16 comment, and kind of -- and the response for 17 Minor Sources subject to Subchapter 7. 18 In the event that they wanted to 19 initiate a modification that -- with an NSR 20 review period, would the same fees apply if a -- 21 if, I guess, a physical change wasn't made, but 22 they wanted to go ahead and initiate the public 23 and EPA review process, the NSR review process? 24 Thank you. 25 MS. HAGENS: Thank you. Does this</p>
<p style="text-align: right;">Page 40</p> <p>1 conclude your comment? 2 MS. BURCHETT: Yes. 3 MS. HAGENS: All right. Thanks. 4 CHAIRMAN LODS: Tom. 5 MR. RICHARDSON: Sorry. I was trying 6 to remember whether we -- whether it's a respond 7 to public comment is the same as the process as 8 responding to Council. 9 So the question is, would there be fees 10 associated with the NSR process going forward 11 for a facility? 12 So all changes to facilities would use 13 our existing fee structure. So if a facility 14 comes in with new construction, that application 15 would be very similar, the fees would be the 16 same and it would be processed. The only 17 difference is that the construction permit would 18 go through this 30-day public review on the web. 19 For an existing Subchapter 7 operating 20 permit, where you're modifying the operating 21 permit itself, where you're not going through 22 the NSR process as the first step, an example 23 would be -- I think Sean Walker brought up the 24 idea of a through-put increase. If you wanted 25 just to increase the through-put for an existing</p>	<p style="text-align: right;">Page 41</p> <p>1 facility without making any physical changes, 2 that could be done through a modification of the 3 operating permit. But unless a facility already 4 has a FESOP, that modification would have to go 5 through the 30-day public review. But, again, 6 the permit modification fee would be exactly the 7 same as they are now. 8 So you would submit an application for 9 an operating permit modification that, that the 10 draft of that modification would go through the 11 30-day public review. And then after that is 12 completed, the permit that's issued would be a 13 FESOP. And then -- then after that, that 14 facility, if they had new construction, that new 15 construction could go through the FESOP enhanced 16 NSR, which is a construction permit process. 17 But, again, the fees would be exactly the same 18 as they are now. So we're not changing the fee 19 structure. 20 MS. FOSTER: Tom, this is Melanie 21 Foster. Just in case I missed a nuance in 22 Adrienne's question, but I -- it's my 23 understanding -- and, Adrienne, you can feel 24 free to raise your hand if we haven't answered 25 your question fully -- but if the minor source</p>

<p style="text-align: right;">Page 42</p> <p>1 facility is just wanting to move it to the FESOP 2 arena, so they're not doing any traditional 3 modification of their operating permit, or any 4 construction, they're not doing anything except 5 they want to convert to the FESOP, yes, that 6 would still be a modification, which would 7 require the normal fee that we charge now for a 8 modification of the operating permit. 9 CHAIRMAN LODS: So that would be the, 10 I think, \$750 fee? 11 MS. FOSTER: Phillip, does that sound 12 right, the dollar figure? Or Lee? 13 MR. FIELDER: Yeah. This is Phillip 14 Fielder, permitting. 15 Yeah, I believe she's right, I believe 16 that is the 750. And I believe that was the 17 question that was asked, is that straight 18 conversion. So, yeah, we're not proposing any 19 new fee in our fee structure. 20 CHAIRMAN LODS: Instead of us just 21 batch doing everybody's, it would be one you can 22 apply for and then pay the fee, and then y'all, 23 essentially, will just put it on your website to 24 do the public notice. 25 MR. FIELDER: Correct.</p>	<p style="text-align: right;">Page 43</p> <p>1 CHAIRMAN LODS: Yeah, so that's a -- 2 for an operating permitting application fee, 3 that's -- yeah, the either -- a modification or 4 an individual is both \$750. 5 MR. FIELDER: Yeah. Right. 6 CHAIRMAN LODS: So -- 7 MS. BOTCHLET-SMITH: I'm sorry. While 8 we're still in public comment -- did you have 9 something else you want to add to that, Laura? 10 I didn't mean to cut you off. 11 CHAIRMAN LODS: No. 12 MS. BOTCHLET-SMITH: Since we are still 13 in public comment, we do want to give everyone 14 the opportunity to speak. 15 Christina, are you seeing anyone else 16 that has indicated they want to speak during 17 this time? And if not, we'll close public 18 comment and move back to the Council. 19 MS. HAGEN: I am not seeing any more 20 hands raised at this time. 21 MS. BOTCHLET-SMITH: Okay. Then, 22 Laura, I -- if you and the other Council members 23 would like to engage in further discussion, this 24 is your opportunity for that. 25 CHAIRMAN LODS: Okay. I do have one</p>
<p style="text-align: right;">Page 44</p> <p>1 question, going back over the EPA letter. I 2 knew there was something I read the other day. 3 There's a paragraph in here, and it 4 says, "However, as previously discussed, the EPA 5 may decide to initiate rulemaking under Clean 6 Air Act Section 110(k)(5), to find the existing 7 Subchapter 7 operating permit SIP provision 8 substantially inadequate to comply with the 9 Clean Air Act requirements for SIPs and require 10 Oklahoma to revise the SIP to correct the 11 deficiency or withdraw the state operating 12 permit." 13 Is that only if we don't pass this or 14 is that, in general, if people don't go and move 15 into the FESOP? 16 MR. RICHARDSON: Laura, my 17 understanding is, if we don't proceed with our 18 rulemaking and we leave our current system in 19 place, that EPA would be obligated to do a 20 finding of deficiency. So my understanding is 21 that does not -- they're not talking about what 22 the existing permits are, that part of the 23 program, because they'll be acting on our newly 24 adopted rules when we submit them to be part of 25 the SIP.</p>	<p style="text-align: right;">Page 45</p> <p>1 Now, any other action would be a 2 completely separate issue, but that -- that 3 particular discussion is focusing on our 4 failure, if we were to fail, to pass the rules, 5 what they feel they would be obligated to do 6 going forward. 7 MS. STEGMANN: Yes. I agree with what 8 Tom said, yeah. 9 CHAIRMAN LODS: And then in next piece 10 it says, "If the ODEQ wishes to pursue the 11 creation of a FESOP program as envisioned by the 12 EPA, then the existing Subchapter 7 operating 13 permits that Oklahoma may wish to use for SIP 14 purposes, or that a source is using to qualify 15 as a minor source, to net out of NSR 16 requirements, or to create external emission 17 offsets could be authorized under the SIP 18 approved FESOP program." 19 So that's the only thing where it 20 almost sounds like, if you've got a synthetic 21 minor source, if I'm reading that right, then we 22 may be -- are we forced into the FESOP now and 23 needing to file those mods? 24 MR. RICHARDSON: Laura, I would say, 25 no. And there's another -- I think in the</p>

<p style="text-align: right;">Page 46</p> <p>1 enclosure, there's another paragraph that 2 addresses the current permits. And they state 3 that the components -- the rules that are in the 4 SIP create the federal enforceability of those 5 permits. And that federal enforceability, the 6 limits that are taken need to be federally 7 enforceable to make them synthetic minor 8 permits, to keep a facility out of Title V. 9 So that will not be imperiled by our 10 creation of a FESOP program. And the issues 11 with regard to 110, that has to do with the 12 nature of our ability to defend the NAAQS. So 13 we do have some other issues we need to do, to 14 address overall 110 issues. 15 For example, we've talked about the 16 110-L demonstration that we'll be submitting, 17 that we have the outline and summary on the web. 18 And then I think Melanie has talked about, we 19 will also have to submit a 110-L to discuss the 20 permit exempt category and why we don't believe 21 that imperils the NAAQS, and we feel like we've 22 got 15-plus years of defending the NAAQS with 23 that in place, that will help support -- lend 24 support to that demonstration. 25 So we believe that the current program</p>	<p style="text-align: right;">Page 47</p> <p>1 is defensive of the NAAQS and we will not have 2 problems defending that. But, there is still a 3 risk going forward that there might be some 4 action taken, but we do not believe that this 5 will be something that will imperil the 6 existence of those existing permits. 7 CHAIRMAN LODS: Okay. It's just the 8 way you read that last paragraph of the EPA 9 letter, it -- they've given themselves, 10 basically, a lot of wiggle room, in my mind, to 11 flip-flop on us and come back and say, well, no, 12 all these existing permits are imperiled still. 13 I guess that's still my biggest concern 14 with this whole thing, is that we give here, and 15 then they're going to say, the others -- well, 16 no, you've got to do something with all the rest 17 of them. 18 MR. RICHARDSON: I think one of the 19 things that gives us comfort, is that's a 20 difficult and lengthy process. It's kind of 21 like, whoever is taking the initiative has the 22 burden. So it's like an activation energy 23 thing. 24 So if EPA decided that they wanted to 25 address our existing permits, they would have to</p>
<p style="text-align: right;">Page 48</p> <p>1 go through -- issue a notice of deficiency, go 2 through federal rulemaking, and we feel like 3 that would give us opportunities to push back 4 and address that issue. So we believe if we go 5 forward with our rules, we'll be in a good state 6 in protecting owner/operators system. 7 CHAIRMAN LODS: Okay. Do we have any 8 other questions or comments from the Council? 9 MR. ELLIOTT: Yeah. Laura, this is 10 Greg. 11 I kind of just want to reiterate, so 12 we're going through all of these SIP revisions 13 because the EPA is saying our previous one and 14 our previous permits weren't done according to 15 what they say we should have done. But now 16 they're saying, if we pass this, they're all 17 good and there was no issue with this. 18 And I -- personally, I like the idea of 19 the batch, putting those out to cover the 20 facilities. Because back in the '90s -- and 21 Kendal may remember this -- we thought 22 everything was good with the permit we had with 23 ODEQ, and the EPA came in and over-filed and it 24 ended up costing us a million dollars. 25 So I like the idea of batch public, to</p>	<p style="text-align: right;">Page 49</p> <p>1 get everybody brought up, and that way we've got 2 a hundred percent security on that. So I just 3 want to throw that comment out there. I really 4 liked the idea of the DEQ doing the batch public 5 comment, if someone chooses to. 6 MR. RICHARDSON: And I guess if -- 7 Greg, thank you for that comment. 8 I would say -- and I think this goes 9 back to what Melanie said earlier -- the 10 rulemaking we're putting out there doesn't speak 11 to the existing permits and how those will be 12 addressed. So we have many, many options on the 13 table, but we want to be responsive to 14 stakeholder comments, including Council 15 comments. 16 But if -- if something were to take 17 place that did imperil those existing permits, 18 all options are on the table. So if we needed 19 to, you know, we could take whatever action 20 necessary to protect our owner/operators, and 21 I -- I think that's one of the benefits of the 22 way we've addressed this particular rulemaking. 23 MR. ELLIOTT: Thank you, Tom. 24 CHAIRMAN LODS: Okay. There's nothing 25 in the rule, one way or the other, about how</p>

<p style="text-align: right;">Page 50</p> <p>1 we're going to address all the existing sources, 2 correct? 3 MR. RICHARDSON: Yes. That's -- 4 MS. STEGMANN: That is -- sorry, Tom. 5 Go ahead. 6 MR. RICHARDSON: No, you're fine. I 7 think we were about to say the exact same thing. 8 Yes, you're exactly right, Laura. 9 CHAIRMAN LODS: The same -- 10 MS. FOSTER: Go ahead, Kendal. This is 11 Melanie. 12 MS. STEGMANN: What I was going to say 13 was, by not going through -- I know a lot of 14 people are very comfortable with their existing 15 permit and may not want to go through the batch 16 process. That's why we're not going to put -- 17 at this time, go through that batch process and 18 force everybody to do a public notice. That's 19 why we're putting it on the facilities. It's 20 their option, if they want to get that FESOP 21 protection. We're making that an option for the 22 company and not make everybody go through it. 23 MR. ELLIOTT: But the companies will 24 have to pay for it versus the other way, it was 25 going to be like a free service.</p>	<p style="text-align: right;">Page 51</p> <p>1 MS. STEGMANN: Yes, that's correct. 2 Yeah. 3 CHAIRMAN LODS: So it's kind of an all 4 or nothing here, we either let each person do it 5 individually and pay 750, or the industry agrees 6 to just go through it and do it as a big batch 7 and it's free? 8 MS. FOSTER: Well, this is Melanie 9 again. I think Kendal had offered, at our last 10 Council meeting, and I think it still stands, 11 you know, that we can have further discussion 12 about this, with the Council and with 13 stakeholders, if we wanted to. We just felt, 14 from the last meeting, that we had gotten enough 15 feedback that this was probably the path that 16 most people were interested in. 17 But that -- again, it doesn't preclude 18 us -- as Tom mentioned, we have all options on 19 the table. The rules we pass, hopefully today, 20 don't lock us into anything as far as what to do 21 with the existing permits. And if the Council 22 still sees questions and concerns with this all 23 or nothing approach, we still have the ability 24 to have further discussions and craft even a 25 more tailored plan, if we so choose.</p>
<p style="text-align: right;">Page 52</p> <p>1 MR. ELLIOTT: Okay. Yes, I was just 2 throwing those comments out. That's very good. 3 So, you know, maybe a letter or 4 something to people that have existing, you 5 know, permits, say, Here is your one time free 6 offer. Do it now or, if you want to do it 7 later, you pay. I don't know. 8 MS. STEGMANN: I would like to mention 9 that we have a little over a thousand of these 10 type of permits that would have to be batched. 11 And the resources on our part, I think, would be 12 relatively high, and that's why we're kind of 13 favoring more of the facility, you know, 14 approach, rather than the batch approach. 15 MR. ELLIOTT: Completely understand. 16 CHAIRMAN LODS: So one more question I 17 have on this, which I think kind of precludes -- 18 so if we pass it today, and if it passes the 19 Environmental Quality Board in February, this 20 batch process or public notice process, it 21 really can't even start until September, once 22 the rules are in effect, correct? 23 MS. FOSTER: Laura, this is Melanie. 24 It would even potentially start after that. If 25 we really want to be extremely protective, it</p>	<p style="text-align: right;">Page 53</p> <p>1 would start, for a batch process or anything 2 like that, for a specific request, it would 3 start after EPA's approval. That would give the 4 most, you know, protection. 5 CHAIRMAN LODS: But EPA's been known 6 to take 15 years for approval. So maybe you and 7 I, Melanie, may have actually retired before 8 they get around to that. 9 MS. STEGMANN: I will say, for EPA, 10 they have -- that seems to be a main initiative 11 right now, is to reduce their SIP gap. So I 12 think they would take this pretty quickly. 13 MS. FOSTER: Yes, that's -- I apologize 14 if my other comment was flippant. No, EPA is 15 very -- is very interested in getting this done. 16 They have been, again, working with us 17 hand-in-hand through this process. As soon as 18 they have our SIP package, you know, down at 19 Region 6 -- which, again, we wouldn't submit at 20 the earliest, if we did it concurrent with when 21 the rules went effective of September 15th, 22 2021, at that point, we would be -- they would 23 start acting on their proposed approval and then 24 final approval. 25 So the earliest we'd probably be</p>

<p style="text-align: right;">Page 54</p> <p>1 looking at would be the end of 2021, on a super 2 aggressive schedule. But they do plan to act on 3 it very quickly.</p> <p>4 MS. STEGMANN: Yeah. Because, I mean, 5 we have been working with them, hand-in-hand in 6 this process. And so none of this is going to 7 be a surprise for them, so they should be very 8 comfortable for what we submit.</p> <p>9 CHAIRMAN LODES: Okay. So if 10 facilities make changes between now and 11 September, it's going to be the traditional 12 process, they will not be issued a FESOP, won't 13 have the option to get issued a FESOP until 14 after September, correct?</p> <p>15 MR. RICHARDSON: Yes. So this will be 16 date forward when the rules become operative 17 here in Oklahoma. So the entire FESOP process, 18 all of that will not occur unless the rules are 19 passed. And then there's the additional process 20 of the EQB, and then it goes through -- you 21 know, it gets the Governor's approval. Then on 22 September 15th of 2021, date forward, that would 23 be the initiation of that process.</p> <p>24 CHAIRMAN LODES: So it's not like 25 people can come in, in February, or whatever,</p>	<p style="text-align: right;">Page 55</p> <p>1 and start applying for this?</p> <p>2 MR. RICHARDSON: Not at that time.</p> <p>3 CHAIRMAN LODES: Okay.</p> <p>4 MR. KEELE: This is Gary Keele. Going 5 back to EPA approval, I believe in the previous 6 meeting it was explained that what EPA -- or 7 what we're doing here and what EPA is what has 8 approved in other region states, is that 9 correct, or something similar to this in our 10 region? Am --</p> <p>11 MR. RICHARDSON: So I think --</p> <p>12 MR. KEELE: Go ahead.</p> <p>13 MR. RICHARDSON: Sorry. I didn't mean 14 to talk over you.</p> <p>15 MR. KEELE: You're fine. Go ahead.</p> <p>16 MR. RICHARDSON: So we did talk to EPA, 17 and there is, if I recall correctly, no other 18 similar program in Region 6. So our EPA 19 contacts -- contacts, actually, went out to 20 other areas. There's a county in California, 21 like an air quality management district in 22 California that has a FESOP program.</p> <p>23 There's the Florida program that's been 24 discussed; although, again, we reached out to 25 them and it seems like that was for facilities</p>
<p style="text-align: right;">Page 56</p> <p>1 that were built before they had an NSR program, 2 so not really maybe a good analogy.</p> <p>3 But there are similar programs in every 4 state, but it seems like every state has a 5 slightly different twist on it. So for 6 example --</p> <p>7 MR. KEELE: Right.</p> <p>8 MR. RICHARDSON: -- ours has this FESOP 9 enhanced NSR process, so there's only one need 10 for public review at the NSR stage if you 11 already have a FESOP. That, to our knowledge, 12 will be the first time that that's been put into 13 place.</p> <p>14 But we've been in close collaboration 15 with EPA, making sure that they're on board with 16 all of these changes and they've given us the 17 green light, that this looks approvable. So we 18 feel quite confident that what we're proposing 19 will be approvable by EPA.</p> <p>20 MR. KEELE: Yeah, fair enough. What I 21 was looking for is if it was already sort of 22 universally or any sort of noticing publication 23 requirements are already universally sort of 24 accepted in other states. You know, we're 25 getting ready to have -- well, there's likely</p>	<p style="text-align: right;">Page 57</p> <p>1 going to be a change in administration, and the 2 EPA can do different things whenever 3 administrations change. So I'm looking, you 4 know, sort of the back, end around way of 5 asking, any chance that that would get slowed 6 down with the change of administration? If 7 everybody else has already had something like 8 this approved into their SIP, then I would think 9 no.</p> <p>10 MS. FOSTER: So, Garry, this is 11 Melanie. I think what you're speaking to is the 12 public noticing of the minor NSR. And, yes, 13 that's universal. That is a foundation of the 14 minor NSR program that we're trying to fix.</p> <p>15 FESOP is kind of a strange little 16 animal, you know, that we're trying to use, 17 because we think it's helpful in our situation. 18 And we think, you know, we can easily meet the 19 burdens of it and have a federally enforceable 20 operating permit program. But, yes, all the 21 other Region 6 states have, as Kendal has 22 mentioned several times -- have the requirement 23 to do minor NSR public notice, and so we're just 24 catching up with everyone else on that.</p> <p>25 MR. RICHARDSON: I would also add --</p>



<p style="text-align: right;">Page 58</p> <p>1 MR. KEELE: Yeah, that --</p> <p>2 MR. RICHARDSON: Go ahead.</p> <p>3 MR. KEELE: I was just going to say,</p> <p>4 that's really what I was asking. So appreciate</p> <p>5 the clarification.</p> <p>6 MR. KEELE: Go ahead, Tom.</p> <p>7 MR. RICHARDSON: I was just going to</p> <p>8 add, I think regardless if you have a new</p> <p>9 administration coming in, there are some holes</p> <p>10 in our current armor, so to speak. And I think,</p> <p>11 no matter how quickly they approve it into the</p> <p>12 SIP, we will have fixed the holes in our armor,</p> <p>13 and I think that will make us more protective of</p> <p>14 our owner/operators. So I think regardless of</p> <p>15 the new administration, I think this puts us in</p> <p>16 a better posture going forward.</p> <p>17 MR. KEELE: Yeah. And this doesn't</p> <p>18 seem like it would be anything that a change in</p> <p>19 administration would -- they would still want</p> <p>20 this anyway, I would think.</p> <p>21 MS. STEGMANN: Yes, I would think so as</p> <p>22 well.</p> <p>23 CHAIRMAN LODS: So I do have a</p> <p>24 question on my Subchapter 8 permits. I file for</p> <p>25 a Tier I minor mod next week for a -- like I</p>	<p style="text-align: right;">Page 59</p> <p>1 would any other permit, like I've been doing for</p> <p>2 years, for one of my Title V facilities. It</p> <p>3 meets today's requirements of it. Now, we know</p> <p>4 Tier I mods tend to sit on desks for lengthy</p> <p>5 periods of time. Is industry going to get</p> <p>6 pushback come next September when somebody</p> <p>7 actually picks up the minor mod to look at it?</p> <p>8 Are they then going to want to change the</p> <p>9 process, because, hey, we've got an increase</p> <p>10 over 10 tons because my -- I maybe netted out a</p> <p>11 PSD if I had a 28-ton increase in NOx?</p> <p>12 MR. RICHARDSON: So, Laura, I think</p> <p>13 we're considering things date forward. So a</p> <p>14 complete application that's been determined to</p> <p>15 be administratively complete, we will process</p> <p>16 that under the rules that were in place when</p> <p>17 that application was submitted.</p> <p>18 But before I say that as an absolute, I</p> <p>19 might like to ask Phillip Fielder to step in,</p> <p>20 because usually I go to Phillip with those</p> <p>21 questions.</p> <p>22 MR. FIELDER: Yeah, this is Phillip.</p> <p>23 Yeah, Laura, so if -- if, after the</p> <p>24 rules are implemented, I believe what your</p> <p>25 question was, and you trigger a minor mod NSR</p>
<p style="text-align: right;">Page 60</p> <p>1 action? As you know, we try to balance our</p> <p>2 workload and try to put actions that most impact</p> <p>3 facilities to the top of our list, and</p> <p>4 construction permits are always the number one</p> <p>5 criteria.</p> <p>6 For those actions, that would now be</p> <p>7 considered NSR minor mods for a major source.</p> <p>8 Those would float to the top of our list. And</p> <p>9 the difference in those case -- under this</p> <p>10 criteria, is that this is now an NSR permit for</p> <p>11 minor -- currently for minor -- you know,</p> <p>12 physical changes that qualify as minor mods.</p> <p>13 We can issue a letter for facilities</p> <p>14 that are just waiting on that coverage for minor</p> <p>15 mods that the agency agrees, and there is not</p> <p>16 that need, unless the facility tells us, to</p> <p>17 actually issue that minor mod, because they have</p> <p>18 that coverage to move forward. And that's a</p> <p>19 case-by-case situation. That we try to work</p> <p>20 with the facilities to say, hey, are you okay</p> <p>21 with this? Do you want this issued? You know,</p> <p>22 what is your comfort level with us agreeing up</p> <p>23 front with the Tier letter?</p> <p>24 Now, making that tier determination,</p> <p>25 when we say it sits on a desk, I mean, that's an</p>	<p style="text-align: right;">Page 61</p> <p>1 interpretation of, you know, what a -- what a</p> <p>2 particular permit writer's going through to</p> <p>3 evaluate. And, you know, we're not perfect.</p> <p>4 Like everybody else understands, situations</p> <p>5 arise.</p> <p>6 But that would be the process, is that</p> <p>7 those NSR permits, those new NSR permits, based</p> <p>8 on how we balance our workload, would move to</p> <p>9 the forefront of our -- of our priority list.</p> <p>10 CHAIRMAN LODS: So I guess -- I guess</p> <p>11 my thought is -- Phillip is, I submit a minor</p> <p>12 mod today to install a new paint line at a</p> <p>13 foundry, it's going to have a 27-ton increase in</p> <p>14 VOC. The facility's PSD major. Today this</p> <p>15 minor mod would meet all the requirements of a</p> <p>16 minor mod to the operating permit; they can</p> <p>17 install the paint line. I submit the app today;</p> <p>18 they can install the paint line tomorrow. It</p> <p>19 may not be issued, because that would sit at the</p> <p>20 bottom of the pile until next December, at best.</p> <p>21 So come next December we have new rules</p> <p>22 in effect. I guess, I want to know -- I want on</p> <p>23 the record some clarification that those</p> <p>24 facilities aren't now going to be told, no, this</p> <p>25 should have been a construction permit</p>

<p style="text-align: right;">Page 62</p> <p>1 modification, and you had to wait on it to be 2 issued, because the rules changed midstream on 3 them. 4 MR. PHILLIP: Okay. So your question 5 is the overlap timing of an application that may 6 be in place. And I think we would -- we 7 haven't -- my input here would be that, since 8 that application was received prior to the 9 implementation of those new rules, that it 10 would -- it would not be impacted by that change 11 in -- in existing -- or change in rule status 12 criteria. 13 I may need input from others here, but 14 that would be my initial input. And I think 15 that would -- should be something that we're 16 going to look at. And I think, to make it clear 17 for everybody, that we will probably make a push 18 to issue those and make a determination to limit 19 those overlap-type situations. 20 Regardless of if we -- if we say, here, 21 oh, don't worry about that, I think it's best 22 for everybody to eliminate that situation as 23 much as we can and get those issued prior to 24 that -- you know, that transfer date, in other 25 words. So that would be my input on that.</p>	<p style="text-align: right;">Page 63</p> <p>1 CHAIRMAN LODS: Okay. Any other 2 questions or concerns from the Council? 3 MR. COLLINS: No. 4 CHAIRMAN LODS: Okay. Hearing no 5 other questions, the agency has asked that we 6 pass the changes to Chapter 4 and Chapter 100. 7 Now, I will ask a question here, 8 Melanie. And I didn't see -- there's Madison. 9 Do we need to pass these individually or should 10 we pass these as a single packet? 11 MS. FOSTER: Individually. 12 CHAIRMAN LODS: Okay. 13 MS. FOSTER: And as proposed today, 14 Laura, because we did have slight changes from 15 previous. 16 CHAIRMAN LODS: Correct. So this 17 means, gentlemen, that we would have, first, a 18 motion and an action on Chapter 4, and then -- 19 as proposed today, and then a motion on Chapter 20 100. 21 What -- I need a motion, and what are 22 everybody's thoughts? 23 MR. ELLIOTT: I make a motion that 24 we -- that we approve Chapter 4, changes as 25 proposed today.</p>
<p style="text-align: right;">Page 64</p> <p>1 CHAIRMAN LODS: I have a motion. Do I 2 have a second? 3 MR. KEELE: Second. This is Garry 4 Keele. 5 CHAIRMAN LODS: I have a motion and a 6 second. 7 Quiana, please call roll. 8 MS. FIELDS: Mr. Collins? 9 MR. COLLINS: Yes. 10 MS. FIELDS: Dr. Delano? 11 DR. DELANO: Yes. 12 MS. FIELDS: Mr. Elliott? 13 MR. ELLIOTT: Yes. 14 MS. FIELDS: Mr. Keele? 15 MR. KEELE: Yes. 16 MS. FIELDS: Mr. Taylor? 17 MR. TAYLOR: Yes. 18 MS. FIELDS: Ms. Lodes? 19 CHAIRMAN LODS: Yes. 20 MS. FIELDS: Motion passed. 21 MR. COLLINS: Laura, this is Gary. I 22 will move that we approve Chapter 100 changes as 23 proposed today. 24 CHAIRMAN LODS: I have a motion. Do I 25 have a second?</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. ELLIOTT: This is Greg. I will 2 second that. 3 CHAIRMAN LODS: Were you able to catch 4 the second? 5 MS. FIELDS: I did. 6 CHAIRMAN LODS: Okay. I have a motion 7 and a second. 8 Quiana, will you please call roll? 9 MS. FIELDS: Mr. Collins? 10 MR. COLLINS: Yes. 11 MS. FIELDS: Dr. Delano? 12 DR. DELANO: Yes. 13 MS. FIELDS: Mr. Elliott? 14 MR. ELLIOTT: Yes. 15 MS. FIELDS: Mr. Keele? 16 MR. KEELE: Yes. 17 MS. FIELDS: Mr. Taylor? 18 MR. TAYLOR: Yes. 19 MS. FIELDS: Ms. Lodes? 20 CHAIRMAN LODS: Yes. 21 MS. FIELDS: Motion passed. 22 MS. BOTCHLET-SMITH: That concludes the 23 hearing portion of today's meeting. 24 (Meeting concluded.) 25</p>

C E R T I F I C A T E

STATE OF OKLAHOMA )

)

COUNTY OF TULSA )

I, Tammie Shipman, Certified Shorthand Reporter  
in and for the State of Oklahoma, do hereby certify  
that the foregoing proceedings are a true and correct  
transcript of the record of the machine shorthand  
notes taken by me and transcribed into written form  
under my supervision, direction and control.

I further certify that I'm neither related to nor  
attorney for any interested party in the named action,  
nor otherwise interested in the outcome of said  
action.

WITNESS MY HAND, this 20th day of November, 2020.

Tammie Shipman

Tammie Shipman

Shorthand Reporter

CSR #1564

**November 12, 2020 Air Quality Advisory Council - Attendance Record - Zoom Participants**

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	19185870000
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Lloyd kirk	
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Melanie Foster

Michael Watt

Michelle Wynn

Michelle Wynn# DEQ

Molly Pattullo

Nancy Pearce

Nancy's iPhone

Nic Ziebro

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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Appendix C. Permitting Process Summary [REVOKED]

Appendix C. Permitting Process Summary [NEW]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. Sections 2-2-101, 2-2-201, and 2-5-106.

Oklahoma Clean Air Act; 27A O.S. Sections 2-5-101 through -117.

Oklahoma Uniform Permitting Act; 27A O.S. Sections 2-14-101 through -305.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

December 21, 2020

**COMMENT PERIOD:**

January 15, 2021 through February 16, 2021

**PUBLIC HEARING:**

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The Department of Environmental Quality (Department or DEQ) is proposing to revoke and replace Appendix C, Permitting Process Summary, to ensure that entities with Air Quality permits are directed to the specific regulatory citations for the public review process rather than following the general procedures outlined in the current version of Appendix C. The gist of the rulemaking and underlying reason for the proposed changes are to insert a notation in Appendix C to ensure that permit holders are aware of recent changes to the public noticing provisions of Chapter 4 for Air Quality permits.

**CONTACT PERSON:**

Madison Miller, Department of Environmental Quality, Legal Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-7187

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 250.3(5) and 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**APPENDIX C. PERMITTING PROCESS SUMMARY [REVOKED]**

**APPENDIX C. PERMITTING PROCESS SUMMARY [NEW]**

<b>Steps</b>	<b>Tier I</b>	<b>Tier II</b>	<b>Tier III</b>
<b>Filing</b> - Applicant files application, pays any required fee, and provides landowner notice. Applicant may meet with the DEQ staff prior to this.	Yes	Yes	Yes
<b>Notice of filing</b> - Applicant publishes notice in one newspaper local to site.	No	Yes	Yes
<b>Process meeting - Notice</b> - 30-day opportunity is published with notice of filing. DEQ holds meeting if requested and sufficient interest is shown.	No	No	Yes
<b>Administrative completeness review</b> - DEQ reviews application and asks applicant to supply any missing information.	Yes	Yes	Yes
<b>Technical review</b> - DEQ reviews application for technical compliance and requests applicant to cure any deficiencies.	Yes	Yes	Yes
<b>Draft permit or draft denial</b> - DEQ prepares this after completing review.	No	Yes	Yes
<b>Notice of draft permit, public comment period and public meeting request opportunity</b> - Applicant publishes this in one newspaper local to site. (DEQ publishes notice of draft denial.)	No	Yes	Yes
<b>Public comment period</b> - 45 days for hazardous waste treatment, storage or disposal draft permits; 30 days for all others.	No	Yes	Yes
<b>Public meeting</b> - Conducted by DEQ if held	No	Yes	Yes
<b>Review of comments</b> - DEQ (written response)	No	Yes	Yes
<b>Proposed permit</b> - DEQ prepares this in response to comments on draft permit	No	No	Yes
<b>Notice of proposed permit</b> - Applicant publishes, in one newspaper local to site, notice of 20-day opportunity to review permit and request administrative hearing.	No	No	Yes
<b>Administrative permit hearing</b> - Conducted by DEQ if held. Results in final order.	No	No	Yes
<b>Issuance or denial</b> - DEQ's final decision	Yes	Yes	Yes

Note for Clean Air Act permits: In order to meet the minimum federal public participation requirements for state air pollution control programs, certain additional steps apply to the AQD permitting process. *See* OAC 252:4-7-13(g).



**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

APPENDIX C. PERMITTING PROCESS SUMMARY [REVOKED]

APPENDIX C. PERMITTING PROCESS SUMMARY [NEW]

**DESCRIPTION:** The Department of Environmental Quality (Department or DEQ) is proposing to revoke and replace Appendix C, Permitting Process Summary, to ensure that entities with Air Quality permits are directed to the specific regulatory citations for the public review process rather than following the general procedures outlined in the current version of Appendix C. The gist of the rulemaking and underlying reason for the proposed changes are to ensure that permit holders are aware of recent changes to the public noticing provisions of Chapter 4 for Air Quality permits through a notation in Appendix C.

**CLASSES OF PERSONS AFFECTED:** Classes of persons affected are the owners and operators of facilities that are subject to the permitting requirements in OAC 252:100, both Part 70 sources subject to Subchapter 8 and minor facilities subject to Subchapter 7.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** This is a clarification only and no costs are expected to be incurred.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The Department has received no information on cost impacts from private or public entities pertaining to the proposed rule.

**CLASSES OF PERSONS BENEFITTED:** The proposed changes will benefit the citizens of Oklahoma and owners and operators of the facilities subject to these regulations by ensuring that they are aware of the correct permitting process.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** The Department anticipates no significant economic impact as a result of the proposed changes.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** The Department anticipates no economic impact on political subdivisions as a result of the proposed changes.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** The Department expects no adverse effect on small business as a result of the proposed changes.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** No fee changes are included in the proposed amendment.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** The Department anticipates there will be no costs associated with the implementation and enforcement

of this proposed clarification. The Department will benefit from the proposal because it will ensure permittees are aware of the proper permit processes.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** There are none. No other agencies will be implementing or enforcing this rule.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Federal grants and fees will continue to be used as the sources of revenue to implement and enforce the rule.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The proposed revision should have little effect on net revenues for the Department and/or other agencies.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** Cooperation of political subdivisions will not be required to implement or enforce the rule.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** This clarification should help minimize mistakes in the permitting process and therefore minimize compliance costs to the regulated community.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** This clarification is the least costly method of ensuring the regulated community follows the correct permitting process.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The proposed clarification will have a minimal effect on public health, safety, and the environment.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed clarification is not designed to reduce significant risks to the public health, safety, and the environment.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** If the proposed changes are not implemented, there is minimal risk of any detrimental effect on the public health, safety, and environment.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** The owners and operators of businesses subject to permitting requirements will benefit from the proposed clarification to ensure they follow the correct permitting process.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** January 15, 2021

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE  
APPENDIX C. PERMITTING PROCESS SUMMARY**

**EXECUTIVE SUMMARY:**

The Department is proposing to revoke and replace Appendix C, Permitting Process Summary, to ensure that entities with Air Quality permits are directed to the specific regulatory citations for the public review process rather than following the general procedures outlined in the current version of Appendix C.

**DIFFERENCES FROM ANALOGOUS FEDERAL RULES:**

Appendix C is a summary of state permit processing requirements and does not have an analogous federal rule.

**ENVIRONMENTAL BENEFIT STATEMENT:**

Appendix C is informational in nature and only summarizes the required state permit processes found elsewhere in Chapter 4; therefore, an Environmental Benefit Statement is not required.

**SUMMARY OF COMMENTS AND RESPONSES:**

No comments were received relating to this rule proposal.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Incorporation by Reference  
252:205-3-1 Reference to 40 CFR [AMENDED]

**AUTHORITY:**

Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101, 2-2-104, 2-2-201, 2-7-105 and 2-7-106.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET**

**SECRETARY:**

August 24, 2020

**COMMENT PERIOD:**

September 15, 2020 through October 15, 2020

**PUBLIC HEARING(S):**

October 15, 2020

February 19, 2021

**ADOPTION:**

February 19, 2021 [Proposed]

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 [Proposed]

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATION BY REFERENCE:**

**Incorporated standards:**

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as amended through July 1, 2020".

**Incorporating rules:**

252:205-3-1

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays.

**GIST/ANALYSIS:**

The gist of this rulemaking is to make DEQ's hazardous waste rules consistent with the federal regulations by incorporating by reference (IBR) the regulations found in 40 CFR Parts 124 and 260-279, revised as of July 1, 2020. The significant rule change for this IBR adds hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations. This change will provide a clear, protective system for managing discarded aerosol cans by easing regulatory burdens, promoting collection and recycling, and encouraging the development of programs to reduce the quantity of these wastes sent to municipal solid waste landfills or combustors. This rulemaking will ensure that Oklahoma's hazardous waste rules are at least equivalent to the federal rules, as required to maintain program Authorization.

**CONTACT PERSON:**

Mike Edwards, Department of Environmental Quality, Land Protection Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-5226 (phone), [mike.edwards@deq.ok.gov](mailto:mike.edwards@deq.ok.gov) (email).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

**SUBCHAPTER 3. INCORPORATION BY REFERENCE**

**252:205-3-1. Reference to 40 CFR**

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified):

- (1) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1, ~~2019~~ 2020.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

Before the Hazardous Waste Management Advisory Council October 15, 2020  
Before the Environmental Quality Board February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 3. Incorporation by Reference  
252:205-3-1 Reference to 40 CFR [AMENDED]

**DESCRIPTION:** The Department is proposing to amend DEQ's hazardous waste rules to make them consistent with the federal regulations by incorporating by reference (IBR) the regulations found in 40 CFR Parts 124 and 260-279, revised as of July 1, 2020. The significant rule change for this IBR adds hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations. This change will provide a clear, protective system for managing discarded aerosol cans by easing regulatory burdens, promoting collection and recycling, and encouraging the development of programs to reduce the quantity of these wastes sent to municipal solid waste landfills or combustors. This rulemaking will ensure that Oklahoma's hazardous waste rules are at least equivalent to the federal rules, as required to maintain program Authorization.

**CLASSES OF PERSONS AFFECTED:** Persons who generate, transport, treat, recycle, or dispose of hazardous waste aerosol cans, unless those persons are households or very small quantity generators, will be affected by this proposed rule.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** Due to the reduced regulatory burden on generators of hazardous waste aerosol cans that will result from the adoption of this rule, no additional costs are anticipated.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** No additional costs to private or public entities are expected.

**CLASSES OF PERSONS BENEFITTED:** Generators of hazardous waste aerosol cans who choose to manage their hazardous waste aerosol cans under the universal waste program will benefit from this rule due to an anticipated reduction in hazardous waste management and disposal costs.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** Generators who elect to manage their hazardous waste aerosol cans as universal waste are expected to benefit from this proposed rule. All other classes of affected persons are projected to experience no economic impact.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** Entities within political subdivisions that generate hazardous waste aerosol cans (such as building and vehicle maintenance departments) will benefit from this rulemaking.



**POTENTIAL ADVERSE EFFECTS ON SMALL BUSINESSES:** Small businesses are expected to benefit from this proposed rule and, therefore, no adverse effects are anticipated.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** No fee changes are associated with this rulemaking.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** No increase in DEQ funding is necessary to implement this rulemaking.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** No other agencies will be involved in the enforcement of this proposed rule. Entities within agencies that generate hazardous waste aerosol cans (such as building and vehicle maintenance departments) will benefit from this rulemaking.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** The Incorporation by Reference rule change will not require additional revenue for implementation and enforcement.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES IF IT CAN BE PROJECTED:** DEQ does not anticipate any loss or gain in revenues from this rulemaking.

**COOPERATION OF POLITICAL SUBDIVISION REQUIRED TO IMPLEMENT OR ENFORCE RULE:** No cooperation by other political subdivisions is anticipated to implement or enforce the proposed rule.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** No compliance costs are anticipated due to the proposed rule changes.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** None. The proposed rule change is to maintain equivalency with federal regulations.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The Adding Aerosol Cans to Universal Waste Regulations rule is expected to both facilitate the environmentally sound recycling of hazardous waste aerosol cans as well as to ensure that cans are sent to destination facilities where they can be properly managed as waste.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed rule should improve ecosystems and safeguard human health by diverting hazardous waste aerosol cans from improper disposal in less-protective municipal solid waste landfills and conserve resources by facilitating recycling.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH,**

**SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:**

Failure to pass the proposed revisions to OAC 252:205 will result in the DEQ hazardous waste rules not being equivalent to the federal regulations. While this outcome may not have a detrimental effect on public health, safety, or the environment, it could result in higher costs to businesses that would not receive the regulatory relief provided for in the new rules as well as result in missed opportunities for recycling and to divert hazardous waste aerosol cans from municipal solid waste landfills.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES INCLUDING QUANTIFIABLE DATA WHERE POSSIBLE:**

Projected quantitative and qualitative impacts at the federal level are available in the respective Regulatory Impact Analyses available for the applicable rule.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** September 29, 2020.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

**EXECUTIVE SUMMARY:**

The Department is proposing to make DEQ's hazardous waste rules consistent with the federal regulations by incorporating by reference (IBR) the regulations found in 40 CFR Parts 124 and 260-279, revised as of July 1, 2020. The significant rule change for this IBR adds hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations. This change will provide a clear, protective system for managing discarded aerosol cans by easing regulatory burdens, promoting collection and recycling, and encouraging the development of programs to reduce the quantity of these wastes sent to municipal solid waste landfills or combustors. This rulemaking will ensure that Oklahoma's hazardous waste rules are at least equivalent to the federal rules, as required to maintain program Authorization.

**DIFFERENCE FROM ANALOGOUS FEDERAL RULES:**

None. The rules passed by the HWMAC incorporate federal hazardous waste management regulations.

**ENVIRONMENTAL BENEFIT STATEMENT:**

None. The rules passed by the HWMAC are not more stringent than their federal counterparts.

**SUMMARY OF COMMENTS AND RESPONSES:**

None.

**DRAFT MINUTES  
HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL  
October 15, 2020**

Oklahoma Department of Environmental Quality  
Multipurpose Room  
Oklahoma City, Oklahoma

Official after Approved by HWMAC  
On July 15, 2021

**Notice of Public Meeting** - The Hazardous Waste Management Advisory Council (HWMAC) convened for a Virtual Regular Meeting at 10:00 a.m. on October 15, 2020. The meeting was held in accordance with the Open Meetings Act, with notice of the meeting given to the Secretary of State on October 16, 2019. The agenda was posted at the DEQ at least twenty-four hours prior to the meeting. Mr. Lee Grater, Chair, called the meeting to order. Ms. Quiana Fields called roll and a quorum was confirmed.

**MEMBERS PRESENT**

Wesley Anderson  
Kenneth Ede  
Lyndel Gibson  
Bob Kennedy  
Debra Smith  
Terry Vandell  
Lee Grater

**DEQ STAFF PRESENT**

Mike Edwards  
Tory Smith  
Kelly Dixon  
Ryan Kirk  
Quiana Fields

**MEMBERS ABSENT**

Ray Reaves  
Noble Stanfield

**OTHERS PRESENT**

Elise Grayson Cruchon, Court Reporter

**Discussion, Amendment, and Roll Call Vote to Approve the Minutes of the October 10, 2019 Hazardous Waste Management Advisory Council meeting** - Ms. Smith moved to approve and Mr. Kennedy made the second.

*See transcript pages 4 - 8*

Wesley Anderson	Yes	Terry Vandell	Yes
Kenneth Ede	Yes	Lee Grater	Yes
Lyndel Gibson	Yes		
Bob Kennedy	Yes		
Debra Smith	Yes		

**Presentation and Discussion** – Mr. Mike Edwards, Environmental Programs Manager of the LPD, gave an overview on the DEQ budget as it applies to the Hazardous Waste Program.

*See transcript pages 8 - 10*

**Presentation and Discussion** – Mr. Edwards talked on the incorporation by reference of federal rule changes from the year that ended July 1, 2020. This presentation will cover new rules as well as changes needed for RCRA Authorization. Following questions and comments by the Council and by the public, Mr. Grater called for a motion. Mr. Kennedy moved to approve and Ms. Smith made the second.

*See transcript pages 10 - 24*

Wesley Anderson	Yes	Terry Vandell	Yes
Kenneth Ede	Yes	Lee Grater	Yes
Lyndel Gibson	Yes		
Bob Kennedy	Yes		
Debra Smith	Yes		

**Election of Officers for 2021** – Ms. Vandell made a motion that Mr. Grater remain as Chair and Dr. Ede made the second.

*See transcript pages 24 - 25*

Wesley Anderson	Yes	Terry Vandell	Yes
Kenneth Ede	Yes	Lee Grater	Yes
Lyndel Gibson	Yes		
Bob Kennedy	Yes		
Debra Smith	Yes		

Dr. Ede made a motion to nominate Mr. Kennedy as Vice-Chair and Mr. Grater made the second.

*See transcript pages 25 - 27*

Wesley Anderson	Yes	Terry Vandell	Yes
Kenneth Ede	Yes	Lee Grater	Yes
Lyndel Gibson	Yes		
Bob Kennedy	Yes		
Debra Smith	Yes		

**Set Meeting Dates for 2021** – The proposed HWMAC meeting dates for 2021 will be Thursday, July 15 and Thursday, October 21. Mr. Anderson moved to approve and Mr. Gibson made the second.

*See transcript pages 27 – 29*

Wesley Anderson	Yes	Debra Smith	Yes
Kenneth Ede	Yes	Noble Stanfield	Yes
Lyndel Gibson	Yes	Terry Vandell	Yes
Bob Kennedy	Yes	Lee Grater	Yes
Ray Reaves	Yes		

**New Business** – None

**Adjournment** – Mr. Kennedy moved to adjourn and Ms. Vandell made the second. The meeting was adjourned at 10:40 a.m.

*See transcript page 31*

Wesley Anderson	Yes	Terry Vandell	Yes
Kenneth Ede	Yes	Lee Grater	Yes
Lyndel Gibson	Yes		
Bob Kennedy	Yes		
Debra Smith	Yes		

**Transcript is attached as an official part of these Minutes.**

DEPARTMENT OF ENVIRONMENTAL QUALITY  
HAZARDOUS WASTE MANAGEMENT ADVISORY COUNCIL

HAZARDOUS WASTE ADVISORY COUNCIL MEETING

OCTOBER 15, 2020 - 10:00 A.M.

VIRTUAL ZOOM MEETING

REPORTED BY: ELISE GRAYSON CRUCHON, CSR

<p>Page 2</p> <p>1 COUNCIL MEMBERS PRESENT</p> <p>2</p> <p>3 MR. LEE GRATER, CHAIRMAN</p> <p>4 MR. RAY REAVES, VICE-CHAIRMAN - ABSENT</p> <p>5 MR. WESLEY ANDERSON</p> <p>6 DR. KENNETH EDE</p> <p>7 MR. LYNDEL GIBSON</p> <p>8 MR. BOB KENNEDY</p> <p>9 MS. DEBRA SMITH</p> <p>10 MR. NOBLE STANFIELD - ABSENT</p> <p>11 MS. TERRY VANDELL</p> <p>12</p> <p>13</p> <p>14</p> <p>15 *****</p> <p>16</p> <p>17</p> <p>18 Also Present:</p> <p>19 Ms. Quiana Fields, Secretary of Board and Council</p> <p>20 Mr. Mike Edwards, RCRA Compliance &amp; Enforcement</p> <p>21 Section - DEQ</p> <p>22 Mr. Ryan Kirk, Environmental Specialist - DEQ</p> <p>23 Ms. Tory Smith, Moderator</p> <p>24 Mr. Nicholas Georges, Household and Commercial</p> <p>25 Products Association</p>	<p>Page 3</p> <p>1 (Inaudible or indecipherable</p> <p>2 testimony may be due to interruptions in</p> <p>3 audio/video connection.)</p> <p>4 (Meeting called to order at</p> <p>5 10:42 a.m.)</p> <p>6 CHAIRMAN GRATER: Call to order the</p> <p>7 October 15th, 2020, virtual regularly</p> <p>8 scheduled meeting of the Hazardous Waste</p> <p>9 Management Advisory Council. It's called in</p> <p>10 accordance with the Open Meeting Act.</p> <p>11 Notice was filed with the Secretary</p> <p>12 of State on October 16th, 2020, (sic). The</p> <p>13 Agenda was duly posted 24 hours prior to the</p> <p>14 meeting at DEQ. Only matters appearing on the</p> <p>15 posted Agenda may be considered at this</p> <p>16 regular meeting.</p> <p>17 In the event this meeting is</p> <p>18 continued and reconvened, public notice of the</p> <p>19 date, time and place of the continued meeting</p> <p>20 will be given by announcement at this meeting.</p> <p>21 Only matters appearing on the Agenda of a</p> <p>22 meeting, which is continued, may be discussed</p> <p>23 at the continued or reconvened meeting.</p> <p>24 MR. GRATER: Ms. Field, would you</p> <p>25 call the roll?</p>
<p>Page 4</p> <p>1 MS. FIELDS: Good morning, can you</p> <p>2 all hear me?</p> <p>3 MR. GRATER: Yes.</p> <p>4 MS. FIELDS: Mr. Anderson?</p> <p>5 MR. ANDERSON: Here.</p> <p>6 MS. FIELDS: Dr. Ede?</p> <p>7 DR. EDE: Here.</p> <p>8 MS. FIELDS: Mr. Gibson?</p> <p>9 MR. GIBSON: Lyndel Gibson present.</p> <p>10 MS. FIELDS: Mr. Kennedy?</p> <p>11 MR. KENNEDY: Here.</p> <p>12 MS. FIELDS: Mr. Reaves is absent.</p> <p>13 Ms. Smith?</p> <p>14 MS. SMITH: Here.</p> <p>15 MS. FIELDS: Mr. Stanfield is absent.</p> <p>16 Ms. Vandell?</p> <p>17 MS. VANDELL: Here.</p> <p>18 MS. FIELDS: Mr. Grater?</p> <p>19 MR. GRATER: Here.</p> <p>20 MS. FIELDS: We have a quorum.</p> <p>21 MR. GRATER: First item on the Agenda</p> <p>22 is Discussion, Amendment, and Roll-Call Vote</p> <p>23 to Approve the minutes of October 10th, 2019,</p> <p>24 Hazardous Waste Management Advisory Council</p> <p>25 Meeting?</p>	<p>Page 5</p> <p>1 Are there comments for the Council?</p> <p>2 (No oral response.)</p> <p>3 MR. GRATER: I hear no comments from</p> <p>4 the Council.</p> <p>5 Any comments from the public?</p> <p>6 (No oral response.)</p> <p>7 MS. SMITH: Thank you, Mr. Grater.</p> <p>8 MR. GRATER: There appears to be no</p> <p>9 comments.</p> <p>10 MS. TORY SMITH: I'm going to read</p> <p>11 some instructions, Mr. Grater, in case the</p> <p>12 public wants to comment.</p> <p>13 My name is Tory Smith and I'm going</p> <p>14 to be helping moderate public comments today.</p> <p>15 For each public comment section, the following</p> <p>16 steps will take place. The protocol officer</p> <p>17 will announce that it's time for public</p> <p>18 comments using the raise-hand feature. All</p> <p>19 hands raised previously will be lowered for</p> <p>20 those who wish to make comments.</p> <p>21 If you wish to make a comment on the</p> <p>22 record, click or tap raise hand on your</p> <p>23 device. Raise hand is a function under more</p> <p>24 meeting settings or participants at either the</p> <p>25 bottom-right or top-right corner of your</p>

<p style="text-align: right;">Page 6</p> <p>1 screen, depending on your device. You may 2 have to hover your cursor over your screen to 3 make this function appear. 4 For those calling in by telephone, 5 press *9 to use the raise-hand feature. When 6 selected for comment, you will be identified 7 by your display name or the last four digits 8 of your phone number and your line will be 9 unmuted. 10 We highly recommend you renaming 11 yourself on your device so that we may 12 properly identify and call on you. This can 13 be accomplished by clicking on your name and 14 participant's tab and selecting rename. 15 Depending on your settings, you may 16 also have to unmute yourself using the 17 microphone icon on your device or using *6 for 18 telephone users. 19 Before being called upon to speak, 20 please ensure you're in a quiet environment 21 and other devices are muted to minimize 22 feedback so your comment can be heard 23 properly. 24 Once unmuted, you must first identify 25 yourself by stating your full name for the</p>	<p style="text-align: right;">Page 7</p> <p>1 record and then you'll be able to give your 2 comment relative to the Agenda item being 3 discussed. 4 When you have concluded your 5 statement, the host will notify everyone, 6 place the commenter back on mute and move on 7 to the next person. 8 If you have any technical issues, 9 please call Amy Britton at (405) 702-5157. 10 Thank you. 11 MS. FIELDS: Thank you. 12 CHAIRMAN GRATER: There do not appear 13 to be any comments from the Council or the 14 public. 15 Is there any motion by the Council? 16 MS. SMITH: I make a motion to 17 approve. 18 MR. KENNEDY: I'll second. 19 MR. GRATER: Motion has been made and 20 seconded. 21 Ms. Fields, would you call the roll? 22 MS. FIELDS: Mr. Anderson? 23 MR. ANDERSON: Yes. 24 MS. FIELDS: Dr. Ede? 25 DR. EDE: Yes.</p>
<p style="text-align: right;">Page 8</p> <p>1 MS. FIELDS: Mr. Gibson? 2 MR. GIBSON: Yes. 3 MS. FIELDS: Mr. Kennedy? 4 MR. KENNEDY: Yes. 5 MS. FIELDS: Ms. Smith? 6 MS. SMITH: Yes. 7 MS. FIELDS: Ms. Vandell? 8 MS. VANDELL: Yes. 9 MS. FIELDS: Mr. Grater? 10 MR. GRATER: Yes. 11 MS. FIELDS: Motion passed. 12 MR. GRATER: Next item on the Agenda 13 is Presentation and Discussion on the DEQ 14 budget as it applies to the Hazardous Waste 15 program. Presentation by Mr. Edwards. 16 MR. EDWARDS: Thank you. I did 17 not -- I decided not to post the typical 18 finance documents that we've shown you in the 19 past few years. I'm not really sure how 20 useful those are. Our revenue is pretty 21 unpredictable anyway just because it's subject 22 to the whims of the industry and whatnot. But 23 I think under the pandemic that aspect of our 24 budget is going to be more unpredictable. So 25 showing you those documents I didn't think was</p>	<p style="text-align: right;">Page 9</p> <p>1 all that useful. I could certainly send those 2 to you. 3 The thing that I did want to mention 4 that relates to our budget is that -- I don't 5 know how familiar you are with the 6 calculations that the EPA does to determine 7 our STAG grant, which is about half of our 8 program's funding. 9 It goes through the equation that 10 they use to determine the money that goes to 11 states or the regions and is revisited 12 periodically. I believe it's every ten years. 13 And so that equation was recently revisited by 14 EPA. And I guess the long story short on it 15 is that they increased the amount of the grant 16 funding that goes to Hazardous Waste 17 Compliance, which is what we do, and they 18 shifted some of the money that previously went 19 to the Corrective Action Program. And so I 20 don't think for our program, it doesn't really 21 matter, because we use one funding code. We 22 don't really separate those monies, so for 23 Oklahoma I don't think it's really going to 24 make much of a difference. I think it is step 25 in the right direction from the big picture</p>



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1 aspect.  
2 And I think what will end up  
3 happening is as a result Texas will get more  
4 money and states like Oklahoma and Arkansas  
5 and New Mexico probably will get about the  
6 same, but we might get a slight increase of  
7 our grant, but probably Texas is going to get  
8 most of the increase.  
9 Anyway, that's all I really have to  
10 say on that. If you have any questions, I'd  
11 be happy to try to answer them.  
12 MR. GRATER: Are there any questions  
13 from the Council?  
14 MR. KENNEDY: No, not from me.  
15 MR. GRATER: Are there any questions  
16 or discussions from the public?  
17 MS. TORY SMITH: It looks like we  
18 have some new people. So as a reminder, if  
19 you'd like to make a comment press the  
20 raise-hand button in Zoom or \*9 if you're  
21 attending by telephone.  
22 MR. GRATER: The next item on the  
23 Agenda is the Presentation and Discussion of  
24 the incorporation by reference of federal rule  
25 changes from the year that ended on July 1st,

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1 reference.  
2 MR. KIRK: Thanks, Mike. Again, this  
3 is Ryan Kirk. The rules we're presenting to  
4 the Council today will allow waste aerosol  
5 cans to be managed as universal waste if the  
6 generator chooses this option. This is a  
7 choice that they can make. It's, obviously,  
8 voluntary. It's not mandatory.  
9 This rule was published as a final  
10 rule on December 9th, 2019, and became  
11 effective at the federal level on February  
12 7th, 2020.  
13 For context I'm going to give just a  
14 brief review of the Universal Waste Program.  
15 Universal waste is a subset of Hazardous Waste  
16 that can be managed under 40 CFR Part 273, and  
17 those requirements rather than RCRA subtitle C  
18 regulations.  
19 These specific wastes are very common  
20 in terms of the sheer number of facilities in  
21 which they're found, as well as their presence  
22 across a wide range of industrial sectors.  
23 This is why the term universal is used in the  
24 name.  
25 They're also found in a lot of

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1 2020. The presentation will cover new rules,  
2 as well as any changes needed for RCRA  
3 authorization.  
4 Introduction and Presentation by  
5 Mr. Edwards and Mr. Kirk.  
6 MR. EDWARDS: Thank you once again.  
7 Before I hand it off to Ryan to do the actual  
8 incorporation by reference discussion, I'll  
9 just mention that our rules were published by  
10 OAR as predicted September 15th, and so  
11 basically that means that the rulemaking we  
12 did last year is effective, and we will be  
13 able to use that in our next authorization  
14 submittal, which I'm hoping to put together in  
15 the very near future.  
16 You may recall the rulemaking that we  
17 did last year included many corrections to the  
18 state rules that EPA had identified, and so  
19 it's kind of odd to be excited by such things,  
20 but I'm kind of excited with the updates to  
21 the rules. I think it cleans things up and it  
22 makes us -- well, it makes us updated as far  
23 as our authorization, so kudos on that.  
24 Having said that, I will hand off to  
25 Ryan to discuss the incorporation by

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1 businesses that don't otherwise generate  
2 hazardous waste. EPA's two main goals, when  
3 they established this program, were to  
4 increase recycling of these materials and  
5 reduce illegal disposal of these materials by  
6 providing management options that are both  
7 simpler and more cost-effective for the  
8 generator to implement.  
9 Universal waste at the federal level,  
10 you want to keep in mind, that aerosol cans as  
11 of February, are universal waste at the  
12 federal level as well. So previously the  
13 universal waste at the federal level were  
14 hazardous waste lamps, most commonly  
15 fluorescent bulbs, fluorescent lamps,  
16 batteries, pesticides, and Mercury-containing  
17 equipment.  
18 Why did EPA consider adding aerosol  
19 cans to the universal waste program? Aerosol  
20 cans are very likely going to be hazardous  
21 waste. The propellant is ignitable, quite  
22 possibly the contents of the can is ignitable,  
23 the contents can be toxic. The can itself is  
24 pressurized, so it can be -- it's going to be  
25 a reactive hazardous waste, most likely.

<p style="text-align: right;">Page 14</p> <p>1 It satisfies the universal aspect, I</p> <p>2 spoke of a minute ago, very common across a</p> <p>3 wide range of industrial sectors.</p> <p>4 EPA has determined that the aerosol</p> <p>5 cans meet the evaluation factors for inclusion</p> <p>6 in the universal waste program. There's 7, 8</p> <p>7 factors for inclusion of this program. Some</p> <p>8 of them, I'm not going to specifically point</p> <p>9 them out, but some of them correspond to some</p> <p>10 of the things I've mentioned, or will mention.</p> <p>11 One, in particular, is they have</p> <p>12 successfully managed universal waste at the</p> <p>13 state level in five states. And, in some</p> <p>14 cases, for many years. Waste management</p> <p>15 officials from these states concur that their</p> <p>16 objectives have been met. The objectives of</p> <p>17 the program have been met, and they have not</p> <p>18 had any problems.</p> <p>19 So how would this rule be different</p> <p>20 than the -- than regulation in full RCRA</p> <p>21 subtitle C regulation? Aerosol cans under</p> <p>22 this rule would be subject to less</p> <p>23 stringent -- I'll just give a few examples</p> <p>24 here. I'm not going to go through everything.</p> <p>25 But less stringent labelings, storage time</p>	<p style="text-align: right;">Page 15</p> <p>1 limits, manifest rules, they're a little more</p> <p>2 relaxed than full regulations.</p> <p>3 And, at the same time, they ensure</p> <p>4 that -- and I'll just give a few examples</p> <p>5 here. Employees still receive training,</p> <p>6 containers have to be structurally sound, they</p> <p>7 have to be closed. Other considerations such</p> <p>8 as -- that are unique to aerosol cans in this</p> <p>9 context. One example is they have to be a</p> <p>10 safe distance from heat sources, such as open</p> <p>11 flames and sparks, so there's definitely a</p> <p>12 protective component there as well that is</p> <p>13 required.</p> <p>14 I'd like to briefly share my</p> <p>15 experience while visiting businesses for the</p> <p>16 last 20 years as a hazardous waste -- with the</p> <p>17 hazardous waste compliance section at ODEQ.</p> <p>18 Basically it's extremely common to</p> <p>19 observe aerosol cans when you're walking</p> <p>20 through facilities. It's very common to</p> <p>21 observe aerosol cans in a trash container.</p> <p>22 When you ask the facility people about it</p> <p>23 they, oftentimes, they're surprised that the</p> <p>24 cans are going to be a hazardous waste. And</p> <p>25 so this results in a large amount of cans</p>
<p style="text-align: right;">Page 16</p> <p>1 ending up in municipal landfill where we don't</p> <p>2 want them to go. And not to mention, there's</p> <p>3 the proper management of the cans at the</p> <p>4 facility which is basically non-existent.</p> <p>5 I believe this is partly due to the</p> <p>6 fact that a lot of hazardous waste, when used</p> <p>7 in a commercial setting, are similar, if not</p> <p>8 identical physically and chemically, to</p> <p>9 chemicals that we have in our homes under your</p> <p>10 sink, in your garage. But the fact that in a</p> <p>11 commercial setting, these materials are often</p> <p>12 purchased in large quantities and used with</p> <p>13 industrial equipment.</p> <p>14 So basically if you store something</p> <p>15 in a 55-gallon drum versus a 2-quart container</p> <p>16 in your garage, it just seems different. It's</p> <p>17 really not. An aerosol can is an aerosol can.</p> <p>18 So sometimes people have trouble getting their</p> <p>19 head around the fact that you're allowed to</p> <p>20 throw something away at home, but the exact</p> <p>21 same thing has a long list of requirements</p> <p>22 that it's used for at work that you have to</p> <p>23 adhere to.</p> <p>24 We believe that adopting this rule</p> <p>25 will result in fewer cans ending up in</p>	<p style="text-align: right;">Page 17</p> <p>1 municipal landfills, is one advantage.</p> <p>2 In conclusion, because this rule is</p> <p>3 less stringent than full regulation, states</p> <p>4 are not required to adopt it. However, we</p> <p>5 believe that adopting this rule will result in</p> <p>6 more aerosol cans being sent for recycling, or</p> <p>7 to a proper disposal facility, while</p> <p>8 maintaining adequate safeguards to protect</p> <p>9 human health and the environment, and</p> <p>10 potentially for providing monetary savings to</p> <p>11 the generators through reduced hazardous waste</p> <p>12 management costs. And I can provide the</p> <p>13 regulatory impact analysis prepared by the EPA</p> <p>14 if anybody requests a copy.</p> <p>15 So does anybody have any questions or</p> <p>16 comments?</p> <p>17 MR. EDWARDS: I'm just going to make</p> <p>18 one additional comment, which is that we did</p> <p>19 receive a comment, an official comment from</p> <p>20 the public, essentially, and that was the</p> <p>21 Household and Commercial Products Association,</p> <p>22 HCPA, and the comment was in favor of the</p> <p>23 incorporation by reference. Basically it's</p> <p>24 backing up everything that Ryan just said and</p> <p>25 it represents additional flexibility and regs,</p>

<p style="text-align: right;">Page 18</p> <p>1 and it's a favorable thing.</p> <p>2 DR. EDE: I'd like to make a couple</p> <p>3 of comments. When I do training, specifically</p> <p>4 in an industry, just as Ryan said, aerosol</p> <p>5 cans unfortunately, at the present time, many</p> <p>6 of them are ending up in the trash. What this</p> <p>7 regulation will do, what this rule will do is</p> <p>8 will promote recycling, and anything we can do</p> <p>9 to encourage recycling is beneficial. It is</p> <p>10 beneficial because, again, right now most of</p> <p>11 it is ending up in trash. And when you think</p> <p>12 about certain them, even organizations, call</p> <p>13 Okie. You call them if you want to know is</p> <p>14 there a gas line -- you're putting in a new</p> <p>15 fence in or something, is there a gas line or</p> <p>16 an electric line? Look how many aerosol cans</p> <p>17 they're using to mark where your gas is, where</p> <p>18 your electric is, all those other things. So,</p> <p>19 again, I'm a big supporter of this rule, and</p> <p>20 any other rule that encourages recycling.</p> <p>21 MR. KENNEDY: I would agree. And</p> <p>22 then, Ryan, you also said that if a company</p> <p>23 chooses to go with managing it as a full RCRA</p> <p>24 constituent, then they're feel to do so,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 19</p> <p>1 MR. KIRK: That is correct.</p> <p>2 MR. GRATER: Any other comments or</p> <p>3 questions?</p> <p>4 Nicholas George raised his hand.</p> <p>5 MS. TORY SMITH: If we're ready for</p> <p>6 public comment, just a reminder, click raise</p> <p>7 hand if you want to make a comment. Or if</p> <p>8 you're on your telephone, press *9.</p> <p>9 Nicholas Georges, I'm about to unmute</p> <p>10 you. Please identify yourself and begin your</p> <p>11 comment.</p> <p>12 MR. GEORGES: Hello, my name is</p> <p>13 Nicholas Georges and I'm the vice president of</p> <p>14 Scientific and International Affairs for</p> <p>15 Household and Commercial Product Association,</p> <p>16 also known as HCPA. As Mike Edwards just read</p> <p>17 off, you know, we submitted written comments</p> <p>18 today in support of this rule.</p> <p>19 The one thing that I want to add is</p> <p>20 that it's important to remember that this rule</p> <p>21 applies to aerosol cans that are non-empty.</p> <p>22 Empty aerosol cans are non-hazardous and can</p> <p>23 be included in the recycle stream without</p> <p>24 further processing.</p> <p>25 But, in essence, by incorporating the</p>
<p style="text-align: right;">Page 20</p> <p>1 federal rule and adding aerosol cans to the</p> <p>2 universal waste program, DEQ ensures that</p> <p>3 programs developed in Oklahoma to handle</p> <p>4 non-empty aerosol products, can safely be</p> <p>5 handled in the same manner that waste handlers</p> <p>6 are developing programs in other locations</p> <p>7 throughout the United States. And by having</p> <p>8 one consistent program to handle aerosol cans</p> <p>9 across multiple sites ensures safety and</p> <p>10 efficiency that's, you know, very much needed</p> <p>11 in the system.</p> <p>12 So thank you for considering to</p> <p>13 include aerosol cans in your Universal Waste</p> <p>14 Program, and I'd be happy to answer any</p> <p>15 questions that you may have about aerosol</p> <p>16 products.</p> <p>17 MR. GRATER: Mr. Georges, thank you</p> <p>18 for your comment.</p> <p>19 Are there any other comments from the</p> <p>20 Council?</p> <p>21 (No oral response.)</p> <p>22 MR. GRATER: Any other comments from</p> <p>23 the public?</p> <p>24 MR. GIBSON: Lee, this is Lyndel</p> <p>25 Gibson. I'd like to ask Mr. Edwards, do we</p>	<p style="text-align: right;">Page 21</p> <p>1 see any type of change in our revenue by</p> <p>2 inclusion of aerosols from what they were</p> <p>3 currently to the universal?</p> <p>4 MR. EDWARDS: I mean, that's going to</p> <p>5 be pretty unpredictable and subject to great</p> <p>6 fluctuations on top of it, so I don't know</p> <p>7 that I could give you any kind of legitimate</p> <p>8 answer. I could speculate.</p> <p>9 You know, it's complete speculation.</p> <p>10 But, I mean, to me aerosol cans -- one thing</p> <p>11 about them is that they -- if they do end up</p> <p>12 in landfills, whether it's a hazardous waste</p> <p>13 landfill or a municipal landfill, they're kind</p> <p>14 of a container that has empty space inside, so</p> <p>15 they're taking up extra space in landfills.</p> <p>16 That's just one aspect. I think that's</p> <p>17 probably pretty minor, and maybe Mr. Grater</p> <p>18 could add to that. But that's something that</p> <p>19 comes to mind that would be an additional</p> <p>20 factor.</p> <p>21 It has nothing to do with your</p> <p>22 question, and I really don't have a good</p> <p>23 answer to your question as far as how it could</p> <p>24 affect revenue. I think it will be minimal</p> <p>25 most likely.</p>

<p style="text-align: right;">Page 22</p> <p>1 And actually there could be a shift 2 in revenue from the hazardous waste side to 3 the solid waste side, that's a potential. But 4 industries have substituted aerosols for pump 5 sprayers, that type of thing. Probably not so 6 much for painting but for cleaning, I think we 7 have seen that happen. Certainly, Tinker Air 8 Force Base did that several years ago. 9 MR. GRATER: This is Mr. Grater. In 10 my experience, aerosol cans are difficult item 11 to manage simply because it really boils down 12 to it's not what you have; it's who has it, 13 and getting people to realize they're not at 14 home. 15 As far as disposal goes, I've seen a 16 number of ways of handling aerosol cans that 17 seem to be rather time consuming and laborious 18 without really yielding a whole lot of 19 benefit. 20 Aerosol cans do represent a void 21 space, but you'd have to have an awful lot of 22 them to make any difference. 23 So I think this is an excellent rule. 24 Anything that would make it simpler for people 25 to have to manage waste and treating it in an</p>	<p style="text-align: right;">Page 23</p> <p>1 industrial setting is going to benefit as 2 well. 3 Are there any other comments from the 4 Council? 5 (No oral response.) 6 Are there any comments from the 7 public? 8 (No oral response.) 9 MR. GRATER: Do we have a motion to 10 accept? 11 MR. KENNEDY: I'll make that motion 12 to accept these rules? 13 MS. SMITH: Second it. 14 MR. GRATER: Motion has been made and 15 seconded. 16 Ms. Fields, would you call the roll? 17 MS. FIELDS: Mr. Anderson? 18 MR. ANDERSON: Yes. 19 MS. FIELDS: Dr. Ede? 20 DR. EDE: Yes. 21 MS. FIELDS: Mr. Gibson? 22 MR. GIBSON: Yes. 23 MS. FIELDS: Mr. Kennedy? 24 MR. KENNEDY: Yes. 25 MS. FIELDS: Ms. Smith?</p>
<p style="text-align: right;">Page 24</p> <p>1 MS. SMITH: Yes. 2 MS. FIELDS: Ms. Vandell? 3 MS. VANDELL: Yes. 4 MS. FIELDS: Mr. Grater? 5 MR. GRATER: Yes. 6 MS. FIELDS: Motion passed. 7 MR. GRATER: Next item on the Agenda 8 is election of officers for 2021? Any 9 nominations for Chairman and Vice Chairman? 10 Any suggestions? 11 MS. VANDELL: I nominate Lee Grater 12 for Chair. 13 DR. EDE: I second it. 14 MR. GRATER: Do we have a nomination 15 for Vice Chair? 16 MS. FIELDS: We can take a vote on 17 that one, Mr. Grater, and then we can go to 18 Vice Chair. 19 MR. GRATER: Yes. 20 MS. FIELDS: Mr. Anderson? 21 MR. ANDERSON: Yes. 22 MS. FIELDS: Dr. Ede? 23 DR. EDE: Yes. 24 MS. FIELDS: Mr. Gibson? 25 MR. GIBSON: Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 MS. FIELDS: Mr. Kennedy? 2 MR. KENNEDY: Yes. 3 MS. FIELDS: Ms. Smith? 4 MS. SMITH: Yes. 5 MS. FIELDS: Ms. Vandell? 6 MS. VANDELL: Yes. 7 MS. FIELDS: Mr. Grater? 8 MR. GRATER: Yes. 9 MS. FIELDS: Motion passed. 10 MR. GRATER: The Vice Chair, do we 11 have any knowledge of who -- the Vice Chair 12 is going to continue, or has there been any 13 discussion? Does anybody have any input on 14 that? 15 MR. EDWARDS: I was not able to 16 connect with Mr. Reaves. I tried phone 17 numbers and e-mails and I never heard from 18 him, so I really don't know. 19 MR. KENNEDY: But as far as his 20 appointment years, do you know? 21 MR. EDWARDS: I don't know where he's 22 at on his term. Does anybody have that in 23 front of them? 24 MS. FIELDS: His term doesn't end 25 until next year in March.</p>

<p style="text-align: right;">Page 26</p> <p>1 MS. SMITH: I'd like to nominate 2 Lyndel Gibson, if he's interested. 3 MR. GIBSON: Well, I'll have to 4 professionally decline. 5 Thank you. 6 DR. EDE: Then I would like to 7 nominate Bob Kennedy, if he's interested. 8 MR. KENNEDY: I'll go ahead and 9 accept that if that's what folks would like. 10 MR. GRATER: I will second it. 11 Motion has been made and seconded to 12 vote Bob Kennedy as Vice Chair. 13 Ms. Fields, if would you call the 14 roll? 15 MS. FIELDS: Mr. Anderson? 16 MR. ANDERSON: Yes. 17 MS. FIELDS: Dr. Ede? 18 DR. EDE: Yes. 19 MS. FIELDS: Mr. Gibson? 20 MR. GIBSON: Yes. 21 MS. FIELDS: Mr. Kennedy? 22 MR. KENNEDY: Yes. 23 MS. FIELDS: Ms. Smith? 24 MS. SMITH: Yes. 25 MS. FIELDS: Ms. Vandell?</p>	<p style="text-align: right;">Page 27</p> <p>1 MS. VANDELL: Yes. 2 MS. FIELDS: Mr. Grater? 3 MR. GRATER: Yes. 4 MS. FIELDS: Motion passed. 5 MR. GRATER: Next item on the Agenda 6 is set meeting dates for 2021. Discussion -- 7 Mr. Edwards, do you have any input on 8 what you foresee on our business schedule for 9 next year? 10 MR. EDWARDS: Yes. So, again, I 11 think this year we'd like to set two meeting 12 dates, one in July, and then the rulemaking 13 meeting in October, as we formerly do. 14 In July, it doesn't really matter in 15 terms of scheduling around rulemaking 16 activities and that type of thing as it does 17 in October. So dates I looked at are 18 Thursdays, the 8th, the 15th or 22nd. 19 We don't have any preference one way 20 or the other. We don't necessarily anticipate 21 holding the meeting, but you never know. We 22 may want to depending on what EPA is doing and 23 that kind of thing. 24 MR. GRATER: I'm actually eliminating 25 the 8th since it's kind of close to the 4th,</p>
<p style="text-align: right;">Page 28</p> <p>1 and people might be traveling or just getting 2 back from holiday and have other pressing 3 business; otherwise, I have no preference 4 between the 15th and 22nd. 5 MR. KENNEDY: I don't either. Should 6 we go with the 15th? 7 MR. GRATER: That's fine. 8 DR. EDE: Sounds good to me. 9 MR. EDWARDS: And then in October, 10 similarly, I'm looking really at the 21st. We 11 try to -- there's a required comment period, 12 as you all know, after the time of the 13 rulemaking notices are published and -- or the 14 meeting could be held, it has to be 30 days. 15 So, for that reason, that pretty much takes 16 out the 14th, because that's not enough time 17 on September 15th, which makes really the 21st 18 or the 28th. Again, I really don't have a 19 preference for either of those dates. The 20 21st is in the middle. 21 DR. EDE: 21st is good for me. 22 MR. GRATER: Yeah. 23 MR. KENNEDY: That's Fine. 24 MR. GIBSON: Fine with me. 25 MR. GRATER: So we have apparently</p>	<p style="text-align: right;">Page 29</p> <p>1 set dates for July the 15th and October 21st. 2 Do I have a motion to approve? 3 MR. ANDERSON: A motion to approve. 4 MR. GIBSON: I second. 5 MR. GRATER: Motion has been made and 6 seconded. 7 Ms. Fields, if you would call the 8 roll? 9 MS. FIELDS: Mr. Anderson? 10 MR. ANDERSON: Yes. 11 MS. FIELDS: Dr. Ede? 12 DR. EDE: Yes. 13 MS. FIELDS: Mr. Gibson? 14 MR. GIBSON: Yes. 15 MS. FIELDS: Mr. Kennedy? 16 MR. KENNEDY: Yes. 17 MS. FIELDS: Ms. Smith? 18 MS. SMITH: Yes. 19 MS. FIELDS: Ms. Vandell? 20 MS. VANDELL: Yes. 21 MS. FIELDS: Mr. Grater? 22 MR. GRATER: Yes. 23 MS. FIELDS: Motion passed. 24 MR. GRATER: Next item on the Agenda 25 is new business, limited to any matter not</p>

<p style="text-align: right;">Page 30</p> <p>1 known or which could not have reasonably 2 foreseen prior to the time of the posting the 3 Agenda 24 hours prior to the meeting. 4 Is there any such new business? 5 (No oral response.) 6 MR. GRATER: There does not appear to 7 be any new business. 8 The next item would be to adjourn the 9 meeting. 10 I'd like to thank everyone for 11 working through this process. A lot of people 12 put a lot of work into making this virtual 13 meeting happen and I think it went rather well 14 under the circumstances. 15 DR. EDE: I think I would agree it 16 went well. 17 And also from an ecological 18 perspective of not having to drive back and 19 forth, this may be the wave of the future. 20 MR. EDWARDS: I agree with that, and 21 I just want to add that a lot of people on DEQ 22 that are not really involved in hazardous 23 waste, put in a lot of work on this meeting. 24 Several people that have nothing whatsoever to 25 with hazardous waste, and I'd just like to</p>	<p style="text-align: right;">Page 31</p> <p>1 give a shout out to those people. 2 MR. KENNEDY: Absolutely. 3 Well, I'll make a motion then to 4 adjourn. 5 MS. VANDELL: I'll second. 6 MR. GRATER: Motion has been made and 7 seconded. 8 Ms. Fields? 9 MS. FIELDS: Mr. Anderson? 10 MR. ANDERSON: Yes. 11 MS. FIELDS: Dr. Ede? 12 DR. EDE: Yes. 13 MS. FIELDS: Mr. Gibson? 14 MR. GIBSON: Yes. 15 MS. FIELDS: Mr. Kennedy? 16 MR. KENNEDY: Yes. 17 MS. FIELDS: Ms. Smith? 18 MS. SMITH: Yes. 19 MS. FIELDS: Ms. Vandell? 20 MS. VANDELL: Yes. 21 MS. FIELDS: Mr. Grater? 22 MR. GRATER: Yes. 23 MS. FIELDS: Motion Passed. 24 MR. GRATER: All right. Thanks 25 everybody.</p>
<p style="text-align: right;">Page 32</p> <p>1 (PROCEEDINGS ADJOURNED.) 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 33</p> <p>1 COURT REPORTER'S CERTIFICATE 2 3 STATE OF OKLAHOMA: 4 COUNTY OF TULSA: 5 6 I, ELISE GRAYSON CRUCHON, CSR, for Tulsa County, 7 Oklahoma, CERTIFY: 8 1. The foregoing Zoom teleconference proceeding 9 was taken before me at the time and place stated in 10 the foregoing styled cause with the appearances as 11 noted; 12 2. Being a Court Reporter, I then reported the 13 teleconference proceeding in Stenotype to the best 14 of my skill and ability, and the foregoing pages 15 contain a full, true and correct transcript of my 16 said Stenotype notes then and there taken; 17 3. I am not in the employ of and am not related 18 to any of the parties or their counsel, and I have 19 no interest in the matter involved. 20 WITNESS MY SIGNATURE, this, the 22nd day of 21 October , 2020. 22 <i>Elise Cruchon</i> 23 E lise G rayson C ruchon 24 ELISE GRAYSON CRUCHON, CSR #1566 25</p>

**THE HAZARDOUS WASTE MANAGEMENT  
ADVISORY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD**

**Identification of Proposed Rulemaking:**

Chapter Number and Title: 252:205

**Rulemaking Hearing - OAC 252:205-3-2 Incorporation By Reference**

On October 15, 2020, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

    X     permanent [take effect after legislative review]

       emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,

\_\_\_\_\_  
Chair or Designee:

Date Signed: \_\_\_\_\_

	VOTING TO APPROVE:	VOTING AGAINST:	ABSTAINING:	ABSENT:
Wesley Anderson	✓			
Lee Grater	✓			
Kenneth Ede	✓			
Bob Kennedy	✓			
Ray Reaves				✓
Lyndel Gibson	✓			
Debra Smith	✓			
Noble Stanfield				✓
Terry Vandell	✓			

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM  
ELECTRIC UTILITIES**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

252:517-1-3 Definitions [AMENDED]

252:517-1-7 Permits [AMENDED]

Subchapter 9. Groundwater Monitoring/Corrective Action

252:517-9-1 General provisions [AMENDED]

252:517-9-2 Groundwater monitoring systems [AMENDED]

252:517-9-6 Assessment monitoring program [AMENDED]

Subchapter 11. Design Criteria

252:517-11-2 Liner design criteria for existing CCR surface impoundments [AMENDED]

Subchapter 15. Closure and Post-Closure Care

252:517-15-6 Closure or retrofit of CCR units [AMENDED]

252:517-15-7 Criteria for conducting the closure or retrofit of CCR units [AMENDED]

252:517-15-8 Alternative closure requirements [AMENDED]

Subchapter 19. Record Keeping, Notification, and Posting of Information to the Internet

252:517-19-1 Recordkeeping requirements [AMENDED]

252:517-19-2 Notification requirements [AMENDED]

252:517-19-3 Publicly accessible internet site requirements [AMENDED]

**AUTHORITY:**

Environmental Quality Board, 27A O.S. §§ 2-2-101, and 2-10-201.

Solid Waste Management Advisory Council, 27A O.S. § 2-2-201.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET**

**SECRETARY:**

November 6, 2020

**COMMENT PERIOD:**

December 1, 2020 through January 13, 2021

**PUBLIC HEARING(S):**

January 14, 2021

February 19, 2021

**ADOPTION:**

February 19, 2021 [Proposed]

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**



**FINAL AD OPTION:**

**EFFECTIVE:**

September 15, 2021 [Proposed]

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATION BY REFERENCE:**

N/A

**GIST/ANALYSIS:**

The Department of Environmental Quality (DEQ), in response to changes to 40 CFR 257 Subpart D, is proposing to amend OAC 252:517 to change the classification of “clay-lined” CCR surface impoundments to “unlined,” revise certain closure deadlines for surface impoundments, provide alternative closure provisions, establish groundwater protection standards for four Appendix B constituents, add a summary requirement to the annual groundwater report, and make other non-substantive changes. The gist of this rulemaking is to incorporate federal changes and ensure state CCR rules are at least as protective as federal rules. This rulemaking is necessary to maintain Environmental Protection Agency (EPA) authorization of Oklahoma’s CCR regulatory program.

**CONTACT PERSON:**

David Cates, Department of Environmental Quality, Land Protection Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, (405) 702-5100 (phone), David.Cates@deq.ok.gov, (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM  
ELECTRIC UTILITIES**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**252:517-1-3. Definitions**

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. Any term not defined in this Chapter shall be defined as set forth in OAC 252:517-1-4.

**"Acre foot"** means the volume of one acre of surface area to a depth of one foot.

**"Active facility"** or **"active electric utilities"** or **"independent power producers"** means any facility subject to the requirements of this Chapter in operation on October 19, 2015. An electric utility or independent power producer is in operation if it is generating electricity that is provided to electric power transmission systems or to electric power distribution systems on or after October 19, 2015. An off-site CCR unit is in operation if it is accepting or managing CCR on or after October 19, 2015.

**"Active life"** or **"in operation"** means the period of operation beginning with the initial placement of CCR in the CCR unit and ending at completion of closure activities in accordance with OAC 252:517-15-7.

**"Active portion"** means that part of the CCR unit that has received or is receiving CCR or non-CCR waste and that has not completed closure in accordance with OAC 252:517-15-7.

**"Aquifer"** means a geologic formation, group of formations, or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

**"Area-capacity curves"** means graphic curves which readily show the reservoir water surface area, in acres, at different elevations from the bottom of the reservoir to the maximum water surface, and the capacity or volume, in acre-feet, of the water contained in the reservoir at various elevations.

**"Areas susceptible to mass movement"** means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where, because of natural or human-induced events, the movement of earthen material at, beneath, or adjacent to the CCR unit results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

**"Beneficial use of CCR"** means the CCR meet all of the following conditions:

- (A) The CCR must provide a functional benefit;
- (B) The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;
- (C) The use of the CCR must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and
- (D) When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products

made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

**"CLIMOCS"** means the following publication of the Oklahoma Climatological Survey: Shafer, Mark A., CLIMOCS: A Climatological Summary of 168 Oklahoma Cooperative Stations, Oklahoma Climatological Survey, February 1993, 184 pp.

**"Closed"** means placement of CCR in a CCR unit has ceased, and the owner or operator has completed closure of the CCR unit in accordance with OAC 252:517-15-7 and has initiated post-closure care in accordance with OAC 252:517-15-9.

**"Coal combustion residuals (CCR)"** means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

**"CCR fugitive dust"** means solid airborne particulate matter that contains or is derived from CCR, emitted from any source other than a stack or chimney.

**"CCR landfill"** or **"landfill"** means an area of land or an excavation that receives CCR and which is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this Chapter, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

**"CCR pile"** or **"pile"** means any non-containerized accumulation of solid, non-flowing CCR that is placed on the land. CCR that is beneficially used off-site is not a CCR pile.

**"CCR surface impoundment"** or **"impoundment"** means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

**"CCR unit"** means any CCR landfill, CCR surface impoundment, or lateral expansion of a CCR unit, or a combination of more than one of these units, based on the context of the paragraph(s) in which it is used. This term includes both new and existing units, unless otherwise specified.

**"Dike"** means an embankment, berm, or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

**"Displacement"** means the relative movement of any two sides of a fault measured in any direction.

**"Disposal"** means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste as defined in Section 27A O.S. § 2-10-103 into or on any land or water so that such solid waste, or constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including groundwaters. For purposes of this Chapter, disposal does not include the storage or the beneficial use of CCR.

**"Downstream toe"** means the junction of the downstream slope or face of the CCR surface impoundment with the ground surface.

**"Eligible unlined CCR surface impoundment"** means an existing CCR surface impoundment that meets all of the following conditions:

(A) The owner or operator has documented that the CCR unit is in compliance with the location restrictions specified under OAC 252:517-5-1 through OAC 252:517-5-5;

(B) The owner or operator has documented that the CCR unit is in compliance with the periodic safety factor assessment requirements under OAC 252:517-11-4(e) and (f); and

(C) No constituent listed in Appendix B to this Chapter has been detected at a statistically significant level exceeding a groundwater protection standard defined under OAC 252:517-9-6(h).

**"Encapsulated beneficial use"** means a beneficial use of CCR that binds the CCR into a solid matrix that minimizes its mobilization into the surrounding environment.

**"Existing CCR landfill"** means a CCR landfill that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

**"Existing CCR surface impoundment"** means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015 and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous on-site, physical construction program had begun prior to October 19, 2015.

**"Facility"** means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, disposing, or otherwise conducting solid waste management of CCR. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

**"Factor of safety (Safety factor)"** means the ratio of the forces tending to resist the failure of a structure to the forces tending to cause such failure as determined by accepted engineering practice.

**"Fault"** means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

**"Flood hydrograph"** means a graph showing, for a given point on a stream, the discharge, height, or other characteristic of a flood as a function of time.

**"Freeboard"** means the vertical distance between the lowest point on the crest of the impoundment dike and the surface of the waste contained therein.

**"Free liquids"** means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure.

**"Groundwater"** means water below the land surface in a zone of saturation.

**"Hazard potential classification"** means the possible adverse incremental consequences that result from the release of water or stored contents due to failure of the diked CCR surface impoundment or mis-operation of the diked CCR surface impoundment or its appurtenances. The hazardous potential classifications include high hazard potential CCR surface impoundment, significant hazard potential CCR surface impoundment, and low hazard potential CCR surface impoundment, which terms mean:

(A) High hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation will probably cause loss of human life.

(B) Low hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation results in no probable loss of human life and low economic and/or environmental losses. Losses are principally limited to the surface impoundment owner's property.

(C) Significant hazard potential CCR surface impoundment means a diked surface impoundment where failure or mis-operation results in no probable loss of human life, but can cause economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns.

**"Height"** means the vertical measurement from the downstream toe of the CCR surface impoundment at its lowest point to the lowest elevation of the crest of the CCR surface impoundment.

**"Holocene"** means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch, at 11,700 years before present, to present.

**"Hydraulic conductivity"** means the rate at which water can move through a permeable medium (i.e., the coefficient of permeability).

**"Inactive CCR surface impoundment"** means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015.

**"Incised CCR surface impoundment"** means a CCR surface impoundment which is constructed by excavating entirely below the natural ground surface, holds an accumulation of CCR entirely below the adjacent natural ground surface, and does not consist of any constructed diked portion.

**"Inflow design flood"** means the flood hydrograph that is used in the design or modification of the CCR surface impoundments and its appurtenant works.

**"In operation"** means the same as active life.

**"Karst terrain"** means an area where karst topography, with its characteristic erosional surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, dolines, collapse shafts (sinkholes), sinking streams, caves, seeps, large springs, and blind valleys.

**"Lateral expansion"** means a horizontal expansion of the waste boundaries of an existing CCR landfill or existing CCR surface impoundment made after October 19, 2015.

**"Liquefaction factor of safety"** means the factor of safety (safety factor) determined using analysis under liquefaction conditions.

**"Lithified earth material"** means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

**"Maximum horizontal acceleration in lithified earth material"** means the maximum expected horizontal acceleration at the ground surface as depicted on a seismic hazard map, with a 98% or greater probability that the acceleration will not be exceeded in 50 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

**"New CCR landfill"** means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

**"New CCR surface impoundment"** means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the permits necessary to begin physical construction and a continuous on-site, physical construction program had begun after October 19, 2015.

**"Operator"** means the person(s) responsible for the overall operation of a CCR unit.

**"Overfill"** means a new CCR landfill constructed over a closed CCR surface impoundment.

**"Owner"** means the person(s) who owns a CCR unit or part of a CCR unit.

**"Permit boundary"** means the outermost edge of the area described by legal description in the owner/operator's permit. The permitted boundary includes the area in the buffer zone.

**"Poor foundation conditions"** mean those areas where features exist which indicate that a natural or human- induced event may result in inadequate foundation support for the structural components of an existing or new CCR unit. For example, failure to maintain static and seismic factors of safety as required in OAC 252:517-11-4(e) and OAC 252:517-11-5(e) would cause a poor foundation condition.

**"Probable maximum flood"** means the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the drainage basin.

**"Qualified person"** means a person or persons trained to recognize specific appearances of structural weakness and other conditions which are disrupting or have the potential to disrupt the operation or safety of the CCR unit by visual observation and, if applicable, to monitor instrumentation.

**"Qualified professional engineer"** means an individual who is licensed as a Professional Engineer in the state of Oklahoma by the State Board of Registration for Professional Engineers and Land Surveyors.

**"Recognized and generally accepted good engineering practices"** means engineering maintenance or operation activities based on established codes, widely accepted standards, published technical reports, or a practice widely recommended throughout the industry. Such practices generally detail approved ways to perform specific engineering, inspection, or mechanical integrity activities.

**"Representative sample"** means a sample of a universe or whole (e.g., waste pile, lagoon, and groundwater) which can be expected to exhibit the average properties of the universe or whole. See EPA publication SW-846, Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods, Chapter 9.

**"Retrofit"** means to remove all CCR and contaminated soils and sediments from the CCR surface impoundment, and to ensure the unit complies with the requirements in OAC 252:517-11-3.

**"Run-off"** means any rainwater, leachate, or other liquid that drains over land from any part of a CCR landfill or lateral expansion of a CCR landfill.

**"Run-on"** means any rainwater, leachate, or other liquid that drains over land onto any part of a CCR landfill or lateral expansion of a CCR landfill.

**"Sand and gravel pit or quarry"** means an excavation for the extraction of aggregate, minerals or metals. The term sand and gravel pit and/or quarry does not include subsurface or surface coal mines.

**"Seismic factor of safety"** means the factor of safety (safety factor) determined using analysis under earthquake conditions using the peak ground acceleration for a seismic event with a 2% probability of exceedance in 50 years, equivalent to a return period of approximately 2,500 years, based on the U.S. Geological Survey (USGS) seismic hazard maps for seismic events with this return period for the region where the CCR surface impoundment is located.

**"Seismic impact zone"** means an area having a 2% or greater probability that the maximum expected horizontal acceleration, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10 g in 50 years.

**"Slope protection"** means engineered or non-engineered measures installed on the upstream or downstream slope of the CCR surface impoundment to protect the slope against wave action or erosion, including but not limited to rock riprap, wooden pile, or concrete revetments, vegetated wave berms, concrete facing, gabions, geotextiles, or fascines.

**"Solid waste management or management"** means the systematic administration of the activities which provide for the collection, source separation, storage, transportation, processing, treatment, or disposal of solid waste.

**"State Director"** means the Executive Director of the DEQ or designee.

**"Static factor of safety"** means the factor of safety (safety factor) determined using analysis under the long-term, maximum storage pool loading condition, the maximum surcharge pool loading condition, and under the end-of-construction loading condition.

**"Structural components"** mean liners, leachate collection and removal systems, final covers, run-on and run-off systems, inflow design flood control systems, and any other component used in the construction and operation of the CCR unit that is necessary to ensure the integrity of the unit and that the contents of the unit are not released into the environment.

**"Technically feasible"** means possible to do in a way that would likely be successful.

**"Technically infeasible"** means not possible to do in a way that would likely be successful.

**"Unstable area"** means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

**"Uppermost aquifer"** means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary. Upper limit is measured at a point nearest to the natural ground surface to which the aquifer rises during the wet season.

**"Waste boundary"** means a vertical surface located at the hydraulically downgradient limit of the CCR unit. The vertical surface extends down into the uppermost aquifer.

**"Wetlands"** means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

## **252:517-1-7. Permits**

(a) **Permit required.** All CCR units must be permitted in accordance with the rules of this Chapter.

(b) **Existing CCR landfill permits.** ~~(1) Existing permits.~~ Permits for active CCR landfills issued

under previous rules, and those in the post-closure monitoring period on the effective date of this Chapter, remain in effect.

~~(2) Permit upgrades. Within 180 days of the effective date of this Chapter, or unless a specific date is provided, the owner/operator of the CCR landfill shall submit a permit modification application to the DEQ to ensure compliance with requirements of this Chapter.~~

(c) **Existing CCR impoundment permits.** Existing CCR impoundments permitted under OAC 252:616 must be permitted in accordance with the rules of this Chapter upon expiration of the existing permit or no later than October 19, 2018, whichever occurs first.

(d) **Permit upgrades.** Within 180 days of the effective date of this Chapter, or unless a specific date is provided, the owner/operator of a CCR unit shall submit a permit modification application to the DEQ to ensure compliance with requirements of this Chapter.

## **SUBCHAPTER 9. GROUNDWATER MONITORING/CORRECTIVE ACTION**

### **252:517-9-1. General provisions**

(a) **Applicability.** All CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the groundwater monitoring and corrective action requirements under OAC 252:517-9-1 through OAC 252:517-9-9.

(b) **Initial timeframes.**

(1) **Existing CCR landfills and existing CCR surface impoundments.** No later than October 17, 2017, the owner or operator of the CCR unit must be in compliance with the following groundwater monitoring requirements:

(A) Install the groundwater monitoring system as required by OAC 252-517-9-2;

(B) Develop the groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data as required by OAC 252:517-9-4;

(C) Initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background and downgradient well as required by OAC 252:517-9-5(b); and

(D) Begin evaluating the groundwater monitoring data for statistically significant increases over background levels for the constituents listed in Appendix A of this Chapter as required by OAC 252:517-9-5.

(2) **New CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units.** Prior to initial receipt of CCR by the CCR unit, the owner or operator must be in compliance with the groundwater monitoring requirements specified in paragraph (b)(1)(A) and (B) of this Section. In addition, the owner or operator of the CCR unit must initiate the detection monitoring program to include obtaining a minimum of eight independent samples for each background well as required by OAC 252:517-9-5(b).

(c) **Groundwater monitoring and corrective action.** Once a groundwater monitoring system and groundwater monitoring program has been established at the CCR unit as required by this Chapter, the owner or operator must conduct groundwater monitoring and, if necessary, corrective action throughout the active life and post-closure care period of the CCR unit.

(d) **Control releases.** In the event of a release from a CCR unit, the owner or operator must immediately take all necessary measures to control the source(s) of releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment.



The owner or operator of the CCR unit must comply with all applicable requirements in OAC 252:517-9-7, OAC 252:517-9-8, and OAC 252:517-9-9.

(e) **Annual groundwater monitoring and corrective action report.** For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator must prepare an annual groundwater monitoring and corrective action report. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator must prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by this Chapter, and annually thereafter. For the preceding calendar year, the annual report must document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of this Section, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by OAC 252:517-19-1(h)(1). At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available:

- (1) A map, aerial image, or diagram showing the CCR unit and all background (or upgradient) and downgradient monitoring wells, to include the well identification numbers, that are part of the groundwater monitoring program for the CCR unit;
- (2) Identification of any monitoring wells that were installed or decommissioned during the preceding year, along with a narrative description of why those actions were taken;
- (3) In addition to all the monitoring data obtained under OAC 252:517-9-1 through OAC 252:517-9-9, a summary including the number of groundwater samples that were collected for analysis for each background and downgradient well, the dates the samples were collected, and whether the sample was required by the detection monitoring or assessment monitoring programs;
- (4) A narrative discussion of any transition between monitoring programs (e.g., the date and circumstances for transitioning from detection monitoring to assessment monitoring in addition to identifying the constituent(s) detected at a statistically significant increase over background levels); ~~and~~
- (5) Other information required to be included in the annual report as specified in OAC 252:517-9-1 through OAC 252:517-9-9; and
- (6) A section at the beginning of the annual report that provides an overview of the current status of groundwater monitoring and corrective action programs for the CCR unit. At a minimum, the summary must specify all of the following:

(A) At the start of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in OAC 252:517-9-5 or the assessment monitoring program in OAC 252:517-9-6;

(B) At the end of the current annual reporting period, whether the CCR unit was operating under the detection monitoring program in OAC 252:517-9-5 or the assessment monitoring program in OAC 252:517-9-6;

(C) If it was determined that there was a statistically significant increase over background for one or more constituents listed in Appendix A to this Chapter pursuant to OAC 252:517-9-5(e):

- (i) Identify those constituents listed in Appendix A to this Chapter and the names of the monitoring wells associated with such an increase; and
  - (ii) Provide the date when the assessment monitoring program was initiated for the CCR unit.
- (D) If it was determined that there was a statistically significant level above the groundwater protection standard for one or more constituents listed in Appendix B to this Chapter pursuant to OAC 252:517-9-6(g) include all of the following:
  - (i) Identify those constituents listed in Appendix B to this Chapter and the names of the monitoring wells associated with such an increase;
  - (ii) Provide the date when the assessment of corrective measures was initiated for the CCR unit;
  - (iii) Provide the date when the public meeting was held for the assessment of corrective measures for the CCR unit; and
  - (iv) Provide the date when the assessment of corrective measures was completed for the CCR unit.
- (E) Whether a remedy was selected pursuant to OAC 252:517-9-8 during the current annual reporting period, and if so, the date of remedy selection; and
- (F) Whether remedial activities were initiated or are ongoing pursuant to OAC 252:517-9-9 during the current annual reporting period.
- (f) **Recordkeeping.** The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in OAC 252:517-19-1(h), the notification requirements specified in OAC 252:517-19-2(h)(g), and the internet requirements specified in OAC 252:517-19-3(h).
- (g) **DEQ approval required.** The annual groundwater monitoring and corrective action report shall be submitted to the DEQ for approval.

## **252:517-9-2. Groundwater monitoring systems**

- (a) **Performance standard.** The owner or operator of a CCR unit must install a groundwater monitoring system that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that:
  - (1) Accurately represent the quality of background groundwater that has not been affected by leakage from a CCR unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the CCR management area where:
    - (A) Hydrogeologic conditions do not allow the owner or operator of the CCR unit to determine what wells are hydraulically upgradient; or
    - (B) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and
  - (2) Accurately represent the quality of groundwater passing the waste boundary of the CCR unit. The downgradient monitoring system must be installed at the waste boundary that ensures detection of groundwater contamination in the uppermost aquifer. All potential contaminant pathways must be monitored.
- (b) **Site-specific considerations.** The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that must include thorough characterization of:

- (1) Aquifer thickness, groundwater flow rate, groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and
  - (2) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.
- (c) **Minimum number.** The groundwater monitoring system must include the minimum number of monitoring wells necessary to meet the performance standards specified in paragraph (a) of this Section, based on the site-specific information specified in paragraph (b) of this Section. The groundwater monitoring system must contain:
- (1) A minimum of one upgradient and three downgradient monitoring wells; and
  - (2) Additional monitoring wells as necessary to accurately represent the quality of background groundwater that has not been affected by leakage from the CCR unit and the quality of groundwater passing the waste boundary of the CCR unit.
- (d) **Multi-unit groundwater monitoring system.** The owner or operator of multiple CCR units may install a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each CCR unit.
- (1) The multiunit groundwater monitoring system must be equally as capable of detecting monitored constituents at the waste boundary of the CCR unit as the individual groundwater monitoring system specified in paragraphs (a) through (c) of this Section for each CCR unit based on the following factors:
    - (A) Number, spacing, and orientation of each CCR unit;
    - (B) Hydrogeologic setting;
    - (C) Site history; and
    - (D) Engineering design of the CCR unit.
  - (2) [RESERVED]
  - ~~(2) If the owner or operator elects to install a multiunit groundwater monitoring system, and if the multiunit system includes at least one existing unlined CCR surface impoundment as determined by OAC 252:517-11-2(a), and if at any time after October 19, 2015 the owner or operator determines in any sampling event that the concentrations of one or more constituents listed in Appendix B to this Chapter are detected at statistically significant levels above the groundwater protection standard established under OAC 252:517-9-6(h) for the multiunit system, then all unlined CCR surface impoundments comprising the multiunit groundwater monitoring system are subject to the closure requirements under OAC 252:517-15-6(a) to retrofit or close.~~
- (e) **Monitoring wells.** Monitoring wells must be constructed in accordance with OAC 252:517-7-3.
- (1) The owner or operator of the CCR unit must document and include in the operating record the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices. The qualified professional engineer must be given access to this documentation when completing the groundwater monitoring system certification required under paragraph (f) of this Section.

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to the design specifications throughout the life of the monitoring program.

(f) **PE certification.** The owner or operator must obtain a certification from a qualified professional engineer stating that the groundwater monitoring system has been designed and constructed to meet the requirements of this Section. If the groundwater monitoring system includes the minimum number of monitoring wells specified in paragraph (c)(1) of this Section, the certification must document the basis supporting this determination.

(g) **DEQ approval required.** A plan meeting the requirements of this section must be submitted to DEQ for approval prior to installation of the groundwater monitoring system.

(h) **Recordkeeping.** The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in OAC 252:517-19-1(h), the notification requirements specified in OAC 252:517-19-2(h)(g), and the internet requirements specified in OAC 252:517-19-3(h).

#### **252:517-9-6. Assessment monitoring program**

(a) **Assessment monitoring required.** Assessment monitoring is required whenever a statistically significant increase over background levels has been detected for one or more of the constituents listed in Appendix A to this Chapter.

(b) **Initiation and number of samples.** Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator of the CCR unit must sample and analyze the groundwater for all constituents listed in Appendix B to this Chapter. The number of samples collected and analyzed for each well during each sampling event must be consistent with OAC 252:517-9-4(e)(f), and must account for any unique characteristics of the site, but must be at least one sample from each well.

(c) **Alternative monitoring frequency.** The owner or operator of a CCR unit may demonstrate the need for an alternative monitoring frequency for repeated sampling and analysis for constituents listed in Appendix B to this Chapter during the active life and the post-closure care period based on the availability of groundwater. If there is not adequate groundwater flow to sample wells semiannually, the alternative frequency shall be no less than annual. The need to vary monitoring frequency must be evaluated on a site-specific basis and approved by the DEQ. The demonstration must be supported by, at a minimum, the information specified in paragraphs (c)(1) and (2) of this Section.

(1) The alternative sampling frequency must be based on consideration of the following factors:

(A) Lithology of the aquifer and unsaturated zone;

(B) Hydraulic conductivity of the aquifer and unsaturated zone; and

(C) Groundwater flow rates.

(2) Information documenting that the alternative frequency will be no less effective in ensuring that any leakage from the CCR unit will be discovered within a timeframe that will not materially delay the initiation of any necessary remediation measures.

(3) The owner or operator must obtain a certification from a qualified professional engineer stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of this Section. The owner or operator must include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified

professional engineer in the annual groundwater monitoring and corrective action report required by OAC 252:517-9-1(e).

(d) **Action required.** After obtaining the results from the initial and subsequent sampling events required in paragraph (b) of this Section, the owner or operator must:

(1) Within 90 days of obtaining the results, and on at least a semiannual basis thereafter, resample all wells that were installed pursuant to the requirements of OAC 252:517-9-2, conduct analyses for all parameters in Appendix A to this Chapter and for those constituents in Appendix B to this Chapter that are detected in response to paragraph (b) of this Section, and record their concentrations in the facility operating record. The number of samples collected and analyzed for each background well and downgradient well during subsequent semiannual sampling events must be consistent with OAC 252:517-9-4(e)(f), and must account for any unique characteristics of the site, but must be at least one sample from each background and downgradient well;

(2) Establish groundwater protection standards for all constituents detected pursuant to paragraph (b) or (d) of this Section. The groundwater protection standards must be established in accordance with paragraph (h) of this Section; and

(3) Include the recorded concentrations required by paragraph (d)(1) of this Section, identify the background concentrations established under OAC 252:517-9-5(b), and identify the groundwater protection standards established under paragraph (d)(2) of this Section in the annual groundwater monitoring and corrective action report required by OAC 252:517-9-1(e).

(e) **Concentrations below background.** If the concentrations of all constituents listed in Appendices A and B to this Chapter are shown to be at or below background values, using the statistical procedures in OAC 252:517-9-4(g), for two consecutive sampling events, the owner or operator may return to detection monitoring of the CCR unit, with DEQ approval. The owner or operator must prepare a notification stating that detection monitoring is resuming for the CCR unit. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by OAC 252:517-19-1(h)(7).

(f) **Concentrations above background.** If the concentrations of any constituent in Appendices A and B to this Chapter are above background values, but all concentrations are below the groundwater protection standard established under paragraph (h) of this Section, using the statistical procedures in OAC 252:517-9-4(g), the owner or operator must continue assessment monitoring in accordance with this Section.

(g) **Concentration above groundwater protection standard.** If one or more constituents in Appendix B to this Chapter are detected at statistically significant levels above the groundwater protection standard established under paragraph (h) of this Section in any sampling event, the owner or operator must prepare a notification identifying the constituents in Appendix B to this Chapter that have exceeded the groundwater protection standard and submit to DEQ, a proposed plan and schedule for analyzing the environmental release from the facility and for developing appropriate corrective action. The owner or operator has completed the notification when the notification is placed in the facility's operating record as required by OAC 252:517-19-1(h)(8). The owner or operator of the CCR unit also must:

(1) Characterize the nature and extent of the release and any relevant site conditions that may affect the remedy ultimately selected. The characterization must be sufficient to support a complete and accurate assessment of the corrective measures necessary to effectively clean up

all releases from the CCR unit pursuant to OAC 252:517-9-7. Characterization of the release includes the following minimum measures:

- (A) Install additional monitoring wells necessary to define the contaminant plume(s);
- (B) Collect data on the nature and estimated quantity of material released including specific information on the constituents listed in Appendix B of this Chapter and the levels at which they are present in the material released;
- (C) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(1) of this Section; and
- (D) Sample all wells in accordance with paragraph (d)(1) of this Section to characterize the nature and extent of the release.

(2) Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with paragraph (g)(1) of this Section. The owner or operator has completed the notifications when they are placed in the facility's operating record as required by OAC 252:517-19-1(h)(8).

(3) Within 90 days of finding that any of the constituents listed in Appendix B to this Chapter have been detected at a statistically significant level exceeding the groundwater protection standards the owner or operator must either:

- (A) Initiate an assessment of corrective measures as required by OAC 252:517-9-7; or
- (B) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. Any such demonstration must be supported by a report that includes the factual or evidentiary basis for any conclusions, must be certified to be accurate by a qualified professional engineer, and submitted to DEQ for approval. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this Section, and upon DEQ approval may return to detection monitoring if the constituents in Appendices A and B to this Chapter are at or below background as specified in paragraph (e) of this Section. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by OAC 252:517-9-1(e), in addition to the certification by a qualified professional engineer.

(4) If a successful demonstration has not been made at the end of the 90 day period provided by paragraph (g)(3)(B) of this Section, the owner or operator of the CCR unit must initiate the assessment of corrective measures requirements under OAC 252:517-9-7.

~~(5) If an assessment of corrective measures is required under OAC 252:517-9-7 by either paragraph (g)(3)(i) or (g)(4) of this Section, and if the CCR unit is an existing unlined CCR surface impoundment as determined by OAC 252:517-11-2(a), then the CCR unit is subject to the closure requirements under OAC 252:517-15-6(a) to retrofit or close. In addition, t~~The owner or operator must prepare a notification stating that an assessment of corrective measures has been initiated.

(h) **Groundwater protection standard.** The owner or operator of the CCR unit must establish a groundwater protection standard for each constituent in Appendix B to this Chapter detected in the groundwater. The groundwater protection standard shall be:

- (1) For constituents for which a maximum contaminant level (MCL) has been established under 40 CFR 141.62 and 141.66, the MCL for that constituent;
- (2) ~~For constituents for which an MCL has not been established, the background concentration for the constituent established from wells in accordance with OAC 252:517-9-2; or~~ For the following constituents:
  - (A) Cobalt: 6 micrograms per liter ( $\mu\text{g/L}$ );
  - (B) Lead: 15  $\mu\text{g/L}$ ;
  - (C) Lithium: 40  $\mu\text{g/L}$ ; and
  - (D) Molybdenum: 100  $\mu\text{g/L}$
- (3) For constituents for which the background level is higher than the MCL levels identified under paragraphs (h)(1) and (h)(2) of this Section, the background concentration.
- (i) **Recordkeeping.** The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in OAC 252:517-19-1(h), the notification requirements specified in OAC 252:517-19-2(h)(g), and the Internet requirements specified in OAC 252:517-19-3(h).

## SUBCHAPTER 11. DESIGN CRITERIA

### 252:517-11-2. Liner design criteria for existing CCR surface impoundments

(a) **Applicability.**

- (1) No later than October 17, 2016, the owner or operator of an existing CCR surface impoundment must document whether or not such unit was constructed with any one of the following:
  - (A) ~~[RESERVED] A liner consisting of a minimum of two feet of compacted soil with a hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec;~~
  - (B) A composite liner that meets the requirements of OAC 252:517-11-1(b); or
  - (C) An alternative composite liner that meets the requirements of OAC 252:517-11-1(c).
- (2) The hydraulic conductivity of the compacted soil must be determined using recognized and generally accepted methods.
- (3) An existing CCR surface impoundment is considered to be an existing unlined CCR surface impoundment if either:
  - (A) The owner or operator of the CCR unit determines that the CCR unit is not constructed with a liner that meets the requirements of paragraphs (a)(1)(A), (B), or (C) of this Section; or
  - (B) The owner or operator of the CCR unit fails to document whether the CCR unit was constructed with a liner that meets the requirements of paragraphs (a)(1)(A), (B), or (C) of this Section.
- (4) All existing unlined CCR surface impoundments are subject to the requirements of OAC 252:517-15-6.
- (b) **PE certification.** The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer attesting that the documentation as to whether a CCR unit meets the requirements of paragraph (a) of this Section is accurate. Documentation and certification shall be submitted to the DEQ.
- (c) **Recordkeeping.** The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in OAC 252:517-19-1(f), the notification requirements specified in OAC 252:517-19-2(f)(e), and the Internet requirements specified in OAC 252:517-19-3(f).

## SUBCHAPTER 15. CLOSURE AND POST-CLOSURE CARE

### 252:517-15-6. Closure or retrofit of CCR units

(a) **Existing unlined CCR surface impoundment.** The owner or operator of an existing unlined CCR surface impoundment, as determined under OAC 252:517-11-2(a), is subject to the requirements of paragraph (a)(1) of this Section.

(1) Except as provided by paragraph (a)(3) of this Section, as soon as technically feasible, but not later than April 11, 2021, if at any time after October 19, 2015 an owner or operator of an existing unlined CCR surface impoundment ~~determines in any sampling event that the concentrations of one or more constituents listed in Appendix B to this Chapter are detected at statistically significant levels above the groundwater protection standard established under OAC 252:517-9-6(h) for such CCR unit, within six months of making such determination, the owner or operator of the existing unlined CCR surface impoundment~~ must cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of OAC 252:517-15-7.

(2) An owner or operator of an existing unlined CCR surface impoundment that closes in accordance with paragraph (a)(1) of this Section must include a statement in the notification required under OAC 252:517-15-7(g) or (k)(5) that the CCR surface impoundment is closing or retrofitting under the requirements of paragraph (a)(1) of this Section.

(3) The timeframe specified in paragraph (a)(1) of this Section does not apply if the owner or operator complies with the alternative closure procedures specified in OAC 252:517-15-8.

(4) At any time after the initiation of closure under paragraph (a)(1) of this Section, the owner or operator may cease closure activities and initiate a retrofit of the CCR unit in accordance with the requirements of OAC 252:517-15-7(k).

(b) **Existing CCR surface impoundment.** The owner or operator of an existing CCR surface impoundment is subject to the requirements of paragraph (b)(1) of this Section.

(1) Closure due to non-compliance with location restrictions:

(A) Except as provided by paragraph (b)(4) of this Section, the owner or operator of an existing CCR surface impoundment that has not demonstrated compliance with the location standard specified in OAC 252:517-5-1(a) must cease placing CCR and non-CCR wastestreams into such CCR unit as soon as technically feasible, but no later than April 11, 2021, and close the CCR unit in accordance with the requirements of OAC 252:517-15-7.

(B) Except as provided by paragraph (b)(4) of this Section, within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in ~~OAC 252:517-5-1(a)~~, OAC 252:517-5-2(a), OAC 252:517-5-3(a), OAC 252:517-5-4(a), and OAC 252:517-5-5(a), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of OAC 252:517-15-7.

(2) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by OAC 252:517-11-4(e) by the deadlines specified in OAC 252:517-11-4(f)(1) through (3) or failing to document that the calculated factors of safety for the existing CCR surface impoundment achieve the minimum safety factors specified in OAC 252:517-11-4(e)(1)(i) through (iv), the owner or operator of the CCR surface impoundment



must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of OAC 252:517-15-7.

(3) An owner or operator of an existing CCR surface impoundment that closes in accordance with paragraphs (b)(1) or (2) of this Section must include a statement in the notification required under OAC 252:517-15-7(g) that the CCR surface impoundment is closing under the requirements of paragraphs (b)(1) or (2) of this Section.

(4) The timeframe specified in paragraph (b)(1) of this Section does not apply if the owner or operator complies with the alternative closure procedures specified in OAC 252:517-15-8.

**(c) New CCR surface impoundment.** The owner or operator of a new CCR surface impoundment is subject to the requirements of paragraph (c)(1) of this Section.

(1) Within six months of either failing to complete the initial or any subsequent periodic safety factor assessment required by OAC 252:517-11-5(e) by the deadlines specified in OAC 252:517-11-5(f)(1) through (3) or failing to document that the calculated factors of safety for the new CCR surface impoundment achieve the minimum safety factors specified in OAC 252:517-11-5(e)(1)(i) through (v), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of OAC 252:517-15-7.

(2) An owner or operator of a new CCR surface impoundment that closes in accordance with paragraph (c)(1) of this Section must include a statement in the notification required under OAC 252:517-15-7(g) that the CCR surface impoundment is closing under the requirements of paragraph (c)(1) of this Section.

**(d) Existing CCR landfill.** The owner or operator of an existing CCR landfill is subject to the requirements of paragraph (d)(1) of this Section.

(1) Except as provided by paragraph (d)(3) of this Section, within six months of determining that an existing CCR landfill has not demonstrated compliance with the location restriction for unstable areas specified in OAC 252:517-5-5(a), the owner or operator of the CCR unit must cease placing CCR and non-CCR waste streams into such CCR landfill and close the CCR unit in accordance with the requirements of OAC 252:517-15-7.

(2) An owner or operator of an existing CCR landfill that closes in accordance with paragraph (d)(1) of this Section must include a statement in the notification required under OAC 252:517-15-7(g) that the CCR landfill is closing under the requirements of paragraph (d)(1) of this Section.

(3) The timeframe specified in paragraph (d)(1) of this Section does not apply if the owner or operator complies with the alternative closure procedures specified in OAC 252:517-15-8.

#### **252:517-15-7. Criteria for conducting the closure or retrofit of CCR units**

**(a) Closure of CCR unit; retrofit of CCR surface impoundment.** Closure of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit must be completed either by leaving the CCR in place and installing a final cover system or through removal of the CCR and decontamination of the CCR unit, as described in paragraphs (b) through (j) of this Section. Retrofit of a CCR surface impoundment must be completed in accordance with the requirements in paragraph (k) of this Section.

**(b) Written closure plan.**

(1) **Content of the plan.** The owner or operator of a CCR unit must prepare a written closure plan that describes the steps necessary to close the CCR unit at any point during the active life

of the CCR unit consistent with recognized and generally accepted good engineering practices. The written closure plan must include, at a minimum, the information specified in paragraphs (b)(1)(A) through (F) of this Section.

(A) A narrative description of how the CCR unit will be closed in accordance with this Section.

(B) If closure of the CCR unit will be accomplished through removal of CCR from the CCR unit, a description of the procedures to remove the CCR and decontaminate the CCR unit in accordance with paragraph (c) of this Section.

(C) If closure of the CCR unit will be accomplished by leaving CCR in place, a description of the final cover system, designed in accordance with paragraph (d) of this Section, and the methods and procedures to be used to install the final cover. The closure plan must also discuss how the final cover system will achieve the performance standards specified in paragraph (d) of this Section.

(D) An estimate of the maximum inventory of CCR ever on-site over the active life of the CCR unit.

(E) An estimate of the largest area of the CCR unit ever requiring a final cover as required by paragraph (d) of this Section at any time during the CCR unit's active life.

(F) A schedule for completing all activities necessary to satisfy the closure criteria in this Section, including an estimate of the year in which all closure activities for the CCR unit will be completed. The schedule should provide sufficient information to describe the sequential steps that will be taken to close the CCR unit, including identification of major milestones such as coordinating with and obtaining necessary approvals and permits from other agencies, the dewatering and stabilization phases of CCR surface impoundment closure, or installation of the final cover system, and the estimated timeframes to complete each step or phase of CCR unit closure. When preparing the written closure plan, if the owner or operator of a CCR unit estimates that the time required to complete closure will exceed the timeframes specified in paragraph (f)(1) of this Section, the written closure plan must include the site-specific information, factors and considerations that would support any time extension sought under paragraph (f)(2) of this Section.

**(2) Timeframes for preparing the initial written closure plan.**

(A) Existing CCR landfills and existing CCR surface impoundments. No later than October 17, 2016, the owner or operator of the CCR unit must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this Section.

(B) New CCR landfills and new CCR surface impoundments, and any lateral expansion of a CCR unit. No later than the date of the initial receipt of CCR in the CCR unit, the owner or operator must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this Section.

(C) The owner or operator has completed the written closure plan when the plan, including the certification required by paragraph (b)(4) of this Section, has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(4).

**(3) Amendment of a written closure plan.**

(A) The owner or operator may amend the initial or any subsequent written closure plan developed pursuant to paragraph (b)(1) of this Section at any time.

(B) The owner or operator must amend the written closure plan whenever:

- (i) There is a change in the operation of the CCR unit that would substantially affect the written closure plan in effect; or
  - (ii) Before or after closure activities have commenced, unanticipated events necessitate a revision of the written closure plan;
- (C) The owner or operator must amend the closure plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the need to revise an existing written closure plan. If a written closure plan is revised after closure activities have commenced for a CCR unit, the owner or operator must amend the current closure plan no later than 30 days following the triggering event.
- (4) **PE certification.** The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer that the initial and any amendment of the written closure plan meets the requirements of this Section.
- (5) **DEQ approval required.** The owner or operator of the CCR unit must submit the initial closure plan and any amendment of the closure plan to the DEQ for approval.
- (c) **Closure by removal of CCR.** An owner or operator may elect to close a CCR unit by removing and decontaminating all areas affected by releases from the CCR unit. CCR removal and decontamination of the CCR unit are complete when constituent concentrations throughout the CCR unit and any areas affected by releases from the CCR unit have been removed and groundwater monitoring concentrations do not exceed the groundwater protection standard established pursuant to OAC 252:517-9-6(h) for constituents listed in Appendix B to this Chapter.
- (d) **Closure performance standard when leaving CCR in place.**
  - (1) **Closure standards.** The owner or operator of a CCR unit must ensure that, at a minimum, the CCR unit is closed in a manner that will:
    - (A) Control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere;
    - (B) Preclude the probability of future impoundment of water, sediment, or slurry;
    - (C) Include measures that provide for major slope stability to prevent the sloughing or movement of the final cover system during the closure and post-closure care period;
    - (D) Minimize the need for further maintenance of the CCR unit; and
    - (E) Be completed in the shortest amount of time consistent with recognized and generally accepted good engineering practices.
  - (2) **Drainage and stabilization of CCR surface impoundments.** The owner or operator of a CCR surface impoundment or any lateral expansion of a CCR surface impoundment must meet the requirements of paragraphs (d)(2)(A) and (B) of this Section prior to installing the final cover system required under paragraph (d)(3) of this Section.
    - (A) Free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.
    - (B) Remaining wastes must be stabilized sufficient to support the final cover system.
  - (3) **Final cover system.** If a CCR unit is closed by leaving CCR in place, the owner or operator must install a final cover system that is designed to minimize infiltration and erosion, and at a minimum, meets the requirements of paragraph (d)(3)(A) of this Section, or the requirements of the alternative final cover system specified in paragraph (d)(3)(B) of this Section.

(A) The final cover system must be designed and constructed to meet the criteria in paragraphs (d)(3)(A)(i) through (iv) of this Section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this Section.

(i) The permeability of the final cover system must be less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than  $1 \times 10^{-5}$  cm/sec, whichever is less.

(ii) The infiltration of liquids through the closed CCR unit must be minimized by the use of an infiltration layer that contains a minimum of 18 inches of earthen material.

(iii) The erosion of the final cover system must be minimized by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

(iv) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(B) The owner or operator may select an alternative final cover system design, provided the alternative final cover system is designed and constructed to meet the criteria in paragraphs ~~(f)(3)(B)(i) through (iv)~~ (d)(3)(B)(i) through (iii) of this Section. The design of the final cover system must be included in the written closure plan required by paragraph (b) of this Section.

(i) The design of the final cover system must include an infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraphs (d)(3)(A)(i) and (ii) of this Section.

(ii) The design of the final cover system must include an erosion layer that provides equivalent protection from wind or water erosion as the erosion layer specified in paragraph (d)(3)(A)(iii) of this Section.

(iii) The disruption of the integrity of the final cover system must be minimized through a design that accommodates settling and subsidence.

(C) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer that the design of the final cover system meets the requirements of this Section.

(e) **Initiation of closure activities.** Except as provided for in paragraph (e)(4) of this Section and OAC 252:517-15-8, the owner or operator of a CCR unit must commence closure of the CCR unit no later than the applicable timeframes specified in either paragraph (e)(1) or (2) of this Section.

(1) **Commencing closure.** The owner or operator must commence closure of the CCR unit no later than 30 days after the date on which the CCR unit either:

(A) Receives the known final receipt of waste, either CCR or any non-CCR waste stream;  
or

(B) Removes the known final volume of CCR from the CCR unit for the purpose of beneficial use of CCR.

(2) **Conditions.**

(A) Except as provided by paragraph (e)(2)(B) of this Section, the owner or operator must commence closure of a CCR unit that has not received CCR or any non-CCR waste stream or is no longer removing CCR for the purpose of beneficial use within two years of the last receipt of waste or within two years of the last removal of CCR material for the purpose of beneficial use.

(B) Notwithstanding paragraph (e)(2)(A) of this Section, the owner or operator of the CCR unit may secure an additional two years to initiate closure of the idle unit provided the owner or operator provides written documentation that the CCR unit will continue to accept wastes or will start removing CCR for the purpose of beneficial use. The documentation must be supported by, at a minimum, the information specified in paragraphs (e)(2)(B)(i) and (ii) of this Section. The owner or operator may obtain two-year extensions provided the owner or operator continues to be able to demonstrate that there is reasonable likelihood that the CCR unit will accept wastes in the foreseeable future or will remove CCR from the unit for the purpose of beneficial use. The owner or operator must place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by OAC 252:517-19-1(i)(5) prior to the end of any two-year period.

(i) Information documenting that the CCR unit has remaining storage or disposal capacity or that the CCR unit can have CCR removed for the purpose of beneficial use; and

(ii) Information demonstrating that there is a reasonable likelihood that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future or that CCR can be removed for the purpose of beneficial use. The narrative must include a best estimate as to when the CCR unit will resume receiving CCR or non-CCR waste streams. The situations listed in paragraphs (e)(2)(B)(ii)(I) through (IV) of this Section are examples of situations that would support a determination that the CCR unit will resume receiving CCR or non-CCR waste streams in the foreseeable future.

(I) Normal plant operations include periods during which the CCR unit does not receive CCR or non-CCR waste streams, such as the alternating use of two or more CCR units whereby at any point in time one CCR unit is receiving CCR while CCR is being removed from a second CCR unit after its dewatering.

(II) The CCR unit is dedicated to a coal-fired boiler unit that is temporarily idled (e.g., CCR is not being generated) and there is a reasonable likelihood that the coal-fired boiler will resume operations in the future.

(III) The CCR unit is dedicated to an operating coal-fired boiler (i.e., CCR is being generated); however, no CCR are being placed in the CCR unit because the CCR are being entirely diverted to beneficial uses, but there is a reasonable likelihood that the CCR unit will again be used in the foreseeable future.

(IV) The CCR unit currently receives only non-CCR waste streams and those non-CCR waste streams are not generated for an extended period of time, but there is a reasonable likelihood that the CCR unit will again receive non-CCR waste streams in the future.

(C) In order to obtain additional time extension(s) to initiate closure of a CCR unit beyond the two years provided by paragraph (e)(2)(A) of this Section, the owner or operator of the CCR unit must include with the demonstration required by paragraph (e)(2)(B) of this Section the following statement signed by the owner or operator or an authorized representative: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I

am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(3) **Commencement activities.** For purposes of this Chapter, closure of the CCR unit has commenced if the owner or operator has ceased placing waste and completes any of the following actions or activities:

(A) Taken any steps necessary to implement the written closure plan required by paragraph (b) of this Section; or

(B) Taken any steps necessary to comply with any standards that are a prerequisite, or are otherwise applicable, to initiating or completing the closure of a CCR unit.

(4) **Timeline exceptions.** The timeframes specified in paragraphs (e)(1) and (2) of this Section do not apply to any of the following owners or operators:

(A) An owner or operator of an existing unlined CCR surface impoundment closing the CCR unit as required by OAC 252:517-15-6(a);

(B) An owner or operator of an existing CCR surface impoundment closing the CCR unit as required by OAC 252:517-15-6(b);

(C) An owner or operator of a new CCR surface impoundment closing the CCR unit as required by OAC 252:517-15-6(c); or

(D) An owner or operator of an existing CCR landfill closing the CCR unit as required by OAC 252:517-15-6(d).

(f) **Completion of closure activities.**

(1) **Closure timeframes.** Except as provided for in paragraph (f)(2) of this Section, the owner or operator must complete closure of the CCR unit:

(A) For existing and new CCR landfills and any lateral expansion of a CCR landfill, within six months of commencing closure activities.

(B) For existing and new CCR surface impoundments and any lateral expansion of a CCR surface impoundment, within five years of commencing closure activities.

(2) **Extensions of closure timeframes.**

(A) **Applicability.** The timeframes for completing closure of a CCR unit specified under paragraphs (f)(1) of this Section may be extended if the owner or operator can demonstrate that it was not feasible to complete closure of the CCR unit within the required timeframes due to factors beyond the facility's control. If the owner or operator is seeking a time extension beyond the time specified in the written closure plan as required by paragraph (b)(1) of this Section, the demonstration must include a narrative discussion providing the basis for additional time beyond that specified in the closure plan. The owner or operator must place each completed demonstration, if more than one time extension is sought, in the facility's operating record as required by OAC 252:517-19-1(i)(6) prior to the end of any two-year period. Factors that may support such a demonstration include:

(i) Complications stemming from the climate and weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(ii) Time required to dewater a surface impoundment due to the volume of CCR contained in the CCR unit or the characteristics of the CCR in the unit;

(iii) The geology and terrain surrounding the CCR unit will affect the amount of material needed to close the CCR unit; or

(iv) Time required or delays caused by the need to coordinate with and obtain necessary approvals and permits from a state or other agency.

**(B) Maximum time extensions.**

- (i) CCR surface impoundments of 40 acres or smaller may extend the time to complete closure by no longer than two years.
- (ii) CCR surface impoundments larger than 40 acres may extend the timeframe to complete closure of the CCR unit multiple times, in two-year increments. For each two-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of five two-year extensions may be obtained for any CCR surface impoundment.
- (iii) CCR landfills may extend the timeframe to complete closure of the CCR unit multiple times, in one-year increments. For each one-year extension sought, the owner or operator must substantiate the factual circumstances demonstrating the need for the extension. No more than a total of two one-year extensions may be obtained for any CCR landfill.

**(C) Certification statement.** In order to obtain additional time extension(s) to complete closure of a CCR unit beyond the times provided by paragraph (f)(1) of this Section, the owner or operator of the CCR unit must include with the demonstration required by paragraph (f)(2)(A) of this Section the following statement signed by the owner or operator or an authorized representative: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

**(3) PE certification.** Upon completion, the owner or operator of the CCR unit must obtain a certification from a qualified professional engineer verifying that closure has been completed in accordance with the closure plan specified in paragraph (b) of this Section and the requirements of this Section.

**(g) Notification of intent to close.** No later than the date the owner or operator initiates closure of a CCR unit, the owner or operator must prepare a notification of intent to close a CCR unit. The notification must include the certification by a qualified professional engineer for the design of the final cover system as required by ~~OAC 252:517-15-7~~ paragraph (d)(3)(iii)(C), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(7).

**(h) Notification of closure.** Within 30 days of completion of closure of the CCR unit, the owner or operator must prepare a notification of closure of a CCR unit. The notification must include the certification by a qualified professional engineer as required by OAC 252:517-15-7(f)(3). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(8).

**(i) Deed notations.**

- (1) Except as provided by paragraph (i)(4) of this Section, following closure of a CCR unit, the owner or operator must record a notation on the deed to the property, or some other instrument that is normally examined during title search.
- (2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:
  - (A) The land has been used as a CCR unit; and

- (B) Its use is restricted under the post-closure care requirements as provided by OAC 252:517-15-9(d)(1)(C).
- (3) Within 30 days of recording a notation on the deed to the property, the owner or operator must prepare a notification stating that the notation has been recorded. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(9).
- (4) An owner or operator that closes a CCR unit in accordance with paragraph (c) of this Section is not subject to the requirements of paragraphs (i)(1) through (3) of this Section.
- (j) **Recordkeeping.** The owner or operator of the CCR unit must comply with the closure recordkeeping requirements specified in OAC 252:517-19-1(i), the closure notification requirements specified in OAC 252:517-19-2~~(i)~~(h), and the closure Internet requirements specified in OAC 252:517-19-3(i).
- (k) **Criteria to retrofit existing CCR surface impoundment.**
- (1) **Retrofit existing CCR surface impoundment.** To retrofit an existing CCR surface impoundment, the owner or operator must:
- (A) First remove all CCR, including any contaminated soils and sediments from the CCR unit; and
  - (B) Comply with the requirements in OAC 252:517-11-3.
  - (C) A CCR surface impoundment undergoing a retrofit remains subject to all other requirements of this Chapter, including the requirement to conduct any necessary corrective action.
- (2) **Written retrofit plan.**
- (A) **Content of the plan.** The owner or operator must prepare a written retrofit plan that describes the steps necessary to retrofit the CCR unit consistent with recognized and generally accepted good engineering practices. The written retrofit plan must include, at a minimum, all of the following information:
- (i) A narrative description of the specific measures that will be taken to retrofit the CCR unit in accordance with this Section.
  - (ii) A description of the procedures to remove all CCR and contaminated soils and sediments from the CCR unit.
  - (iii) An estimate of the maximum amount of CCR that will be removed as part of the retrofit operation.
  - (iv) An estimate of the largest area of the CCR unit that will be affected by the retrofit operation.
  - (v) A schedule for completing all activities necessary to satisfy the retrofit criteria in this Section, including an estimate of the year in which retrofit activities of the CCR unit will be completed.
- (B) **Timeframes for preparing the initial written retrofit plan.**
- (i) No later than 60 days prior to date of initiating retrofit activities, the owner or operator must prepare an initial written retrofit plan consistent with the requirements specified in paragraph (k)(2) of this Section. For purposes of this Chapter, initiation of retrofit activities has commenced if the owner or operator has ceased placing waste in the unit and completes any of the following actions or activities:
    - (I) Taken any steps necessary to implement the written retrofit plan;



- (II) Submitted a completed application for any required state or agency permit or permit modification; or
  - (III) Taken any steps necessary to comply with any state or other agency standards that are a prerequisite, or are otherwise applicable, to initiating or completing the retrofit of a CCR unit.
  - (ii) The owner or operator has completed the written retrofit plan when the plan, including the certification required by paragraph (k)(2)(D) of this Section, has been placed in the facility's operating record as required by OAC 252:517-19-1~~(j)~~(k)(1).
- (C) Amendment of a written retrofit plan.**
- (i) The owner or operator may amend the initial or any subsequent written retrofit plan at any time.
  - (ii) The owner or operator must amend the written retrofit plan whenever:
    - (I) There is a change in the operation of the CCR unit that would substantially affect the written retrofit plan in effect; or
    - (II) Before or after retrofit activities have commenced, unanticipated events necessitate a revision of the written retrofit plan.
  - (iii) The owner or operator must amend the retrofit plan at least 60 days prior to a planned change in the operation of the facility or CCR unit, or no later than 60 days after an unanticipated event requires the revision of an existing written retrofit plan. If a written retrofit plan is revised after retrofit activities have commenced for a CCR unit, the owner or operator must amend the current retrofit plan no later than 30 days following the triggering event.
- (D) PE certification.** The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of this Section.
- (E) DEQ approval required.** The owner or operator of the CCR unit must submit the written retrofit plan, and any amendment of the plan, to the DEQ for approval.
- (3) Deadline for completion.** Deadline for completion of activities related to the retrofit of a CCR unit. Any CCR surface impoundment that is being retrofitted must complete all retrofit activities within the same time frames and procedures specified for the closure of a CCR surface impoundment in OAC 252:517-15-7(f) or, where applicable, OAC 252:517-15-8.
- (4) PE certification; DEQ approval required.** Upon completion, the owner or operator must obtain a certification from a qualified professional engineer verifying that the retrofit activities have been completed in accordance with the retrofit plan specified in paragraph (k)(2) of this Section and the requirements of this Section. The certified report shall be submitted to DEQ for approval.
- (5) Notification of intent.** No later than the date the owner or operator initiates the retrofit of a CCR unit, the owner or operator must prepare a notification of intent to retrofit a CCR unit. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1~~(j)~~(k)(5).
- (6) Notification of completion.** Within 30 days of completing the retrofit activities specified in paragraph (k)(1) of this Section, the owner or operator must prepare a notification of completion of retrofit activities. The notification must include the certification by a qualified professional engineer as required by paragraph (k)(4) of this Section. The owner or operator

has completed the notification when it has been placed in the facility's operating record as required by OAC 252:517-19-1~~(j)~~(k)(6).

(7) **Retrofit cessation.** At any time after the initiation of a CCR unit retrofit, the owner or operator may cease the retrofit and initiate closure of the CCR unit in accordance with the requirements of OAC 252:517-15-7.

(8) **Recordkeeping.** The owner or operator of the CCR unit must comply with the retrofit recordkeeping requirements specified in OAC 252:517-19-1~~(j)~~(k), the retrofit notification requirements specified in OAC 252:517-19-2~~(j)~~(h), and the retrofit Internet requirements specified in OAC 252:517-19-3(j).

### **252:517-15-8. Alternative closure requirements**

The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to OAC 252:517-15-6(a), (b)(1), or (d) may nevertheless continue to receive the wastes specified in either paragraph (a), (b), (f)(1), or (f)(2) of this Section in the unit provided the owner or operator meets all of the requirements contained in the respective paragraph.

#### **(a) CCR landfills with no alternative disposal capacity.**

(1) Notwithstanding the provisions of OAC 252:517-15-6(d), a CCR landfill may continue to receive CCR if the owner or operator of the CCR landfill certifies that the CCR must continue to be managed in that CCR landfill due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph, the owner or operator of the CCR landfill must document that all of the following conditions have been met and approved by DEQ:

(A) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this Section;

(B) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under paragraph (a) of this Section lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator must arrange to use such capacity as soon as feasible;

(C) The owner or operator must remain in compliance with all other requirements of this Chapter, including the requirement to conduct any necessary corrective action; and

(D) The owner or operator must prepare the annual progress report specified in paragraph (c) of this Section documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.

(2) Once alternative capacity is available, the CCR landfill must cease receiving CCR and initiate closure following the timeframes in OAC 252:517-15-7(e).

(3) If no alternative capacity is identified within five years after the initial certification, the CCR landfill must cease receiving CCR and close in accordance with the timeframes in OAC 252:517-15-7(e) and (f).

#### **(b) CCR landfills - Permanent cessation of a coal-fired boiler(s) by a date certain.**

(1) Notwithstanding the provisions of OAC 252:517-15-6(d), a CCR landfill may continue to receive CCR if the owner or operator certifies that the facility will cease operation of the coal-fired boilers within the timeframe specified in paragraph (b)(4) of this Section, but in the

interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR landfill due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph, the owner or operator of the CCR landfill must document that all of the following conditions have been met and approved by DEQ:

(A) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this Section.

(B) The owner or operator must remain in compliance with all other requirements of this Chapter, including the requirement to conduct any necessary corrective action; and

(C) The owner or operator must prepare the annual progress report specified in paragraph (c) of this Section documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.

(2) [RESERVED]

(3) [RESERVED]

(4) For a CCR landfill, the coal-fired boiler must cease operation, and the CCR landfill must complete closure no later than April 19, 2021.

**(c) Required notices and progress reports for CCR landfills.** An owner or operator of a CCR landfill that closes in accordance with paragraph (a) or (b) of this Section must complete the notices and progress reports specified in paragraphs (c)(1) through (3) of this Section.

(1) Within six months of becoming subject to closure pursuant to OAC 252:517-15-6(d), the owner or operator must prepare and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of this Section. The notification must describe why the CCR landfill qualifies for the alternative closure provisions under either paragraph (a) or (b) of this Section, in addition to providing the documentation and certifications required by paragraph (a) or (b) of this Section.

(2) The owner or operator must prepare the periodic progress reports required by paragraph (a)(1)(D) or (b)(1)(C) of this Section, in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports must be completed according to the following schedule:

(A) The first annual progress report must be prepared no later than 13 months after completing the notification of intent to comply with the alternative closure requirements required by paragraph (c)(1) of this Section.

(B) The second annual progress report must be prepared no later than 12 months after completing the first annual progress report. Subsequent annual progress reports must be prepared within 12 months of completing the previous annual progress report.

(C) The owner or operator has completed the progress reports specified in this paragraph (c)(2) when the reports are placed in the facility's operating record as required by OAC 252:517-19-1(i)(11).

(3) An owner or operator of a CCR landfill must also prepare the notification of intent to close a CCR landfill as required by OAC 252:517-15-7(g).

**(d) CCR landfill recordkeeping.** The owner or operator of the CCR landfill must comply with the recordkeeping requirements specified in OAC 252:517-19-1(i), the notification requirements specified in OAC 252:517-19-2(h), and the internet requirements specified in OAC 252:517-19-3(i).

**(e) [RESERVED]**

**(f) Site-specific alternative deadlines to initiate closure of CCR surface impoundments.**

Notwithstanding the provisions of OAC 252:517-15-6(a) and (b)(1), a CCR surface impoundment may continue to receive the waste specified in paragraph (f)(1) or (2) of this Section, provided the owner or operator submits a demonstration that the criteria in either paragraph (f)(1) or (2) of this Section have been met. The demonstration must be submitted to DEQ no later than the relevant deadline in paragraph (f)(3) of this Section. DEQ will act on the submission in accordance with the procedures in paragraph (f)(3) of this Section.

(1) Development of alternative capacity is technically infeasible. Notwithstanding the provisions of OAC 252:517-15-6(a) and (b)(1), a CCR surface impoundment may continue to receive the waste specified in paragraph (f)(1)(B)(i) or (ii) of this Section, provided the owner or operator demonstrates the wastestream(s) must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to provide alternative disposal capacity on or off- site of the facility by April 11, 2021. To obtain approval under this paragraph all of the following criteria must be met:

(A) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this Section;

(B) Development of alternative capacity is technically infeasible.

(i) For units closing pursuant to OAC 252:517-15-6(a) and (b)(1)(A), CCR and/or non-CCR wastestreams must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site of the facility by April 11, 2021.

(ii) For units closing pursuant to OAC 252:517-15-6(b)(1)(B), CCR must continue to be managed in that CCR surface impoundment because it was technically infeasible to complete the measures necessary to obtain alternative disposal capacity either on or off-site of the facility by April 11, 2021.

(C) The facility is in compliance with all of the requirements of this Chapter.

(D) The owner or operator of the CCR surface impoundment must submit to DEQ documentation that the criteria in paragraphs (f)(1)(A) through (C) of this Section have been met by submitting all of the following:

(i) To demonstrate that the criteria in paragraphs (f)(1)(A) and (B) of this Section have been met the owner or operator must submit a workplan that contains all of the following elements:

(I) A written narrative discussing the options considered both on and off-site to obtain alternative capacity for each CCR and/or non-CCR wastestreams, the technical infeasibility of obtaining alternative capacity prior to April 11, 2021, and the option selected and justification for the alternative capacity selected. The narrative must also include all of the following: an in-depth analysis of the site and any site-specific conditions that led to the decision to select the alternative capacity being developed; an analysis of the adverse impact to plant operations if the CCR surface impoundment in question were to no longer be available for use; and a detailed explanation and justification for the amount of time being requested and

how it is the fastest technically feasible time to complete the development of the alternative capacity;

(II) A detailed schedule of the fastest technically feasible time to complete the measures necessary for alternative capacity to be available including a visual timeline representation. The visual timeline must clearly show all of the following: how each phase and the steps within that phase interact with or are dependent on each other and the other phases; all of the steps and phases that can be completed concurrently; the total time needed to obtain the alternative capacity and how long each phase and step within each phase will take; and at a minimum, the following phases: Engineering and design, contractor selection, equipment fabrication and delivery, construction, and start up and implementation.;

(III) A narrative discussion of the schedule and visual timeline representation, which must discuss all of the following: why the length of time for each phase and step is needed and a discussion of the tasks that occur during the specific step; why each phase and step shown on the chart must happen in the order it is occurring; the tasks that occur during each of the steps within the phase; and anticipated worker schedules; and

(IV) A narrative discussion of the progress the owner or operator has made to obtain alternative capacity for the CCR and/or non-CCR wastestreams. The narrative must discuss all the steps taken, starting from when the owner or operator initiated the design phase up to the steps occurring when the demonstration is being compiled. It must discuss where the facility currently is on the timeline and the efforts that are currently being undertaken to develop alternative capacity.

(ii) To demonstrate that the criteria in paragraph (f)(1)(C) of this Section have been met, the owner or operator must submit all of the following:

(I) A certification signed by the owner or operator that the facility is in compliance with all of the requirements of this Chapter;

(II) Visual representation of hydrogeologic information at and around the CCR unit(s) that supports the design, construction and installation of the groundwater monitoring system. This includes all of the following: map(s) of groundwater monitoring well locations in relation to the CCR unit(s); well construction diagrams and drilling logs for all groundwater monitoring wells; and maps that characterize the direction of groundwater flow accounting for seasonal variations;

(III) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event;

(IV) A description of site hydrogeology including stratigraphic cross-sections;

(V) Any corrective measures assessment conducted as required at OAC 252:517-9-7;

(VI) Any progress reports on corrective action remedy selection and design and the report of final remedy selection required at OAC 252:517-9-8(a);

(VII) The most recent structural stability assessment required at OAC 252:517-11-4(d); and

(VIII) The most recent safety factor assessment required at OAC 252:517-11-4(e).

(E) As soon as alternative capacity for any CCR or non-CCR wastestream is available, the

CCR surface impoundment must cease receiving that CCR or non-CCR wastestream. Once the CCR surface impoundment ceases receipt of all CCR and/or non-CCR wastestreams, the CCR surface impoundment must initiate closure following the timeframes in OAC 252:517-15-7(e) and (f).

(F) All CCR surface impoundments covered by paragraph (f)(1) of this Section must cease receiving waste by the deadlines specified in paragraphs (f)(1)(F)(i) and (ii) of this Section and close in accordance with the timeframes in OAC 252:517-15-7(e) and (f).

(i) Except as provided by paragraph (f)(1)(F)(ii) of this Section, no later than October 15, 2023.

(ii) An eligible unlined CCR surface impoundment must cease receiving CCR and/or non-CCR wastestreams no later than October 15, 2024. In order to continue to operate until October 15, 2024, the owner or operator must demonstrate that the unit meets the definition of an eligible unlined CCR surface impoundment.

(G) An owner or operator may seek additional time beyond the time granted in the initial approval by making the showing in paragraphs (f)(1)(A) through (D) of this Section, provided that no facility may be granted time to operate the impoundment beyond the maximum allowable time frames provided in (f)(1)(F) of this Section.

(H) The owner or operator at all times bears responsibility for demonstrating qualification this Section. Failure to remain in compliance with any of the requirements of this Chapter will result in the automatic loss of authorization under this Section.

(I) The owner or operator must:

(i) Upon submission of the demonstration to DEQ, prepare and place in the facility's operating record a notification that it has submitted the demonstration, along with a copy of the demonstration. An owner or operator that claims CBI in the demonstration may post a redacted version of the demonstration to its publicly accessible CCR internet site provided that it contains sufficient detail so that the public can meaningfully comment on the demonstration.

(ii) Upon receipt of a decision pursuant to paragraph (f)(3) of this Section, must prepare and place in the facility's operating record a copy of the decision.

(iii) If an extension of an approved deadline pursuant to paragraph (f)(1)(G) of this Section has been requested, place a copy of the request submitted to DEQ in the facility's operating record.

(J) The owner or operator must prepare semi-annual progress reports. The semi-annual progress reports must contain all of the following elements:

(i) Discussion of the progress made to date in obtaining alternative capacity, including:

(I) Discussion of the current stage of obtaining the capacity in reference to the timeline required under paragraph (f)(1)(D)(i) of this Section;

(II) Discussion of whether the owner or operator is on schedule for obtaining alternative capacity;

(III) If the owner or operator is not on or ahead of schedule for obtaining alternative capacity, the following must be included: discussion of any problems encountered, and a description of the actions taken or planned to resolve the problems and get back on schedule; and discussion of the goals for the next six

months and major milestones to be achieved for obtaining alternative capacity; and

(ii) Discussion of any planned operational changes at the facility.

(K) The progress reports must be completed according to the following schedule:

(i) The semi-annual progress reports must be prepared no later than April 30 and October 31 of each year for the duration of the alternative cease receipt of waste deadline.

(ii) The first semi-annual progress report must be prepared by whichever date, April 30 or October 31, is soonest after receiving approval from DEQ; and

(iii) The owner or operator has completed the progress reports specified in paragraph (f)(1)(J) of this Section when the reports have been placed in the facility's operating record as required by OAC 252:517-19-1(i)(17).

(L) The owner or operator must prepare the notification of intent to close a CCR surface impoundment as required by OAC 252:517-15-7(g).

(M) The owner or operator must comply with the recordkeeping requirements specified in OAC 252:517-19-1(i), the notification requirements specified in OAC 252:517-19-2(h), and the internet posting requirements in OAC 252:517-19-3(i).

(2) Permanent cessation of a coal-fired boiler(s) by a date certain. Notwithstanding the provisions of OAC 252:517-15-6(a) and (b)(1), a CCR surface impoundment may continue to receive CCR and/or non-CCR wastestreams if the facility will cease operation of the coal-fired boiler(s) and complete closure of the impoundment within the timeframes specified in paragraph (f)(2)(D) of this Section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR surface impoundment due to the absence of alternative disposal capacity both on and off-site of the facility. To qualify under this paragraph all of the following criteria must be met:

(A) No alternative disposal capacity is available on or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this Section.

(B) Potential risks to human health and the environment from the continued operation of the CCR surface impoundment have been adequately mitigated;

(C) The facility is in compliance with all other requirements of this Chapter, including the requirement to conduct any necessary corrective action; and

(D) The coal-fired boilers must cease operation and closure of the impoundment must be completed within the following timeframes:

(i) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler(s) must cease operation and the CCR surface impoundment must complete closure no later than October 17, 2023.

(ii) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler(s) must cease operation, and the CCR surface impoundment must complete closure no later than October 17, 2028.

(E) The owner or operator of the CCR surface impoundment must submit the following documentation that the criteria in paragraphs (f)(2)(A) through (D) of this Section have been met as specified in paragraphs (f)(2)(E)(i) through (iv) of this Section.

- (i) To demonstrate that the criteria in paragraph (f)(2)(A) of this Section have been met the owner or operator must submit a narrative that explains the options considered to obtain alternative capacity for CCR and/or non-CCR wastestreams both on and off-site.
- (ii) To demonstrate that the criteria in paragraph (f)(2)(B) of this Section have been met the owner or operator must submit a risk mitigation plan describing the measures that will be taken to expedite any required corrective action, and that contains all of the following elements:
  - (I) A discussion of any physical or chemical measures a facility can take to limit any future releases to groundwater during operation.
  - (II) A discussion of the surface impoundment's groundwater monitoring data and any found exceedances; the delineation of the plume (if necessary based on the groundwater monitoring data); identification of any nearby receptors that might be exposed to current or future groundwater contamination; and how such exposures could be promptly mitigated.
  - (III) A plan to expedite and maintain the containment of any contaminant plume that is either present or identified during continued operation of the unit.
- (iii) To demonstrate that the criteria in paragraph (f)(2)(C) of this Section have been met, the owner or operator must submit all of the following:
  - (I) A certification signed by the owner or operator that the facility is in compliance with all of the requirements of this Chapter;
  - (II) Visual representation of hydrogeologic information at and around the CCR unit(s) that supports the design, construction and installation of the groundwater monitoring system. This includes all of the following: map(s) of groundwater monitoring well locations in relation to the CCR unit; well construction diagrams and drilling logs for all groundwater monitoring wells; and maps that characterize the direction of groundwater flow accounting for seasonal variations;
  - (III) Constituent concentrations, summarized in table form, at each groundwater monitoring well monitored during each sampling event;
  - (IV) Description of site hydrogeology including stratigraphic cross-sections;
  - (V) Any corrective measures assessment required at OAC 252:517-9-7;
  - VI) Any progress reports on remedy selection and design and the report of final remedy selection required at OAC 252:517-9-8(a);
  - (VII) The most recent structural stability assessment required at OAC 252:517-11-4(d); and
  - (VIII) The most recent safety factor assessment required at OAC 252:517-11-4(e).
- (iv) To demonstrate that the criteria in paragraph (f)(2)(D) of this Section have been met, the owner or operator must submit the closure plan required by OAC 252:517-15-7(b) and a narrative that specifies and justifies the date by which they intend to cease receipt of waste into the unit in order to meet the closure deadlines.
- (F) The owner or operator at all times bears responsibility for demonstrating qualification for authorization under this Section. Failure to remain in compliance with any of the requirements of this Chapter will result in the automatic loss of authorization under this Section.



(G) The owner or operator must comply with the recordkeeping requirements specified in OAC 252:517-19-1(i), the notification requirements specified in OAC 252:517-19-2(h), and the internet posting requirements in OAC 252:517-19-3(i).

(H) Upon submission of the demonstration to DEQ the owner or operator must prepare and place in the facility's operating record and on its publicly accessible CCR internet site a notification that it has submitted a demonstration along with a copy of the demonstration.

(I) Upon receipt of a decision pursuant to paragraph (f)(3) of this Section, the owner or operator must place a copy of the decision in the facility's operating record and on the facility's publicly accessible CCR internet site.

(J) The owner or operator must prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the CCR surface impoundment. The owner or operator has completed the progress report when the report has been placed in the facility's operating record as required by OAC 252:517-19-1(i)(20).

(3) Process to Obtain Authorization.

(A) The owner or operator is subject to the following deadlines for submission:

(i) The owner or operator must submit the demonstration required under paragraph (f)(1)(D) of this Section, for an alternative cease receipt of waste deadline for a CCR surface impoundment pursuant to paragraph (f)(1) of this Section, to DEQ for approval no later than November 30, 2020.

(ii) An owner or operator may seek additional time beyond the time granted in the initial approval, in accordance with paragraph (f)(1)(G) of this Section, by submitting a new demonstration, as required under paragraph (f)(1)(D) of this Section, to DEQ for approval, no later than fourteen days from determining that the cease receipt of waste deadline will not be met.

(iii) The owner or operator must submit the demonstration required under paragraph (f)(2)(E) of this Section to the DEQ for approval no later than November 30, 2020.

(B) DEQ will evaluate the demonstration and may request additional information to complete its review. Submission of a complete demonstration will toll the facility's deadline to cease receipt of waste until issuance of a decision under paragraph (f)(3)(D) of this Section. Incomplete submissions will not toll the facility's deadline and will be rejected without further process. All decisions issued under this paragraph or paragraph (f)(3)(D) of this Section will contain the facility's deadline to cease receipt of waste.

(C) DEQ will publish its proposed decision on a complete demonstration on its web site for a 30-day comment period.

(D) After consideration of the comments, DEQ will issue its decision on the alternative compliance deadline within four months of receiving a complete demonstration.

(4) Transfer between site-specific alternatives. An owner or operator authorized to continue operating a CCR surface impoundment under this Section may at any time request authorization to continue operating the impoundment pursuant to another paragraph of Subsection (f), by submitting the information in paragraph (f)(4)(A) or (B) of this Section.

(A) Transfer from (f)(1) to (f)(2) of this Section. The owner or operator of a surface impoundment authorized to operate pursuant to paragraph (f)(1) of this Section may request authorization to instead operate the surface impoundment in accordance with the

requirements of paragraph (f)(2) of this Section, by submitting a new demonstration that meets the requirements of paragraph (f)(2)(E) of this Section to DEQ. DEQ will approve the request only upon determining that the criteria at paragraphs (f)(2)(A) through (D) have been met.

(B) Transfer from (f)(2) to (f)(1) of this Section. The owner or operator of a surface impoundment authorized to operate pursuant to paragraph (f)(2) of this Section may request authorization to instead operate the surface impoundment in accordance with the requirements of paragraph (f)(1) of this Section, by submitting a new demonstration that meets the requirements of paragraph (f)(1)(D) of this Section to DEQ. DEQ will approve the request only upon determining that the criteria at paragraphs (f)(1)(A) through (C) and (F) of this Section have been met.

(C) The procedures in paragraph (f)(3) of this Section will apply to all requests for transfer under this paragraph.

~~(a) The owner or operator of a CCR landfill, CCR surface impoundment, or any lateral expansion of a CCR unit that is subject to closure pursuant to OAC 252:517-15-6(a), (b)(1), or (d) may continue to receive CCR in the unit provided the owner or operator meets the requirements of either paragraph (a) or (b) of this Section.~~

~~(1) **No alternative CCR disposal capacity.**~~

~~(A) Notwithstanding the provisions of OAC 252:517-15-6(a), (b)(1), or (d), a CCR unit may continue to receive CCR if the owner or operator of the CCR unit certifies that the CCR must continue to be managed in that CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility. To qualify under this paragraph (a)(1), the owner or operator of the CCR unit must document that all of the following conditions have been met and approved by the DEQ:~~

~~(B) No alternative disposal capacity is available on-site or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this Section;~~

~~(C) The owner or operator has made, and continues to make, efforts to obtain additional capacity. Qualification under this Subsection lasts only as long as no alternative capacity is available. Once alternative capacity is identified, the owner or operator must arrange to use such capacity as soon as feasible;~~

~~(D) The owner or operator must remain in compliance with all other requirements of this Chapter, including the requirement to conduct any necessary corrective action; and~~

~~(E) The owner or operator must prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the development of alternative CCR disposal capacity.~~

~~(2) Once alternative capacity is available, the CCR unit must cease receiving CCR and initiate closure following the timeframes in OAC 252:517-15-7(e) and (f).~~

~~(3) If no alternative capacity is identified within five years after the initial certification, the CCR unit must cease receiving CCR and close in accordance with the timeframes in OAC 252:517-15-7(e) and (f).~~

~~(b) **Permanent cessation of a coal fired boiler(s) by a date certain.**~~

~~(1) Notwithstanding the provisions of OAC 252:517-15-6(a), (b)(1), and (d), a CCR unit may continue to receive CCR if the owner or operator certifies that the facility will cease~~

~~operation of the coal-fired boilers within the timeframes specified in paragraphs (b)(2) through (4) of this Section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility. To qualify under this paragraph (b)(1), the owner or operator of the CCR unit must document that all of the following conditions have been met and approved by the DEQ:~~

~~(A) No alternative disposal capacity is available on-site or off-site. An increase in costs or the inconvenience of existing capacity is not sufficient to support qualification under this Section.~~

~~(B) The owner or operator must remain in compliance with all other requirements of this Chapter, including the requirement to conduct any necessary corrective action; and~~

~~(C) The owner or operator must prepare an annual progress report documenting the continued lack of alternative capacity and the progress towards the closure of the coal-fired boiler.~~

~~(2) For a CCR surface impoundment that is 40 acres or smaller, the coal-fired boiler must cease operation and the CCR surface impoundment must have completed closure no later than October 17, 2023.~~

~~(3) For a CCR surface impoundment that is larger than 40 acres, the coal-fired boiler must cease operation, and the CCR surface impoundment must complete closure no later than October 17, 2028.~~

~~(4) For a CCR landfill, the coal-fired boiler must cease operation, and the CCR landfill must complete closure no later than April 19, 2021.~~

~~(c) **Required notices and progress reports.** An owner or operator of a CCR unit that closes in accordance with paragraphs (a) or (b) of this Section must complete the notices and progress reports specified in paragraphs (c)(1) through (3) of this Section.~~

~~(1) Within six months of becoming subject to closure pursuant to OAC 252:517-15-6(a), (b)(1), or (d), the owner or operator must prepare, submit to DEQ and place in the facility's operating record a notification of intent to comply with the alternative closure requirements of this Section. The notification must describe why the CCR unit qualifies for the alternative closure provisions under either paragraph (a) or (b) of this Section, in addition to providing the documentation and certifications required by paragraph (a) or (b) of this Section.~~

~~(2) The owner or operator must prepare the periodic progress reports required by paragraphs (a)(1)(D) or (b)(1)(C), in addition to describing any problems encountered and a description of the actions taken to resolve the problems. The annual progress reports must be completed according to the following schedule:~~

~~(A) The first annual progress report must be prepared no later than 13 months after completing the notification of intent to comply with the alternative closure requirements required by paragraph (c)(1) of this Section.~~

~~(B) The second annual progress report must be prepared no later than 12 months after completing the first annual progress report. Additional annual progress reports must be prepared within 12 months of completing the previous annual progress report.~~

~~(C) The owner or operator must submit the progress reports required in (A) and (B) above to the DEQ for approval.~~

~~(D) The owner or operator has completed the progress reports specified in paragraph (c)(2) of this Section when the reports are placed in the facility's operating record as required by OAC 252:517-19-1(i)(10).~~

~~(3) An owner or operator of a CCR unit must also prepare the notification of intent to close a CCR unit as required by OAC 252:517-15-7(g).~~

~~(d) **Recordkeeping.** The owner or operator of the CCR unit must comply with the recordkeeping requirements specified in OAC 252:517-19-1(i), the notification requirements specified in OAC 252:517-19-2(i), and the Internet requirements specified in OAC 252:517-19-3(i).~~

## **SUBCHAPTER 19. RECORD KEEPING, NOTIFICATION, AND POSTING OF INFORMATION TO THE INTERNET**

### **252:517-19-1. Recordkeeping requirements**

(a) **Applicability.** Each owner or operator of a CCR unit subject to the requirements of this Chapter must maintain files of all information required by this Section in a written operating record at their facility.

(b) **Records retention.** Unless specified otherwise, each file must be retained for at least five years following the date of each occurrence, measurement, maintenance, corrective action, report, record, or study.

(c) **Recordkeeping methods.** An owner or operator of more than one CCR unit subject to the provisions of this Chapter may comply with the requirements of this Section in one recordkeeping system provided the system identifies each file by the name of each CCR unit. The files may be maintained on microfilm, on a computer, on computer disks, on a storage system accessible by a computer, on magnetic tape disks, or on microfiche.

(d) **DEQ submittal.** The owner or operator of a CCR unit must submit to the DEQ any demonstration or documentation required by this Chapter, if requested, when such information is not otherwise available on the owner or operator's publicly accessible Internet site.

(e) **Location restrictions.** The owner or operator of a CCR unit subject to this Chapter must place the demonstrations documenting whether or not the CCR unit is in compliance with the requirements under OAC 252:517-5-1(a), OAC 252:517-5-2(a), OAC 252:517-5-3(a), OAC 252:517-5-4(a), and OAC 252:517-5-5(a), as it becomes available, in the facility's operating record.

(f) **Design criteria.** The owner or operator of a CCR unit subject to this Chapter must place the following information, as it becomes available, in the facility's operating record:

(1) The design and construction certifications as required by OAC 252:517-11-1(e) and (f).

(2) The documentation of liner type as required by OAC 252:517-11-2(a).

(3) The design and construction certifications as required by OAC 252:517-11-3(c) and (d).

(4) Documentation prepared by the owner or operator stating that the permanent identification marker was installed as required by OAC 252:517-11-4(a)(1) and OAC 252:517-11-5(a)(1).

(5) The initial and periodic hazard potential classification assessments as required by OAC 252:517-11-4(a)(2) and OAC 252:517-11-5(a)(2).

(6) The emergency action plan (EAP), and any amendment of the EAP, as required by OAC 252:517-11-4(a)(3) and OAC 252:517-11-5(a)(3), except that only the most recent EAP must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this Section.

(7) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders as required by OAC 252:517-11-4(a)(3)(A)(v) and OAC 252:517-11-5(a)(3)(A)(v).

(8) Documentation prepared by the owner or operator recording all activations of the emergency action plan as required by OAC 252:517-11-4(a)(3)(F) and OAC 252:517-11-5(a)(3)(F).

(9) The history of construction, and any revisions of it, as required by OAC 252:517-11-4(c), except that these files must be maintained until the CCR unit completes closure of the unit in accordance with OAC 252:517-15-7.

(10) The initial and periodic structural stability assessments as required by OAC 252:517-11-4(d) and OAC 252:517-11-5(d).

(11) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by OAC 252:517-11-4(d)(2) and OAC 252:517-11-5(d)(2).

(12) The initial and periodic safety factor assessments as required by OAC 252:517-11-4(e) and OAC 252:517-11-5(e).

(13) The design and construction plans, and any revisions of it, as required by OAC 252:517-11-5(c), except that these files must be maintained until the CCR unit completes closure of the unit in accordance with OAC 252:517-15-7.

(g) **Operating criteria.** The owner or operator of a CCR unit subject to this Chapter must place the following information, as it becomes available, in the facility's operating record:

(1) The CCR fugitive dust control plan, and any subsequent amendment of the plan, required by OAC 252:517-13-1(b), except that only the most recent control plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this Section.

(2) The annual CCR fugitive dust control report required by OAC 252:517-13-1(c).

(3) The initial and periodic run-on and run-off control system plans as required by OAC 252:517-13-2(c).

(4) The initial and periodic inflow design flood control system plan as required by OAC 252:517-13-3(c).

(5) Documentation recording the results of each inspection and instrumentation monitoring by a qualified person as required by OAC 252:517-13-4(a).

(6) The periodic inspection report as required by OAC 252:517-13-4(b)(2).

(7) Documentation detailing the corrective measures taken to remedy the deficiency or release as required by OAC 252:517-13-4(b)(5) and OAC 252:517-13-5(b)(5).

(8) Documentation recording the results of the weekly inspection by a qualified person as required by OAC 252:517-13-5(a).

(9) The periodic inspection report as required by OAC 252:517-13-5(b)(2).

(h) **Groundwater monitoring and corrective action.** The owner or operator of a CCR unit subject to this Chapter must place the following information, as it becomes available, in the facility's operating record:

(1) The annual groundwater monitoring and corrective action report as required by OAC 252:517-9-1(e).

- (2) Documentation of the design, installation, development, and decommissioning of any monitoring wells, piezometers and other measurement, sampling, and analytical devices as required by OAC 252:517-9-2(e)(1).
  - (3) The groundwater monitoring system certification as required by OAC 252:517-9-2(f).
  - (4) The selection of a statistical method certification as required by OAC 252:517-9-4(f)(6).
  - (5) Within 30 days of establishing an assessment monitoring program, the notification as required by OAC 252:517-9-5(e)(3).
  - (6) The results of Appendices A and B to this Chapter constituent concentrations as required by OAC 252:517-9-6(d)(1).
  - (7) Within 30 days of returning to a detection monitoring program, the notification as required by OAC 252:517-9-6(e).
  - (8) Within 30 days of detecting one or more constituents in Appendix B to this Chapter at statistically significant levels above the groundwater protection standard, the notifications as required by OAC 252:517-9-6(g).
  - (9) Within 30 days of initiating the assessment of corrective measures requirements, the notification as required by OAC 252:517-9-6(g)(5).
  - (10) The completed assessment of corrective measures as required by OAC 252:517-9-7(d).
  - (11) Documentation prepared by the owner or operator recording the public meeting for the corrective measures assessment as required by OAC 252:517-9-7(e).
  - (12) The semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report as required by OAC 252:517-9-8(a), except that the selection of remedy report must be maintained until the remedy has been completed.
  - (13) Within 30 days of completing the remedy, the notification as required by OAC 252:517-9-9(e).
- (i) **Closure and post-closure care.** The owner or operator of a CCR unit subject to this Chapter must place the following information, as it becomes available, in the facility's operating record:
- (1) The notification of intent to initiate closure of the CCR unit as required by OAC 252:517-15-5(c)(1).
  - (2) The annual progress reports of closure implementation as required by OAC 252:517-15-5(c)(2)(A) and (B).
  - (3) The notification of closure completion as required by OAC 252:517-15-5(c)(3).
  - (4) The written closure plan, and any amendment of the plan, as required by OAC 252:517-15-7(b), except that only the most recent closure plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this Section.
  - (5) The written demonstration(s), including the certification required by OAC 252:517-15-7(e)(2)(C), for a time extension for initiating closure as required by OAC 252:517-15-7(e)(2)(B).
  - (6) The written demonstration(s), including the certification required by OAC 252:517-15-7(f)(2)(C), for a time extension for completing closure as required by OAC 252:517-15-7(f)(2)(A).
  - (7) The notification of intent to close a CCR unit as required by OAC 252:517-15-7(g).
  - (8) The notification of completion of closure of a CCR unit as required by OAC 252:517-15-7(h).
  - (9) The notification recording a notation on the deed as required by OAC 252:517-15-7(i).

(10) The notification of intent to comply with the alternative closure requirements as required by OAC 252:517-15-8(c)(1).

(11) The annual progress reports under the alternative closure requirements as required by OAC 252:517-15-8(c)(2).

(12) The written post-closure plan, and any amendment of the plan, as required by OAC 252:517-15-9(d), except that only the most recent closure plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this Section.

(13) The notification of completion of post-closure care period as required by OAC 252:517-15-9(e).

(14) The notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by OAC 252:517-15-8(f)(1)(I)(i).

(15) The approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by OAC 252:517-15-8(f)(1)(I)(ii).

(16) The notification for requesting additional time to the alternative cease receipt of waste deadline as required by OAC 252:517-15-8(f)(1)(I)(iii).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as required by OAC 252:517-15-8(f)(1)(K).

(18) The notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by OAC 252:517-15-8(f)(2)(H).

(19) The approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by OAC 252:517-15-8(f)(2)(I).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by OAC 252:517-15-8(f)(2)(J).

(j) **Financial assurance.** The owner or operator of a CCR unit subject to this Chapter must follow the recordkeeping requirements of Subchapter 17 of this Chapter, as applicable to the facility.

(k) **Retrofit criteria.** The owner or operator of a CCR unit subject to this Chapter must place the following information, as it becomes available, in the facility's operating record:

(1) The written retrofit plan, and any amendment of the plan, as required by OAC 252:517-15-7(k)(2), except that only the most recent retrofit plan must be maintained in the facility's operating record irrespective of the time requirement specified in paragraph (b) of this Section.

(2) The notification of intent that the retrofit activities will proceed in accordance with the alternative procedures in OAC 252:517-15-8.

(3) The annual progress reports required under the alternative requirements as required by OAC 252:517-15-8.

(4) The written demonstration(s), including the certification in OAC 252:517-15-7(f)(2)(C), for a time extension for completing retrofit activities as required by OAC 252:517-15-7(k)(3).

(5) The notification of intent to initiate retrofit of a CCR unit as required by OAC 252:517-15-7(k)(5).

(6) The notification of completion of retrofit activities as required by OAC 252:517-15-7(k)(6).

### **252:517-19-2. Notification requirements**

(a) **DEQ notification.** The notifications required under paragraphs (e) through (i) of this Section must be sent to the DEQ before the close of business on the day the notification is required to be completed. For purposes of this Section, before the close of business means the notification must be postmarked or sent by electronic mail (email). If a notification deadline falls on a weekend or federal holiday, the notification deadline is automatically extended to the next business day. For those plans requiring approval by DEQ, submittal of the plan constitutes notification.

(b) **Combining notifications.** Notifications may be combined as long as the deadline requirement for each notification is met.

(c) **Notification required.** Unless otherwise required in this Section, the notifications specified in this Section must be sent to the DEQ within 30 days of placing in the operating record the information required by OAC 252:517-19-1.

(d) **Location restrictions.** The owner or operator of a CCR unit subject to the requirements of this Chapter must notify the DEQ that each demonstration specified under OAC 252:517-19-1(e) has been placed in the operating record and on the owner or operator's publicly accessible internet site.

(e) **Design criteria.** The owner or operator of a CCR unit subject to this Chapter must notify the DEQ when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:

(1) Within 60 days of commencing construction of a new CCR unit, provide notification of the availability of the design certification specified under OAC 252:517-19-1(f)(1) or (3). If the owner or operator of the CCR unit elects to install an alternative composite liner, the owner or operator must also submit to the DEQ a copy of the alternative composite liner design.

(2) No later than the date of initial receipt of CCR by a new CCR unit, provide notification of the availability of the construction certification specified under OAC 252:517-19-1(f)(1) or (3).

(3) Provide notification of the availability of the documentation of liner type specified under OAC 252:517-19-1(f)(2).

(4) Provide notification of the availability of the initial and periodic hazard potential classification assessments specified under OAC 252:517-19-1(f)(5).

(5) Provide notification of the availability of emergency action plan (EAP), and any revisions of the EAP, specified under OAC 252:517-19-1(f)(6).

(6) Provide notification of the availability of documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under OAC 252:517-19-1(f)(7).

(7) Provide notification of documentation prepared by the owner or operator recording all activations of the emergency action plan specified under OAC 252:517-19-1(f)(8).

(8) Provide notification of the availability of the history of construction, and any revision of it, specified under OAC 252:517-19-1(f)(9).

(9) Provide notification of the availability of the initial and periodic structural stability assessments specified under OAC 252:517-19-1(f)(10).



- (10) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under OAC 252:517-19-1(f)(11).
- (11) Provide notification of the availability of the initial and periodic safety factor assessments specified under OAC 252:517-19-1(f)(12).
- (12) Provide notification of the availability of the design and construction plans, and any revision of them, specified under OAC 252:517-19-1(f)(13).
- (f) **Operating criteria.** The owner or operator of a CCR unit subject to this Chapter must notify the DEQ when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:
- (1) Provide notification of the availability of the CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under OAC 252:517-19-1(g)(1).
  - (2) Provide notification of the availability of the annual CCR fugitive dust control report specified under OAC 252:517-19-1(g)(2).
  - (3) Provide notification of the availability of the initial and periodic run-on and run-off control system plans specified under OAC 252:517-19-1(g)(3).
  - (4) Provide notification of the availability of the initial and periodic inflow design flood control system plans specified under OAC 252:517-19-1(g)(4).
  - (5) Provide notification of the availability of the periodic inspection reports specified under OAC 252:517-19-1(g)(6).
  - (6) Provide notification of the availability of the documentation detailing the corrective measures taken to remedy the deficiency or release specified under OAC 252:517-19-1(g)(7).
  - (7) Provide notification of the availability of the periodic inspection reports specified under OAC 252:517-19-1(g)(9).
- (g) **Groundwater monitoring and corrective action.** The owner or operator of a CCR unit subject to this Chapter must notify the DEQ when information has been placed in the operating record and on the owner or operator's publicly accessible internet site. The owner or operator must:
- (1) Provide notification of the availability of the annual groundwater monitoring and corrective action report specified under OAC 252:517-19-1(h)(1).
  - (2) Provide notification of the availability of the groundwater monitoring system certification specified under OAC 252:517-19-1(h)(3).
  - (3) Provide notification of the availability of the selection of a statistical method certification specified under OAC 252:517-19-1(h)(4).
  - (4) Provide notification that an assessment monitoring programs has been established specified under OAC 252:517-19-1(h)(5).
  - (5) Provide notification that the CCR unit is returning to a detection monitoring program specified under OAC 252:517-19-1(h)(7).
  - (6) Provide notification that one or more constituents in Appendix B to this Chapter have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under OAC 252:517-19-1(h)(8).
  - (7) Provide notification that an assessment of corrective measures has been initiated specified under OAC 252:517-19-1(h)(9).
  - (8) Provide notification of the availability of assessment of corrective measures specified under OAC 252:517-19-1(h)(10).

(9) Provide notification of the availability of the semiannual report describing the progress in selecting and designing the remedy and the selection of remedy report specified under OAC 252:517-19-1(h)(12).

(10) Provide notification of the completion of the remedy specified under OAC 252:517-19-1(h)(13).

**(h) Closure and post-closure care.** The owner or operator of a CCR unit subject to this Chapter must notify the DEQ when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator must:

(1) Provide notification of the intent to initiate closure of the CCR unit specified under OAC 252:517-19-1(i)(1).

(2) Provide notification of the availability of the annual progress reports of closure implementation specified under OAC 252:517-19-1(i)(2).

(3) Provide notification of closure completion specified under OAC 252:517-19-1(i)(3).

(4) Provide notification of the availability of the written closure plan, and any amendment of the plan, specified under OAC 252:517-19-1(i)(4).

(5) Provide notification of the availability of the demonstration(s) for a time extension for initiating closure specified under OAC 252:517-19-1(i)(5).

(6) Provide notification of the availability of the demonstration(s) for a time extension for completing closure specified under OAC 252:517-19-1(i)(6).

(7) Provide notification of intent to close a CCR unit specified under OAC 252:517-19-1(i)(7).

(8) Provide notification of completion of closure of a CCR unit specified under OAC 252:517-19-1(i)(8).

(9) Provide notification of the deed notation as required by OAC 252:517-19-1(i)(9).

(10) Provide notification of intent to comply with the alternative closure requirements specified under OAC 252:517-19-1(i)(10).

(11) The annual progress reports under the alternative closure requirements as required by OAC 252:517-19-1(i)(11).

(12) Provide notification of the availability of the written post-closure plan, and any amendment of the plan, specified under OAC 252:517-19-1(i)(12).

(13) Provide notification of completion of post-closure care specified under OAC 252:517-19-1(i)(13).

(14) Provide the notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under OAC 252:517-19-1(i)(14).

(15) Provide the approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible specified under OAC 252:517-19-1(i)(15).

(16) Provide the notification for requesting additional time to the alternative cease receipt of waste deadline as required by OAC 252:517-19-1(i)(16).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under OAC 252:517-19-1(i)(17).

(18) Provide the notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as specified under OAC 252:517-19-1(i)(18).

(19) Provide the approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by OAC 252:517-19-1(i)(19).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by OAC 252:517-19-1(i)(20).

(i) **Retrofit criteria.** The owner or operator of a CCR unit subject to this Chapter must notify the DEQ when information has been placed in the operating record and on the owner or operator's publicly accessible Internet site. The owner or operator must:

(1) Provide notification of the availability of the written retrofit plan, and any amendment of the plan, specified under OAC 252:517-19-1~~(j)~~(k)(1).

(2) Provide notification of intent to comply with the alternative retrofit requirements specified under OAC 252:517-19-1~~(j)~~(k)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by OAC 252:517-19-1~~(j)~~(k)(3).

(4) Provide notification of the availability of the demonstration(s) for a time extension for completing retrofit activities specified under OAC 252:517-19-1~~(j)~~(k)(4).

(5) Provide notification of intent to initiate retrofit of a CCR unit specified under OAC 252:517-19-1~~(j)~~(k)(5).

(6) Provide notification of completion of retrofit activities specified under OAC 252:517-19-1~~(j)~~(k)(6).

### **252:517-19-3. Publicly accessible internet site requirements**

(a) **Applicability.** Each owner or operator of a CCR unit subject to the requirements of this Chapter must maintain a publicly accessible Internet site (CCR Web site) containing the information specified in this Section. The owner or operator's Web site must be titled "CCR Rule Compliance Data and Information." The website must ensure that all information required to be posted is immediately available to anyone visiting the site, without requiring any prerequisite, such as registration or a requirement to submit a document request. All required information must be clearly identifiable and must be able to be immediately printed and downloaded by anyone accessing the site. If the owner/operator changes the web address (i.e., Uniform Resource Locator (URL)) at any point, they must notify DEQ within 14 days of making the change. The facility's CCR website must also have a "contact us" form or a specific email address posted on the website for the public to use to submit questions and issues relating to the availability of information on the website.

(b) **Multiple CCR units.** An owner or operator of more than one CCR unit subject to the provisions of this Chapter may comply with the requirements of this Section by using the same Internet site for multiple CCR units provided the CCR Web site clearly delineates information by the name or identification number of each unit.

(c) **Website records retention.** Unless otherwise required in this Section, the information required to be posted to the CCR Web site must be made available to the public for at least five years following the date on which the information was first posted to the CCR Web site.

(d) **Timeline for posting to website.** Unless otherwise required in this Section, the information must be posted to the CCR Web site within 30 days of placing the pertinent information required by OAC 252:517-19-1 in the operating record.

(e) **Location restrictions.** The owner or operator of a CCR unit subject to this Chapter must place each demonstration specified under OAC 252:517-19-1(e) on the owner or operator's CCR Web site.

(f) **Design criteria.** The owner or operator of a CCR unit subject to this Chapter must place the following information on the owner or operator's CCR Web site:

(1) Within 60 days of commencing construction of a new unit, the design certification specified under OAC 252:517-19-1(f)(1) or (3).

(2) No later than the date of initial receipt of CCR by a new CCR unit, the construction certification specified under OAC 252:517-19-1(f)(1) or (3).

(3) The documentation of liner type specified under OAC 252:517-19-1(f)(2).

(4) The initial and periodic hazard potential classification assessments specified under OAC 252:517-19-1(f)(5).

(5) The emergency action plan (EAP) specified under OAC 252:517-19-1(f)(6), except that only the most recent EAP must be maintained on the CCR Web site irrespective of the time requirement specified in paragraph (c) of this Section.

(6) Documentation prepared by the owner or operator recording the annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders specified under OAC 252:517-19-1(f)(7).

(7) Documentation prepared by the owner or operator recording any activation of the emergency action plan specified under OAC 252:517-19-1(f)(8).

(8) The history of construction, and any revisions of it, specified under OAC 252:517-19-1(f)(9).

(9) The initial and periodic structural stability assessments specified under OAC 252:517-19-1(f)(10).

(10) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under OAC 252:517-19-1(f)(11).

(11) The initial and periodic safety factor assessments specified under OAC 252:517-19-1(f)(12).

(12) The design and construction plans, and any revisions of them, specified under OAC 252:517-19-1(f)(13).

(g) **Operating criteria.** The owner or operator of a CCR unit subject to this Chapter must place the following information on the owner or operator's CCR Web site:

(1) The CCR fugitive dust control plan, or any subsequent amendment of the plan, specified under OAC 252:517-19-1(g)(1) except that only the most recent plan must be maintained on the CCR Web site irrespective of the time requirement specified in paragraph (c) of this Section.

(2) The annual CCR fugitive dust control report specified under OAC 252:517-19-1(g)(2).

(3) The initial and periodic run-on and run-off control system plans specified under OAC 252:517-19-1(g)(3).

(4) The initial and periodic inflow design flood control system plans specified under OAC 252:517-19-1(g)(4).

(5) The periodic inspection reports specified under OAC 252:517-19-1(g)(6).

(6) The documentation detailing the corrective measures taken to remedy the deficiency or release specified under OAC 252:517-19-1(g)(7).

(7) The periodic inspection reports specified under OAC 252:517-19-1(g)(9).

**(h) Groundwater monitoring and corrective action.** The owner or operator of a CCR unit subject to this Chapter must place the following information on the owner or operator's CCR Web site:

- (1) The annual groundwater monitoring and corrective action report specified under OAC 252:517-19-1(h)(1).
- (2) The groundwater monitoring system certification specified under OAC 252:517-19-1(h)(3).
- (3) The selection of a statistical method certification specified under OAC 252:517-19-1(h)(4).
- (4) The notification that an assessment monitoring programs has been established specified under OAC 252:517-19-1(h)(5).
- (5) The notification that the CCR unit is returning to a detection monitoring program specified under OAC 252:517-19-1(h)(7).
- (6) The notification that one or more constituents in Appendix B to this Chapter have been detected at statistically significant levels above the groundwater protection standard and the notifications to land owners specified under OAC 252:517-19-1(h)(8).
- (7) The notification that an assessment of corrective measures has been initiated specified under OAC 252:517-19-1(h)(9).
- (8) The assessment of corrective measures specified under OAC 252:517-19-1(h)(10).
- (9) The semiannual reports describing the progress in selecting and designing remedy and the selection of remedy report specified under OAC 252:517-19-1(h)(12), except that the selection of the remedy report must be maintained until the remedy has been completed.
- (10) The notification that the remedy has been completed specified under OAC 252:517-19-1(h)(13).

**(i) Closure and post-closure care.** The owner or operator of a CCR unit subject to this Chapter must place the following information on the owner or operator's CCR Web site:

- (1) The notification of intent to initiate closure of the CCR unit specified under OAC 252:517-19-1(i)(1).
- (2) The annual progress reports of closure implementation specified under OAC 252:517-19-1(i)(2).
- (3) The notification of closure completion specified under OAC 252:517-19-1(i)(3).
- (4) The written closure plan, and any amendment of the plan, specified under OAC 252:517-19-1(i)(4).
- (5) The demonstration(s) for a time extension for initiating closure specified under OAC 252:517-19-1(i)(5).
- (6) The demonstration(s) for a time extension for completing closure specified under OAC 252:517-19-1(i)(6).
- (7) The notification of intent to close a CCR unit specified under OAC 252:517-19-1(i)(7).
- (8) The notification of completion of closure of a CCR unit specified under OAC 252:517-19-1(i)(8).
- (9) The notification recording a notation on the deed as required by OAC 252:517-19-1(i)(9).
- (10) The notification of intent to comply with the alternative closure requirements as required by OAC 252:517-19-1(i)(10).
- (11) The annual progress reports under the alternative closure requirements as required by OAC 252:517-19-1(i)(11).

(12) The written post-closure plan, and any amendment of the plan, specified under OAC 252:517-19-1(i)(12).

(13) The notification of completion of post-closure care specified under OAC 252:517-19-1(i)(13).

(14) The notification of intent to comply with the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under OAC 252:517-19-1(i)(14).

(15) The approved or denied demonstration for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible specified under OAC 252:517-19-1(i)(15).

(16) The notification for requesting additional time to the alternative cease receipt of waste deadline as required by OAC 252:517-19-1(i)(16).

(17) The semi-annual progress reports for the site-specific alternative to initiation of closure due to development of alternative capacity infeasible as specified under OAC 252:517-19-1(i)(17).

(18) The notification of intent to comply with the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as specified under OAC 252:517-19-1(i)(18).

(19) The approved or denied demonstration for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by OAC 252:517-19-1(i)(19).

(20) The annual progress report for the site-specific alternative to initiation of closure due to permanent cessation of a coal-fired boiler(s) by a date certain as required by OAC 252:517-19-1(i)(20).

(j) **Retrofit criteria.** The owner or operator of a CCR unit subject to this Chapter must place the following information on the owner or operator's CCR Web site:

(1) The written retrofit plan, and any amendment of the plan, specified under OAC 252:517-19-1~~(j)~~(k)(1).

(2) The notification of intent to comply with the alternative retrofit requirements as required by OAC 252:517-19-1~~(j)~~(k)(2).

(3) The annual progress reports under the alternative retrofit requirements as required by OAC 252:517-19-1~~(j)~~(k)(3).

(4) The demonstration(s) for a time extension for completing retrofit activities specified under OAC 252:517-19-1~~(j)~~(k)(4).

(5) The notification of intent to retrofit a CCR unit specified under OAC 252:517-19-1~~(j)~~(k)(5).

(6) The notification of completion of retrofit activities specified under OAC 252:517-19-1~~(j)~~(k)(6).

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM ELECTRIC  
UTILITIES**

Before the Solid Waste Management Advisory Council at 9:00 a.m. on January 14, 2021.  
Before the Environmental Quality Board at 9:30 a.m. on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 1. General Provisions  
252:517-1-3 Definitions [AMENDED]  
252:517-1-7 Permits [AMENDED]  
Subchapter 9. Groundwater Monitoring/Corrective Action  
252:517-9-1 General provisions [AMENDED]  
252:517-9-2 Groundwater monitoring systems [AMENDED]  
252:517-9-6 Assessment monitoring program [AMENDED]  
Subchapter 11. Design Criteria  
252:517-11-2 Liner design criteria for existing CCR surface impoundments [AMENDED]  
Subchapter 15. Closure and Post-Closure Care  
252:517-15-6 Closure or retrofit of CCR units [AMENDED]  
252:517-15-7 Criteria for conducting the closure or retrofit of CCR units [AMENDED]  
252:517-15-8 Alternative closure requirements [AMENDED]  
Subchapter 19. Record Keeping, Notification, and Posting of Information to the Internet  
252:517-19-1 Recordkeeping requirements [AMENDED]  
252:517-19-2 Notification requirements [AMENDED]  
252:517-19-3 Publicly accessible internet site requirements [AMENDED]

**DESCRIPTION:** The Department of Environmental Quality (DEQ), in response to changes to 40 CFR 257 Subpart D, is proposing to amend OAC 252:517 to change the classification of “clay-lined” CCR surface impoundments to “unlined”, revise certain closure deadlines for surface impoundments, provide alternative closure provisions, establish groundwater protection standards for four Appendix B constituents, add a summary requirement to the annual groundwater report, and make other non-substantive changes. The gist of this rulemaking is to incorporate federal changes and ensure state CCR rules are at least as protective as federal rules. This rulemaking is necessary to maintain Environmental Protection Agency (EPA) authorization of Oklahoma’s CCR regulatory program.

**CLASSES OF PERSONS AFFECTED:** Owners and/or operators of new and existing disposal facilities receiving only CCR generated from the combustion of coal at electric utilities and independent power producers will be required to comply with the proposed rulemaking.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** Owners and/or operators of new and existing CCR facilities will bear the costs of complying with the proposed rulemaking, though minimal additional costs are expected.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** No information was provided to the Department by any private or public entities regarding cost impacts for the proposed rulemaking.

**CLASSES OF PERSONS BENEFITTED:** The general public, CCR generators, and owners and/or operators of CCR disposal facilities will benefit from the proposed rulemaking as it will incorporate federal changes and ensure state CCR rules are at least as protective as federal rules which is necessary to maintain EPA authorization of Oklahoma's CCR regulatory program.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** Owners and operators of CCR disposal facilities are already subject to OAC 252:517, which prescribes requirements pertaining to the disposal of CCR generated from the combustion of coal at electric utilities and independent power producers, therefore minimal economic impact is anticipated as a result of the proposed rulemaking.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** No economic impact on political subdivisions is anticipated.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** No significant economic impact on small business is anticipated.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** None.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** DEQ will incur and absorb any additional costs associated with the proposed rulemaking, though none are anticipated. The benefit to DEQ is ensuring Oklahoma's CCR regulatory program is at least as protective as the federal rules which is necessary to maintain EPA authorization of the State's regulatory program.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** None.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** The source of revenue to be used to implement and enforce the proposed rulemaking are fees previously established and collected pursuant to 27A O.S. § 2-10-802.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** None.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** No cooperation of political subdivisions is required for the proposed rulemaking.

**EXPLANATION OF THE MEASURES DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** DEQ will be absorbing any additional costs associated with the proposed rulemaking,



though none are anticipated, and will not be proposing any additional permitting or disposal fees at this time.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** There are no other such methods of achieving the purpose of the proposed rule.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY, AND ENVIRONMENT:** The proposed rulemaking will have a positive effect on public health, safety, and the environment by ensuring Oklahoma's CCR regulatory program is at least as protective as the federal rules thereby enabling consistent State regulation of CCR disposal facilities.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed rulemaking is designed to ensure proper regulation of CCR facilities and to reduce risks posed to human health and the environment when CCR is not disposed of appropriately within the State. The proposed rulemaking will ensure Oklahoma's CCR regulatory program is at least as protective as the federal rules and allows for consistent DEQ oversight and enforcement of CCR disposal facilities.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY, AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** If the proposed rulemaking is not implemented, Oklahoma's CCR regulatory program would not be as protective as the federal rules and EPA's authorization of the program would be lost. Consequently, DEQ's ability to consistently regulate the proper disposal of CCR generated at electric utilities and independent power producers within the State would be adversely affected.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES, INCLUDING QUANTIFIABLE DATA WHERE POSSIBLE:** The proposed rulemaking will impact all business entities that own and/or operate CCR disposal facilities. However, the qualitative and quantitative impact on the existing business entities will be minimal, since the facilities are already in the process of closing their "clay-lined" surface impoundments under different provisions of the rules. Also, while the revised closure specifications and changes to the groundwater sections in the proposed rulemaking will add details to their currently applicable reporting requirements, the impact should not be burdensome but will allow for more complete and comprehensive reporting, as well as allow for more consistent oversight and enforcement of CCR disposal operations and thus improved protectiveness of the environment.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** December 15, 2020.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM  
ELECTRIC UTILITIES**

**EXECUTIVE SUMMARY:**

The Department of Environmental Quality (DEQ), in response to changes to 40 CFR 257 Subpart D, is proposing to amend OAC 252:517 to change the classification of “clay-lined” CCR surface impoundments to “unlined,” revise certain closure deadlines for surface impoundments, provide alternative closure provisions, establish groundwater protection standards for four Appendix B constituents, add a summary requirement to the annual groundwater report, and make other non-substantive changes. The gist of this rulemaking is to incorporate federal changes and ensure state CCR rules are at least as protective as federal rules. This rulemaking is necessary to maintain Environmental Protection Agency (EPA) authorization of Oklahoma’s CCR regulatory program.

**DIFFERENCE FROM ANALOGOUS FEDERAL RULES:**

The purpose of this rule making is to ensure consistency with analogous federal rules.

**ENVIRONMENTAL BENEFIT STATEMENT:**

These rules are not more stringent than any corresponding federal rules.

**SUMMARY OF COMMENTS AND RESPONSES:**

See attached.

**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM  
ELECTRIC UTILITIES**

**SUMMARY OF COMMENTS AND STAFF RESPONSES  
FOR PROPOSED REVISION TO  
OAC 252:517. DISPOSAL OF COAL COMBUSTION RESIDUALS FROM ELECTRIC  
UTILITIES**

**COMMENTS RECEIVED PRIOR TO THE *JANUARY 14, 2021*  
SOLID WASTE MANAGEMENT ADVISORY COUNCIL MEETING**

**Written Comments**

**Environmental Federation of Oklahoma (EFO)** – Email dated January 12, 2021, from Mr. Howard Ground, President of EFO. The email provided the following comments:

- 1. COMMENT:** We ask that you include the statement: “EPA established health-based levels for regulated CCR facilities in Oklahoma” at 252:517-9-6(h)(2) so that there will not be confusion on which landfills this section applies to.

252:517-9-6(h)(2): For the following “EPA established health-based levels for regulated CCR facilities in Oklahoma:”

- (A) Cobalt: 6 micrograms per liter (ug/L);
- (B) Lead: 15 ug/L;
- (C) Lithium: 40 ug/L; and,
- (D) Molybdenum: 100 ug/L

**RESPONSE:** In order to maintain EPA authorization for the Oklahoma CCR program, DEQ works to maintain wording that closely resembles the wording in the federal regulation. The proposed wording in this comment adds substantive language that is not in the equivalent federal language at 40 CFR 257.95(h)(2). DEQ intends to maintain consistency with the federal rule as closely as possible – with minor adjustments to satisfy state rulemaking and permitting requirements – and therefore will not be incorporating the proposed change in this comment.

- 2. COMMENT:** Under Alternative Closure Requirements, 252:517-15-8(b), We believe that the title of this paragraph can be misunderstood. It currently states the following:  
(b) CCR landfills undergoing permanent cessation of a coal-fired boiler(s) by a date certain. We believe that it should read as follows:  
(b) CCR landfills: Permanent cessation of a coal-fired boiler(s) by a date certain.  
Delete the word “undergoing” and insert colon. The current draft language makes it appear that the “landfill” is undergoing permanent cessation versus the boiler. The proposed

language is also consistent with the federal rule as published in the Federal Register on August 28, 2020.

**RESPONSE:** DEQ agrees that removal of the word “undergoing” is more consistent with the federal language at 40 CFR 257.103(b). However, DEQ will be adding a dash rather than a colon following the word “landfills” to reflect the federal rule more accurately. The new proposed language at OAC 252:517-15-8(b) will read:

(b) CCR landfills – Permanent cessation of a coal-fired boiler(s) by a date certain.

**LEAD Agency** – Email dated January 5, 2021, from Mr. Earl Hatley, Grand Riverkeeper, LEAD Agency, Inc. The email provided the following comments:

**COMMENT:** Thanks David. I really appreciate your help with this. Reading through it, I am happy to see the changes requiring the liners. I hope you are successful at getting it through. Take care.

**RESPONSE:** No response required.

**DRAFT MINUTES**  
**Solid Waste Management Advisory Council**  
**January 14, 2021 Regular Meeting**  
**Department of Environmental Quality**  
**Multipurpose Room 707 N. Robinson**  
**Oklahoma City, Oklahoma**

**Official SWMAC Approval**  
**at April 8, 2021 meeting**

**Notice of Public Meeting** - The Solid Waste Management Advisory Council convened for its Regular Meeting at 9:00 a.m. on January 14, 2021, in accordance with the Open Meeting Act, Section 311 of Title 25 of the Oklahoma Statutes. Notice of Regular Meeting was filed to the Office of the Secretary of State on November 4, 2020. Agendas were posted on the entrance doors at the Department of Environmental Quality (DEQ) Central Office in Oklahoma City at least twenty-four hours prior to the meeting. Mr. Jeff Shepherd, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present. Mr. Shepherd welcomed new Council members, Mr. Robert Joyce and Ms. April Sacha to the Council.

**MEMBERS PRESENT**

Todd Adcock  
Rodney Cleveland  
Robert Joyce  
Jim Linn  
Jody Reinhart  
April Sacha  
Jeff Shepherd

**DEQ STAFF PRESENT**

Kelly Dixon  
Kole Kennedy  
Patrick Riley  
Karen Jayne  
Michele Woods  
David Cates  
Jeff Biddick  
Quiana Fields

**MEMBERS ABSENT**

Brenda Merchant  
Greg Phillips

**OTHERS PRESENT**

Tammie Shipman, Court Reporter

**Approval of the Minutes for the September 10, 2020 Solid Waste Management Advisory Council Meeting** – Mr. Linn moved approval of the September 10, 2020 Minutes and Mr. Adcock made the second.

*See transcript pages 6 – 7*

**Roll Call**

Todd Adcock	Yes	Jody Reinhart	Yes
Rodney Cleveland	Yes	April Sacha	Yes
Robert Joyce	Abstain	Jeff Shepherd	Yes
Jim Linn	Yes		

**Director's Report** – Mr. Patrick Riley, Environmental Programs Manager of the LPD, provided an update on Division activities.

*See transcript pages 7 – 16*

**Discussion of proposed changes to Chapter 517 Disposal of Coal Combustion Residuals from Electric Utilities** – Mr. Riley stated the Department, in response to changes to 40 CFR 257 Subpart D, is proposing to amend OAC 252:517 to change the classification of “clay-lined” CCR surface impoundments to “unlined,” revise certain closure deadlines for surface impoundments, provide alternative closure provisions, establish groundwater protection standards for four Appendix B constituents, add a summary requirement to the annual groundwater report and make other non-substantive changes. Following questions and comments by the Council and by

the public, Mr. Shepherd called for motion. Mr. Linn moved to approve the changes and Ms. Reinhart made the second.

*See transcript pages 16 – 50*

<b>Roll Call</b>			
Todd Adcock	Yes	Jody Reinhart	Yes
Rodney Cleveland	Yes	April Sacha	Yes
Robert Joyce	Yes	Jeff Shepherd	Yes
Jim Linn	Yes		

**Discussion of subcommittee review of Closure and Post-Closure Cost Estimates** – Mr. Riley stated that the Subcommittee formed to conduct the five year review of unit costs required by OAC 252:515-27-4(a) will present information for discussion and potential action by Council. The item was just discussed for informational purposes only and no action was taken.

*See transcript pages 51 – 54*

**Public Forum** – No public issues were raised.

**New Business** – None

**Adjournment** – Mr. Shepherd adjourned the meeting. The meeting was adjourned at 10:13 a.m.

*See transcript page 57*

**Transcript and Attendance Sheet are attached as an official part of these Minutes.**

DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOLID WASTE MANAGEMENT ADVISORY COUNCIL

SOLID WASTE MANAGEMENT ADVISORY COUNCIL MEETING

JANUARY 14, 2021 - 9:00 A.M.

REPORTED BY: TAMMIE SHIPMAN, CSR

<p>Page 2</p> <p>1 COUNCIL MEMBERS PRESENT:</p> <p>2</p> <p>3 MR. JEFFREY SHEPHERD, CHAIRMAN</p> <p>4 MR. TODD ADCOCK</p> <p>5 MR. RODNEY CLEVELAND</p> <p>6 MR. JIM LINN</p> <p>7 MS. JODY REINHART</p> <p>8 MR. ROBERT JOYCE</p> <p>9 MS. APRIL SACHA</p> <p>10 MS. BRENDA MERCHANT - Absent</p> <p>11 MR. GREG PHILLIPS - Absent</p> <p>12</p> <p>13</p> <p>14</p> <p>15 Also Present:</p> <p>16 Ms. Quiana Fields, Secretary of Board and Council</p> <p>17 Mr. Patrick Riley, Environmental Programs Manager</p> <p>18 Mr. David Cates, Engineer Manager, Solid Waste</p> <p>19 Permitting</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 (Meeting began at 9:00 a.m.)</p> <p>2 CHAIRMAN SHEPHERD: All right. We'll</p> <p>3 get started. This is the January 14th, 2021,</p> <p>4 regular meeting of the Solid Waste Management</p> <p>5 Advisory Council was called in the accordance</p> <p>6 with the Open Meeting Act. Notice was filed</p> <p>7 with the Secretary of State on November the 4th,</p> <p>8 2020. The agenda was duly posted on the doors</p> <p>9 of the DEQ, 707 North Robinson, Oklahoma City,</p> <p>10 Oklahoma, at least 24 hours prior to the</p> <p>11 meeting.</p> <p>12 Only matters appearing on the posted</p> <p>13 agenda may be considered at this regular</p> <p>14 meeting. In the event that this is continued or</p> <p>15 reconvened, public notice of the date, time, and</p> <p>16 place of the continued meeting will be given by</p> <p>17 announcement at this meeting. Only matters</p> <p>18 appearing on the agenda of a meeting which is</p> <p>19 continued may be discussed at the continued or</p> <p>20 reconvened meeting.</p> <p>21 We'll call roll.</p> <p>22 MS. FIELDS: Mr. Adcock?</p> <p>23 MR. ADCOCK: Here.</p> <p>24 MS. FIELDS: Mr. Cleveland?</p> <p>25 MR. CLEVELAND: Here.</p>
<p>Page 4</p> <p>1 MS. FIELDS: Mr. Joyce?</p> <p>2 MR. JOYCE: Here.</p> <p>3 MS. FIELDS: Mr. Linn?</p> <p>4 MR. LINN: Here.</p> <p>5 MS. FIELDS: Ms. Merchant is absent.</p> <p>6 Mr. Phillips is absent.</p> <p>7 Ms. Reinhart?</p> <p>8 MS. REINHART: Here.</p> <p>9 MS. FIELDS: Ms. Sacha?</p> <p>10 MS. SACHA: Here.</p> <p>11 MS. FIELDS: Mr. Shepherd?</p> <p>12 CHAIRMAN SHEPHERD: Here.</p> <p>13 MS. FIELDS: We have a quorum.</p> <p>14 CHAIRMAN SHEPHERD: All right.</p> <p>15 Introduction of new Council members. We'd like</p> <p>16 to welcome Robert Joyce and April Sacha.</p> <p>17 Is that right?</p> <p>18 MS. SACHA: Yes.</p> <p>19 CHAIRMAN SHEPHERD: Robert -- Bob Joyce</p> <p>20 is a chemical engineer and environmental</p> <p>21 attorney, and is a shareholder with McAfee and</p> <p>22 Taft Law Firm. Bob received his BS in Chemical</p> <p>23 Engineering from the University of Tulsa in</p> <p>24 1981. He started working for City Service</p> <p>25 Company in 1978 while still at TU, and then</p>	<p>Page 5</p> <p>1 moved his city's NGL engineering group to work</p> <p>2 at the process and project engineers.</p> <p>3 Bob graduated from law school in 1988</p> <p>4 and began his environmental law practice at the</p> <p>5 firm of Boone, Smith, Davis and Hurst. He later</p> <p>6 moved in-house as senior attorney and manager of</p> <p>7 environmental compliance for Hilti, Inc. In 1993</p> <p>8 Bob joined the Tulsa Office of Gardere and</p> <p>9 Wynne, and subsequently became shareholder and</p> <p>10 managing partner for the firms Tulsa office.</p> <p>11 In 2000 Bob and several colleagues</p> <p>12 started their own environmental boutique law</p> <p>13 firm, Joyce, Paul, Carson and McDaniel. After</p> <p>14 ten years Bob's firm joined Oklahoma's largest</p> <p>15 law firm, McAfee and Taft. Bob continues to</p> <p>16 practice law with McAfee in the environmental</p> <p>17 regulatory and compliance area, as well as in</p> <p>18 oil and gas environmental litigation. Welcome</p> <p>19 Robert.</p> <p>20 MR. JOYCE: Thank you.</p> <p>21 CHAIRMAN SHEPHERD: April Sacha. I'm</p> <p>22 going to read this in -- so it's going to be</p> <p>23 weird, because I'm going to read it -- it says,</p> <p>24 I'm currently a senior environmental consultant</p> <p>25 that does the RCRA and water permitting</p>



<p style="text-align: right;">Page 6</p> <p>1 compliance, along with the enviromental training 2 program for the Phillips 66 Ponca City refinery. 3 She previously worked in the Conoco Phillips 66 4 midstream business unit and did multimedia, air, 5 RCRA, water, permitting, compliance for 6 pipelines and terminals in multiple states, 7 Oklahoma, Texas and Missouri. 8 Other enviromental programs she has 9 been responsible for include air programs, 10 asbestos, CEMS, immissions inventory, engines, 11 GDMACT, GDGACT. 12 You may have to explain that at some 13 point. 14 Greenhouse gas, refrigerants, tanks, et 15 cetera. NIFA, emergency response, cleanup, 16 remediation, spill, prevention controls and 17 counter measures, adsara (phonetic) 311, 312, 18 toxics release inventory and toxic substances 19 control act and waste management. 20 Prior to working in the oil and gas 21 industry, she worked as a GPMS analysis in 22 commercial and environment laboratories, and 23 then had the enviromental consultant on federal 24 superfund site projects. Welcome April. 25 All right. Moving on, approval of the</p>	<p style="text-align: right;">Page 7</p> <p>1 minutes for the September 10th, 2020, Solid 2 Waste Management Advisory Council meeting. 3 MR. LINN: I'll move that. 4 MR. ADCOCK: Second. 5 MS. FIELDS: Mr. Adcock? 6 MR. ADCOCK: Yes. 7 MS. FIELDS: Mr. Cleveland? 8 MR. CLEVELAND: Aye. 9 MS. FIELDS: Mr. Joyce. 10 MR. JOYCE: I'll abstain. 11 MS. FIELDS: Mr. Linn? 12 MR. LINN: Yes. 13 MS. REINHART: Ms. Reinhart? 14 MS. REINHART: Yes. 15 MS. FIELDS: Ms. Sacha? 16 MS. SACHA: Yes. 17 MS. FIELDS: Mr. Shepherd? 18 CHAIRMAN SHEPHERD: Yes. 19 MS. FIELDS: Motion passed. 20 CHAIRMAN SHEPHERD: All right. Item 21 Number 5, Director's Report. Patrick. 22 MR. RILEY: Well, we usually reserve 23 the agenda item for the Land Protection Division 24 director, Kelly Dixon. I think I saw her come 25 in. She told me she doesn't have a lot of</p>
<p style="text-align: right;">Page 8</p> <p>1 agency updates to provide at this time, since 2 she just provided an update at the last council 3 meeting in September. So she left it to me to 4 mention a few things that may be of interest to 5 you, so I'll share just a little bit. 6 First of all, I want to thank you for 7 being here. You're all volunteers but you take 8 your commitment very seriously. I know it's not 9 especially convenient or pleasant during the 10 times of the pandemic to show up to an in-person 11 meeting, so I -- I really appreciate you being 12 here. 13 Last year you remember there was a 14 legislative effort to do away with the Solid 15 Waste Management Advisory Council and other 16 councils. And it was partly due to your effort 17 and the effort of your organizations to share 18 that the work that we do as a council is 19 valuable and necessary. And so that -- that 20 legislation was defeated and we remain as a 21 body. 22 And I can share that I -- personally, 23 for the work that we do and the rules that we 24 pass, I feel much more confident sharing those 25 with you and getting your input before we push</p>	<p style="text-align: right;">Page 9</p> <p>1 them forward to the Enviromental Quality Board, 2 so just a thank you to you. 3 A few notes of the DEQ COVID response. 4 In March we moved to remote working as an 5 agency, which was no small effort. But since 6 then we've worked hard to try and continue with 7 the business of the DEQ. A lot of that was 8 accomplished through a shift to virtual 9 platforms for meetings with facilities and other 10 customers, community involvement meetings, 11 council meetings. As you recall, in September 12 we had a council meeting virtually. Hazardous 13 Waste Council and Radiation Management Advisory 14 Council also met remotely. 15 We've shifted to mostly electronic 16 review of documents, which is kind of a pleasant 17 surprise. You know, we did it by necessity, but 18 it's become a very valuable tool for real time 19 collaboration of peers and others to review the 20 documents electronically, and it kind of just 21 added to our efficiency and the speed at which 22 we review documents. So I think that's a 23 practice that we're going to continue even after 24 a routine return to the office. So that was 25 kind of a pleasant outcome of this experience.</p>

<p style="text-align: right;">Page 10</p> <p>1           Inspections, we've -- we've tried to</p> <p>2   continue to accomplish compliance inspections</p> <p>3   either by phone or other electronic means or</p> <p>4   other virtual means as necessary. And it's been</p> <p>5   particularly helpful for our Tire group who has</p> <p>6   to document compliance inspection before they</p> <p>7   pay out reimbursement for processed recycled</p> <p>8   tires. So it's allowed us to continue to meet</p> <p>9   our obligations and yet continue to pay the</p> <p>10  processors for the work that they do.</p> <p>11           And finally I'd just like to ask, you</p> <p>12   know, a lot of you, you're customers of the DEQ.</p> <p>13   And my question to you would be, as we have</p> <p>14   shifted to this remote environment, virtual</p> <p>15   environment, are your expectations being met?</p> <p>16   And you can think about that now, and certainly</p> <p>17   I'll take your comments. But I would also</p> <p>18   encourage you, as you think about that, if</p> <p>19   things -- if ideas or questions come to mind</p> <p>20   later, please let me know. Because it's our</p> <p>21   goal to make sure that we're meeting your</p> <p>22   expectations.</p> <p>23           The next thing I'll point out is that</p> <p>24   conferences and trainings, we typically have a</p> <p>25   SWANA conference in the spring, and that is</p>	<p style="text-align: right;">Page 11</p> <p>1   canceled for this year, the Oklahoma chapter.</p> <p>2   We had a successful conference last year where</p> <p>3   Oklahoma and Texas got together for a big</p> <p>4   conference and that -- we were looking forward</p> <p>5   to something like that again, but that has been</p> <p>6   canceled for 2021.</p> <p>7           DEQ will host waste exclusion plan</p> <p>8   training. As you know, that's a requirement for</p> <p>9   landfill operators to have annual refresher</p> <p>10   training, and that will occur virtually sometime</p> <p>11   in the spring, so watch for that. There will be</p> <p>12   notices and we will continue to provide that</p> <p>13   service.</p> <p>14           Finally, there will be a national</p> <p>15   Brownfields conference in Oklahoma City this</p> <p>16   year, in September. The end of September, 27th</p> <p>17   through 30th, and it's going to be at the new</p> <p>18   convention center here in Oklahoma City. I'm</p> <p>19   assuming that will have the ability to meet in</p> <p>20   person, so watch for more details about that.</p> <p>21           CHAIRMAN SHEPHERD: Is that going to be</p> <p>22   the first -- is that going to be the first</p> <p>23   conference hosted at the new facility?</p> <p>24           MR. RILEY: I don't know. Surely it</p> <p>25   would be -- it may be one of the first, I would</p>
<p style="text-align: right;">Page 12</p> <p>1   think. Brand new.</p> <p>2           CHAIRMAN SHEPHERD: Brand new.</p> <p>3           MR. RILEY: I'm looking forward to</p> <p>4   seeing it.</p> <p>5           And the last thing I have to share is</p> <p>6   about draft legislation that the DEQ has</p> <p>7   prepared for PFAS, so poly or per-fluorinated</p> <p>8   substances. I'm sure it's all on your mind.</p> <p>9   It's becoming a -- it's an emerging contaminate</p> <p>10   of concern. We know it's an interest to your</p> <p>11   industry. DEQ is concerned that other states</p> <p>12   are taking action to regulate PFAS waste. And</p> <p>13   if Oklahoma is not aware of what's happening and</p> <p>14   proactive in taking measures to ensure proper</p> <p>15   regulation and management of this type of waste,</p> <p>16   that Oklahoma may become a -- a dumping ground</p> <p>17   for out of state PFAS waste.</p> <p>18           So there is some drafted legislation</p> <p>19   that's being proposed this year that would allow</p> <p>20   the DEQ to regulate PFAS disposal. I can tell</p> <p>21   you that it's not the DEQ's goal to manage or</p> <p>22   regulate incidental amounts of PFAS that is</p> <p>23   present in all or many consumer -- consumer</p> <p>24   waste, some industrial waste, and that's not</p> <p>25   what we're concerned with. We're concerned with</p>	<p style="text-align: right;">Page 13</p> <p>1   large amounts of industrially generated PFAS</p> <p>2   waste, aspect firefighting foam, remediation</p> <p>3   cleanups, that type of thing.</p> <p>4           So it may, you know, very early in the</p> <p>5   process. You know, I didn't know of this until</p> <p>6   the end of December, so it's -- it's quickly</p> <p>7   evolving. I would expect that the language in</p> <p>8   that bill will evolve as well throughout the</p> <p>9   session.</p> <p>10           What it means to you as a body is that</p> <p>11   at some point we will bring rules to you for</p> <p>12   consideration to pass onto the environmental</p> <p>13   quality board for proper management and disposal</p> <p>14   of PFAS waste. So it may be premature to talk</p> <p>15   about the details of that now, but I wanted to</p> <p>16   give you a heads up so that you can watch for</p> <p>17   that and become involved as you see it necessary</p> <p>18   at the legislative level.</p> <p>19           Any questions about that?</p> <p>20           CHAIRMAN SHEPHERD: I think it's</p> <p>21   important to note that, as it relates to PFAS,</p> <p>22   it's not the landfills or the transfer stations</p> <p>23   that are actually generating that waste, so</p> <p>24   let's not put the burden on them to have to deal</p> <p>25   with it.</p>

<p style="text-align: right;">Page 14</p> <p>1 MR. RILEY: Right.</p> <p>2 CHAIRMAN SHEPHERD: This waste is being</p> <p>3 generated every day, by everybody, and it's --</p> <p>4 It's everywhere, so just be thinking about that.</p> <p>5 MR. RILEY: And I don't have the -- I'm</p> <p>6 not prepared to speak on it, the details of the</p> <p>7 bill. But I know that there's awareness that</p> <p>8 the generator -- there's an awareness and the</p> <p>9 desire to not remove liability from the</p> <p>10 generator of the waste.</p> <p>11 CHAIRMAN SHEPHERD: Okay.</p> <p>12 MR. RILEY: So that the generator would</p> <p>13 maintain responsibility for -- for that. So I</p> <p>14 think that is kind of what you're talking about.</p> <p>15 CHAIRMAN SHEPHERD: Yeah.</p> <p>16 MR. RILEY: Okay. Any -- any</p> <p>17 discussion or questions about that information</p> <p>18 from the director's report?</p> <p>19 CHAIRMAN SHEPHERD: How are you</p> <p>20 completing your quarterly inspection reports?</p> <p>21 MR. RILEY: So --</p> <p>22 CHAIRMAN SHEPHERD: Quarterly</p> <p>23 inspections, really.</p> <p>24 MR. RILEY: Yeah. A couple of</p> <p>25 different ways. One is, if we can -- if we can</p>	<p style="text-align: right;">Page 15</p> <p>1 send an inspector to the field and maintain</p> <p>2 social distance, they will do a physical</p> <p>3 inspection. And a lot of times they will show</p> <p>4 up and do a -- just an independent inspection</p> <p>5 unaccompanied by -- by facility personnel or</p> <p>6 personnel staying at a distance. So that's one</p> <p>7 way we've done it.</p> <p>8 The other ways we've done it, we've</p> <p>9 done it by phone, gone through the checklist --</p> <p>10 inspection checklist, asked questions, requested</p> <p>11 photographs or videos to document certain</p> <p>12 things. So that's -- that's how we're</p> <p>13 continuing to do that.</p> <p>14 We -- one of the things that I didn't</p> <p>15 mention is that early on in the process we</p> <p>16 recognized that there was going to be concern</p> <p>17 with physical -- physically going out to sites.</p> <p>18 So we prepared a field manual, some guidelines</p> <p>19 to maintain how you could accomplish an</p> <p>20 inspection while be protective of both the</p> <p>21 facility, personnel, and then DEQ personnel.</p> <p>22 And, really, for some -- some</p> <p>23 facilities are easier than others. You know,</p> <p>24 it's easier to do a solid waste landfill</p> <p>25 inspection because it's -- you're outside, you</p>
<p style="text-align: right;">Page 16</p> <p>1 can drive around the facility easily in a pickup</p> <p>2 truck.</p> <p>3 Some of the things that are harder are</p> <p>4 the hazardous waste inspections where you have</p> <p>5 to go inside a building or being in a closed</p> <p>6 area. So those are kind of the limits and the</p> <p>7 things that we're thinking about as we figure</p> <p>8 out how to do these.</p> <p>9 CHAIRMAN SHEPHERD: Any other</p> <p>10 questions?</p> <p>11 Thanks, Patrick.</p> <p>12 MR. RILEY: Sure.</p> <p>13 CHAIRMAN SHEPHERD: All right. Item</p> <p>14 Number 6, Rulemaking. Discussion of Proposed</p> <p>15 Changes to Chapter 517 Disposal of Full</p> <p>16 Combustion Residuals for Electric Utility. The</p> <p>17 department in response to changes to 40 CFR 257</p> <p>18 Subpart E is proposing to amend OAC 252:517 to</p> <p>19 change the classification of clay lined CCR</p> <p>20 surface impoundments to unlined. Revised</p> <p>21 certain closure deadlines for surface</p> <p>22 impoundments, provide alternative enclosure</p> <p>23 provisions, establish groundwater protection</p> <p>24 standards for four Appendix B constituents, add</p> <p>25 a summary requirement to the annual groundwater</p>	<p style="text-align: right;">Page 17</p> <p>1 report, and make other non-substantive changes.</p> <p>2 MR. RILEY: Sounds like a lot, doesn't</p> <p>3 it?</p> <p>4 CHAIRMAN SHEPHERD: Here we go. Every</p> <p>5 meeting, man. The old combustion ash.</p> <p>6 MR. RILEY: Yeah, that's the ways we</p> <p>7 feel as well, so I'll offer a little context.</p> <p>8 And also I want to present and talk through a</p> <p>9 summary, a fact sheet about CCR. And it's a</p> <p>10 recent addition. It wasn't e-mailed to you but</p> <p>11 it appears in your packet, and I'll talk about</p> <p>12 that in just a minute.</p> <p>13 But each time that we talk about the</p> <p>14 CCR and you have to go back to the history and</p> <p>15 try and remember all the things that have</p> <p>16 happened. And it's become so -- the effort has</p> <p>17 continued for so long and there's been so many</p> <p>18 changes, it's hard to -- my institutional memory</p> <p>19 is being stained. So we catalog some of the</p> <p>20 changes in the fact sheet, and I'll talk about</p> <p>21 that.</p> <p>22 A few things to point out is the</p> <p>23 federal standard for combustible coal ash first</p> <p>24 became final on April of 2015. DEQ first had CP</p> <p>25 rules -- CCR rules in 2017, and we have -- we</p>

<p style="text-align: right;">Page 18</p> <p>1 have regulated the disposal of coal ash from 2 utilities for decades under the Solid Waste 3 rules. But according to the new federal 4 standards, there are new requirements. So we 5 have specific CCR rules that came out in October 6 of 2017.</p> <p>7 DEQ received approval from EPA to 8 manage our program, in lieu of the federal 9 program, in June of 2018. So now our rules 10 operate instead of the federal rules, so there's 11 certain -- which is good. And we talked about 12 this, that we feel strongly that Oklahoma 13 regulations -- that Oklahoma facilities should 14 be regulated by Oklahoma regulatory agencies 15 rather than the federal agency.</p> <p>16 There are a lot of advantages to that, 17 in both to the regulated community and to the 18 citizens of Oklahoma. And we think we're more 19 responsive and more effective at regulating on a 20 local level. So that's why we undertook the 21 effort, and we -- we were the first state to 22 receive that approval, and that's something that 23 we're very proud out of.</p> <p>24 It does not come without strings 25 attached, however. Those strings include</p>	<p style="text-align: right;">Page 19</p> <p>1 updating the rules -- a requirement to update 2 our rules when the federal rules change; to 3 maintain our rules to be at least as protective 4 or stringent as the federal level. So that's 5 why we come to you so often, to share 6 information, and at this time, as we've done 7 sometimes in the past, present rules to catch up 8 to the federal changes.</p> <p>9 It's -- the rules are long. They 10 are -- we incorporated them as closely as we 11 could to the federal language. So when you look 12 at how these Oklahoma rules are written for CCR, 13 they look different than how we would have 14 written them if we did them ourselves. So 15 they're longer -- and I'm going to editorialize 16 a little bit here, but they seem longer, a 17 little more convoluted. There's a lot of depth 18 to the organization, so it gets a little 19 confusing.</p> <p>20 So as we talk about these changes, I 21 want to refer you to the fact sheet that we 22 have, the summary outline. It's behind tab 7. 23 And I want to thank the engineering manager, 24 David Cates, for putting this together. It's 25 very comprehensive and detailed and, I think,</p>
<p style="text-align: right;">Page 20</p> <p>1 helps us catalog and chronical the changes and 2 helps describe what we're doing.</p> <p>3 So if you look at the -- at the summary 4 sheet there's some background provided about the 5 CCR rule, more specific information. The dates 6 that I mentioned, when the rules -- the 7 standards first became effective on the federal 8 level and then our state implementation and 9 approval.</p> <p>10 As -- as anything, when the rule is 11 first written, it wasn't perfect on the federal 12 level, and they have made some revisions over 13 time. That's not unexpected and it's not 14 necessarily a bad thing. They want to improve 15 it as they go along. They've had the benefit of 16 time to receive input from industry and other 17 stakeholders, and they made changes.</p> <p>18 So -- so changes have occurred. We 19 expect more changes in the future. There's a -- 20 this list here talks about changes that occurred 21 in 2018, and then additional changes that 22 happened in 2020. Again, we have three years to 23 catch up, so this 2018 deadline is -- is 24 becoming close for us to go through our 25 legislative process and pass the rules and then</p>	<p style="text-align: right;">Page 21</p> <p>1 go back to EPA and ask for approval of our 2 changes.</p> <p>3 So these different bullet points -- I 4 want to point out, some of the things that we're 5 doing, that we decided to do and some that we 6 didn't. Again, if it's something that's more -- 7 where the federal rule change would be more 8 stringent, then we have to incorporate that if 9 we want to maintain our program.</p> <p>10 Other things we're incorporating 11 because we see benefit. It's a -- it's a common 12 sense change that -- that is a benefit to our 13 regulating community or the citizens. So let me 14 point out just a few things as we go through 15 here, and then we can look at the rules as a 16 whole and the changes, and I think it will make 17 a lot more sense.</p> <p>18 So under the changes from 20 -- August 19 of 2018, establishing alternative groundwater 20 protection standards, this is something that -- 21 that is a benefit for facilities, if they get 22 into a situation where something shows up in the 23 groundwater above background, for these 24 parameters that did not have groundwater 25 protection standards established, the federal</p>

<p style="text-align: right;">Page 22</p> <p>1 rule adds some in and it will -- in the event 2 that something were to show up, having these 3 groundwater protection standards is a benefit. 4 So we're adding that in, or proposing to. 5 The next two bullet points, one is for 6 the -- an allowance for the state director to 7 issue a certification in lieu of a PE. We are 8 not recommending that that be part of the rules. 9 We don't want to be in the business of approving 10 your work, the work of regulating facilities, 11 but we would rather have professional engineers 12 make that certification. 13 The third bullet point, allowing for 14 participating state director to approve 15 suspension of groundwater monitoring if a 16 demonstration of no migration can be made. We 17 are not proposing to incorporate this, because 18 the federal rules were written to apply to all 19 areas of the United States, some which have a 20 geology that is much different than Oklahoma. 21 The standards that they have written to 22 demonstrate no migration of groundwater would 23 never apply in Oklahoma, according to our 24 review. Our professional opinion, professional 25 opinion of geologists, is that even if we added</p>	<p style="text-align: right;">Page 23</p> <p>1 these things into our rules, there is no way a 2 facility could take advantage of it. So if it's 3 not applicable to Oklahoma, so we're not 4 proposing that be included. 5 The next bullet point refers to some 6 changes in deadlines. That was actually revised 7 in the next set of changes that came out in 8 2020, so we'll pass that down to the next group. 9 So the first bullet point from 10 September 2020, there was a decision -- the 11 federal change removed the allowance of clay 12 lined surface impoundments, so -- so if it's -- 13 a clay lined impoundment is no longer considered 14 to be lined, so that is a change that's more 15 stringent and we have to incorporate that. 16 Changes some deadlines for initiating 17 closure, we're adding that. The next one is a 18 change in deadline that we see as a benefit, so 19 we're adding that. 20 Revisions to alternative closure 21 provisions. Alternative closure provisions are 22 valuable and make -- make sense to allow that. 23 What the federal changes that happened in 24 this -- in September did was to spell out lots 25 of criteria for how you get that approval. So</p>
<p style="text-align: right;">Page 24</p> <p>1 that's more stringent and we're plugging that in 2 as a whole. 3 And then the last two things, the 4 changes that we're incorporating also. They 5 require an executive summary for groundwater 6 monitoring and correction action reports. From 7 discussions I had with folks at EPA, they found 8 that some of the information that was being 9 prepared in the reports was hard to interpret by 10 the public, so they had -- they have added this 11 requirement for an executive summary, to make it 12 more user friendly, to allow -- make it easier 13 to understand. 14 And then the last thing is some 15 requirements for the publically accessed 16 websites. That is a requirement, so they 17 tightened that up a little bit. 18 So all those things we're building into 19 our rules, and that's what you'll -- we'll go 20 through those changes real quick and I'll show 21 you where those things that I just described 22 show up in the rules. 23 The rest of the information on this 24 sheet, we're not -- I'm going to skip that for 25 now. You can take this home, read it over the</p>	<p style="text-align: right;">Page 25</p> <p>1 weekend, study it before the next meeting if you 2 want. It will be there the next time we have to 3 go through all the federal changes or proposing 4 more changes to the CCR. So that document is 5 going to be with us. And we'll update it as we 6 go along. 7 All right. So all that being said, 8 let's look behind tab 4. And this is the 9 redline strike out version of the rule, and I 10 think that it's -- having the text in red helps 11 us identify where the changes occur. 12 And if you'll indulge me, I'll go 13 through these rules and point out where those 14 changes are happening and what they are. And 15 then as you have questions, we can go back and 16 talk about anything in specific detail. 17 So starting on page two, we're adding 18 some definitions. Eligible online surface 19 impoundment, and then later on page six some 20 definitions for technically feasible and 21 infeasible. These are terms that show up with 22 some of the new rules that are proposed by the 23 federal language. We didn't have them in there 24 before, so we're adding them in now. 25 At the bottom of page six and the top</p>

<p style="text-align: right;">Page 26</p> <p>1 of page seven we're adding some language about 2 permit upgrades. This is the mechanism that DEQ 3 uses in our rule, or at least the Solid Waste 4 rules and CCR rules, that when we make changes 5 to rules that facilities have to incorporate, 6 this is the mechanism by which we allow that to 7 occur. So we give facilities 180 days to update 8 their permits; that's what this language is 9 referring to.</p> <p>10 Initially we talked about CCR landfill 11 permits. We have added this new text in D about 12 changes for permit upgrades for both 13 landfills -- CCR landfills and surface 14 impoundments.</p> <p>15 On page eight, the section that talks 16 about the groundwater report, the summary for 17 groundwater reporting. To make it easier to 18 understand, that's the federal language that 19 we're incorporating. On he page ten we're 20 striking language that refers to online CCR 21 impoundments, which are no longer allowed, so 22 pulled that out.</p> <p>23 Top of page 11 there's a typo or a 24 change. Because of stricken language, we have 25 to change our citation numbering, so there's --</p>	<p style="text-align: right;">Page 27</p> <p>1 there's a change there. You'll see that occur 2 from time to time.</p> <p>3 Page 13. There's language that refers 4 to an online impoundment that has to be 5 stricken. The top of page 14, this is the 6 groundwater protection standards that are being 7 added in for those four constituents. The next 8 change refers to liner criteria for clay line 9 impoundments, which, again, are not considered 10 to be lined and have to be stricken.</p> <p>11 The top of page 15 is the deadline 12 change, and you'll see some language that refers 13 to technically feasible. That's where we have 14 to add in that definition. The middle of page 15 15 there's some -- there was some differences 16 that the feds added for closure provisions that 17 related to not being able to meet locations 18 restrictions. So there's changes there that 19 became more specific. So because they were more 20 stringent, we're adding that in too.</p> <p>21 The next change is on 19. 19, I'm 22 pleased to say that this is a typo that happened 23 by EPA. This was something that -- a mistake 24 that they made, that we were -- that we are 25 fixing on their behalf. We didn't know -- we</p>
<p style="text-align: right;">Page 28</p> <p>1 didn't feel like we had to do it, but our guys 2 really wanted to do that. You know, it's our 3 commitment to excellence, and also, we're like, 4 yeah, hey, we're not the only ones that make 5 typos.</p> <p>6 Page 22, there's a -- and 23, there's 7 some other adjustments to citations and some 8 typographical errors. Again, on page 24 -- you 9 know, the thing is, with these rules, they're so 10 complex and so many sections, if you refer to 11 other sections, if you change one thing, you 12 have to renumber it all, and it is -- it is kind 13 of a nightmare.</p> <p>14 25. So the next -- so starting on page 15 25, there is a whole lot of text that 16 incorporates the changes -- the alternative 17 closure provision changes that happen on the 18 federal level. All we've done here is take the 19 language, the federal language, and insert it as 20 a block.</p> <p>21 And, again, these are criteria that 22 they have established for alternative closure 23 requests. It is more stringent than Oklahoma 24 rules currently, so we are required to 25 incorporate that if we want to maintain</p>	<p style="text-align: right;">Page 29</p> <p>1 permitting approval.</p> <p>2 On page 38, this section of the rules 3 refers to all of the reporting requirements of 4 facilities. Because they were new rules added 5 before, we now have more reporting requirements. 6 So that's what's going on there.</p> <p>7 Some more language in reporting 8 requirements. Some changes in citations on page 9 42. Page 43 is the website changes that we 10 talked about. Page 45 talks about notification. 11 So you have reporting requirements and then 12 notification requirements, so those are the new 13 ones that show up because of the rule changes. 14 And then finally on page 46 we're making some -- 15 the last things are sudden changes to citations 16 that make everything fit.</p> <p>17 So that is our world wind tour through 18 CCR federal changes incorporated into Oklahoma 19 change -- in Oklahoma rules. I'm happy to 20 answer any questions or I'm happy to let David 21 Cates answer any questions related to details 22 about any of this.</p> <p>23 CHAIRMAN SHEPHERD: How many CCR 24 facilities are clay lined in Oklahoma? 25 MR. RILEY: So we only have two</p>

<p style="text-align: right;">Page 30</p> <p>1 facilities that have impoundments, surface</p> <p>2 impoundments, and they are both closing for</p> <p>3 other reasons. Because they were unable to meet</p> <p>4 the location restriction for distance from</p> <p>5 groundwater, they would have to close anyway.</p> <p>6 So the ironic thing about all these changes in</p> <p>7 eliminating clay lined impoundments is that</p> <p>8 it -- all these changes won't effect the</p> <p>9 facilities that are in operation now.</p> <p>10 Is that fair to say, David?</p> <p>11 MR. CATES: (Nodded head.)</p> <p>12 MR. RILEY: So, yeah. The universe of</p> <p>13 CCR facilities in Oklahoma are is fairly small.</p> <p>14 The universe for those that operate impoundments</p> <p>15 is even smaller. It's a lot of work for a few</p> <p>16 facilities, but it is a lot of waste that</p> <p>17 goes -- CCR is one of the largest waste streams,</p> <p>18 and it's -- it's important, and we feel strongly</p> <p>19 that we want to maintain control of the program.</p> <p>20 MR. JOYCE: So there are no</p> <p>21 requirements that have been added that are</p> <p>22 anymore stringent that the federal requirements?</p> <p>23 MR. RILEY: No.</p> <p>24 MS. REINHART: So I'm representing</p> <p>25 enviromental organization. Will we be adjusting</p>	<p style="text-align: right;">Page 31</p> <p>1 the regulations for those comments, David? I</p> <p>2 mean, I'm -- does that make sense on that</p> <p>3 behalf?</p> <p>4 MR. CATES: Are you saying -- are you</p> <p>5 asking if we received comments on these rule</p> <p>6 changes as or --</p> <p>7 MS. REINHART: Yes.</p> <p>8 MR. CATES: The only comments were from</p> <p>9 enviromental organizations, the LEAD agency.</p> <p>10 MS. REINHART: Through Bud Ground?</p> <p>11 Through Bud Ground?</p> <p>12 MR. RILEY: I don't believe that we</p> <p>13 received those.</p> <p>14 MS. REINHART: Okay. I have a copy of</p> <p>15 the e-mail that he sent to you, so --</p> <p>16 MR. CATES: When was at.</p> <p>17 MR. RILEY: Yeah, when was it?</p> <p>18 MR. CATES: Was it sent late?</p> <p>19 MS. REINHART: January 12th, so it</p> <p>20 would be Tuesday. Have you not seen that yet?</p> <p>21 MR. CATES: I am not familiar with it,</p> <p>22 no.</p> <p>23 MS. REINHART: Okay. It's just a -- he</p> <p>24 just had a few editorial comments to make, but</p> <p>25 they're not -- you know, they're just</p>
<p style="text-align: right;">Page 32</p> <p>1 clarifying, you know.</p> <p>2 So on Section 517-9 -- well, let me</p> <p>3 give you the page number. It will be easier.</p> <p>4 Page 14. So the opening phrase for the</p> <p>5 following constituents, he recommended having it</p> <p>6 say, For the following EPA established health</p> <p>7 based levels for regulated CCR facilities in</p> <p>8 Oklahoma, and then the levels that are listed</p> <p>9 there.</p> <p>10 And then the second change is on page</p> <p>11 26. So instead of saying "undergoing" title</p> <p>12 that section CCR Landfills: Permanent cessation</p> <p>13 of coal fire boiler by a certain date. Just to</p> <p>14 make certain it's really clear that -- you know,</p> <p>15 so it's consistent with the federal rule and it</p> <p>16 makes the language clear what's going on that</p> <p>17 situation.</p> <p>18 It -- right now it appears that the</p> <p>19 landfill's undergoing permanent cessation versus</p> <p>20 the boiler, so we just want to put that clarity</p> <p>21 into the rule.</p> <p>22 MR. RILEY: And can you read -- can you</p> <p>23 read that again?</p> <p>24 MS. REINHART: Yeah. Paragraph B would</p> <p>25 be "CCR Landfills:", and just strike the word</p>	<p style="text-align: right;">Page 33</p> <p>1 "undergoing" and start with capital P, Permanent</p> <p>2 Cessation of a coal fire boiler by a certain</p> <p>3 date -- by a date certain. So just striking the</p> <p>4 word "undergoing".</p> <p>5 MR. RILEY: One of the -- one of the</p> <p>6 challenges here is that this language has been</p> <p>7 taken verbatim from the federal language.</p> <p>8 MS. REINHART: Right. And I understood</p> <p>9 that to be you all's discussion. I didn't know</p> <p>10 if we had that latitude to be able to do that,</p> <p>11 just to make certain it gives clarity. I mean,</p> <p>12 we've done a few other things, you know, through</p> <p>13 what you've talked about, so I didn't know if we</p> <p>14 were going to be able to do that, have that</p> <p>15 latitude.</p> <p>16 MR. RILEY: We can certain -- we can</p> <p>17 make changes. The problem or the potential</p> <p>18 problem would be is if we -- if we change</p> <p>19 language in a way that EPA believes changes the</p> <p>20 intent of their meaning --</p> <p>21 MS. REINHART: Absolutely.</p> <p>22 MR. RILEY: -- then when we present</p> <p>23 this language -- we'll have to put this package</p> <p>24 together and send it to EPA for approval. And</p> <p>25 there's -- there's potential that our</p>

<p style="text-align: right;">Page 34</p> <p>1 interpretation may be different than theirs. 2 It's -- for things that we change when we 3 deviate from their language. So that would be 4 the only -- that would be the potential downside 5 of deviating from the federal language. 6 MS. REINHART: And we're -- I 7 understand that. And so if that is something we 8 shouldn't do, then we're fine with that. 9 MR. CATES: If we do decide to make 10 some changes, would we have to decide on that 11 change today before it could go to the -- 12 MS. REINHART: Yeah, that's what I'm 13 saying. 14 CHAIRMAN SHEPHERD: Are we voting on 15 these? 16 MR. RILEY: Yes. 17 MS. REINHART: Yeah. Yeah, that's 18 what -- 19 CHAIRMAN SHEPHERD: Is this the first 20 time you've presented these? 21 MR. RILEY: Yes. 22 MS. REINHART: That's the criticality 23 of a decision such as this. 24 CHAIRMAN SHEPHERD: Don't we normally 25 present them once and then the next meeting we</p>	<p style="text-align: right;">Page 35</p> <p>1 vote on them? 2 MR. RILEY: It's our standard practice 3 to present drafts rules to you early on, say, 4 September, so you can consider them before you 5 have to vote. 6 CHAIRMAN SHEPHERD: Uh-huh. 7 MR. RILEY: The timing is such that we 8 thought it was important to move forward. 9 CHAIRMAN SHEPHERD: Okay. 10 MR. RILEY: So this is the first time 11 that you're seeing it. So if you -- so the 12 timing is that if you decide not to pass these 13 rules, then we'll be -- we'll come back in a 14 year. 15 CHAIRMAN SHEPHERD: Okay. 16 MR. RILEY: And we'll do it again in a 17 year from now. 18 CHAIRMAN SHEPHERD: We can't do it at 19 another meeting this year? 20 MR. RILEY: We have to pass -- to get 21 the rules on the agenda of the Enviromental 22 Quality Board and then before the legislature 23 for approval, we have to make the decision now 24 to make -- for it to go through this legislative 25 session.</p>
<p style="text-align: right;">Page 36</p> <p>1 CHAIRMAN SHEPHERD: Okay. Is it 2 necessary that it go through this legislative 3 session: 4 MR. RILEY: So the three -- so a couple 5 of things. The three-year window that we have, 6 going back to the 2018 changes in the federal 7 rule, if we want to be in a good position to get 8 approval from EPA within that three-year window, 9 it would make -- it would be better to do that 10 now. 11 If we wait a year, then the changes 12 from 2018 are not incorporated, the -- and it 13 may not -- and if we are in process, EPA may -- 14 may give us latitude in that, okay, we're 15 working toward these changes so that, you know, 16 your program is still in good standing. 17 The other thing I would point out is 18 that, because we operate in lieu of the federal 19 programs, those changes that are advantageous to 20 the facility -- for instance, the groundwater 21 protection standard, adding those in -- before 22 we change our rules, even though they changed on 23 the federal level, they will not be effective in 24 Oklahoma until we change ours. 25 So if there were a facility that wanted</p>	<p style="text-align: right;">Page 37</p> <p>1 to rely upon those changed groundwater standards 2 when they're reviewing their assessment 3 monitoring plans or potential cleanup 4 requirements, they would not have benefit of 5 those -- that rule change until we pass it. 6 MS. REINHART: So would the first 7 language change, would that -- that's not going 8 to effect how we move forward today, but the 9 second one, because it is straight from the 10 federal registered one, that could possibly 11 effect this. Am I understanding this correctly? 12 MR. RILEY: Oh, I'd need to look back 13 at the -- 14 MS. REINHART: Yeah. 15 MR. RILEY: -- at the groundwater 16 standards and what your proposed change was. 17 MR. CATES: I'm pretty sure both are 18 from the -- directly from the changes that were 19 made in the federal register. 20 MS. REINHART: Okay. 21 MR. CATES: Copy and paste, basically. 22 MR. RILEY: And I can -- and I'll add 23 that -- 24 Go ahead, David. 25 MR. CATES: You know, with a few</p>



<p style="text-align: right;">Page 38</p> <p>1 changes to fit into our citation format, so --</p> <p>2 MS. REINHART: Okay.</p> <p>3 MS. SACHA: I'd like to make a comment</p> <p>4 to that. I know as part of -- this is April.</p> <p>5 As part of the regulated community,</p> <p>6 when we have questions regarding how the DEQ</p> <p>7 interprets something or the way it reads</p> <p>8 straight from the federal regs, and you just</p> <p>9 copy and paste it down into the state regs, we</p> <p>10 always feel very comfortable coming to DEQ and</p> <p>11 asking, is this what this meant or are we</p> <p>12 interpreting this correctly? So there's that</p> <p>13 constant conversation back and forth.</p> <p>14 So if it were a little unclear at all</p> <p>15 on our behalf, we always felt comfortable coming</p> <p>16 to DEQ and saying, now this level over here, is</p> <p>17 that the EPA, ECL, or something like that. So</p> <p>18 if it's not a substantial change, we always feel</p> <p>19 comfortable doing that, if that helps any.</p> <p>20 MR. JOYCE: And I think those specific</p> <p>21 facilities or -- has submitted comments or --</p> <p>22 MR. RILEY: No.</p> <p>23 MR. JOYCE: -- or raised any concerns?</p> <p>24 MR. RILEY: Correct.</p> <p>25 THE REPORTER: Mr. -- can you speak</p>	<p style="text-align: right;">Page 39</p> <p>1 into your microphone? I'm not hearing you.</p> <p>2 MR. JOYCE: I'm sorry.</p> <p>3 THE REPORTER: That's okay. Can you</p> <p>4 say that again, please?</p> <p>5 MR. JOYCE: Yeah. I was just asking if</p> <p>6 any specific facility had expressed any concerns</p> <p>7 with the wording of the rules.</p> <p>8 MS. REINHART: So we do have somebody</p> <p>9 that is a -- do we know which -- I mean, which</p> <p>10 companies are affected by this, I guess is what</p> <p>11 I'm asking. You mentioned there are two in</p> <p>12 Oklahoma. What companies are represented there?</p> <p>13 MR. RILEY: Well, we have -- we have</p> <p>14 one -- we have one facility that, what we know</p> <p>15 of, that has approached closure by cessation of</p> <p>16 a coal fired -- coal fired boiler by date</p> <p>17 certain, which we have already entertained that</p> <p>18 request and approved it to my knowledge.</p> <p>19 Is that right?</p> <p>20 MR. CATES: I believe so.</p> <p>21 MR. RILEY: Before these -- under this</p> <p>22 previous rule. So in that sense then, I don't</p> <p>23 know of any facilities that would rely on this.</p> <p>24 CHAIRMAN SHEPHERD: So the facility's</p> <p>25 closing because the boiler's closing?</p>
<p style="text-align: right;">Page 40</p> <p>1 MR. RILEY: Correct, because they have</p> <p>2 set a date for closure of the boiler.</p> <p>3 CHAIRMAN SHEPHERD: Gotcha.</p> <p>4 MR. RILEY: So that gives them the</p> <p>5 advantage of an alternative closure deadline.</p> <p>6 CHAIRMAN SHEPHERD: Okay. And you've</p> <p>7 approved that?</p> <p>8 MR. RILEY: We have approved that.</p> <p>9 MS. REINHART: Okay. If -- you know,</p> <p>10 if this is going to cause, you know, a complete</p> <p>11 derailment of the situation, then I -- you know,</p> <p>12 I think we'll be fine with the language there.</p> <p>13 Okay.</p> <p>14 I would just ask that we be given more</p> <p>15 time in the future about these type changes so</p> <p>16 we can -- just like, you know, Sherman (sic)</p> <p>17 Shepherd mentioned, we should see these before</p> <p>18 they have to go through the board and, you know,</p> <p>19 through the legislature is preferable.</p> <p>20 MR. RILEY: That's our preference as</p> <p>21 well, and we'll commit to that effort as much --</p> <p>22 as often as possible. You know, I think that --</p> <p>23 CHAIRMAN SHEPHERD: When's the board</p> <p>24 meeting that these will have to be presented at?</p> <p>25 MR. RILEY: February and this --</p>	<p style="text-align: right;">Page 41</p> <p>1 Do you know, Karen?</p> <p>2 CHAIRMAN SHEPHERD: Do you know the</p> <p>3 date?</p> <p>4 MS. JAYNE: I don't know.</p> <p>5 CHAIRMAN SHEPHERD: There could be a</p> <p>6 problem with that.</p> <p>7 MS. JAYNE: It's in February, and then</p> <p>8 we have to get the whole -- February 19th, we</p> <p>9 have to get the whole rulemaking package to the</p> <p>10 legislature -- this is Karen, by the way. To</p> <p>11 the legislature, I think, by April 1st. So in</p> <p>12 any other circumstance we would have brought it</p> <p>13 to you twice, but because we're playing catch up</p> <p>14 with the federal rules, we hoped we could make</p> <p>15 an exception.</p> <p>16 CHAIRMAN SHEPHERD: We hope.</p> <p>17 Do you have some more comments?</p> <p>18 MS. REINHART: No, that's the only two</p> <p>19 that I have.</p> <p>20 CHAIRMAN SHEPHERD: Okay. Does anybody</p> <p>21 -- any other council member have any other</p> <p>22 comments?</p> <p>23 Questions, comments and discussion by</p> <p>24 the public, does anybody want to speak?</p> <p>25 MR. LAZARSKI: Tom Lazarski, Enercon</p>

<p style="text-align: right;">Page 42</p> <p>1 Services, former Solid Waste Management Advisory 2 Council member. 3 A little clarification on the comments 4 on the groundwater standards. So in the -- the 5 reason why the comment was put in is -- well, 6 the relationship between DEQ and OWRB when they 7 established -- 8 THE REPORTER: Sir, I'm sorry. 9 MR. LAZARSKI: Oh, I'm sorry. 10 So the issue there is how DEQ works 11 with OWRB when they establish and implement 12 groundwater protection standards. These are not 13 MCLs, they are EPA health base levels. So the 14 question comes in, if somebody's reviewing your 15 rule, they may see these standards and go, geez, 16 do I need -- can I apply these to other 17 locations? 18 And the usual question that comes in, 19 these only apply to CCR landfills. So that's 20 the reason why that came into play, is just to 21 clarify. And I don't know if that helps explain 22 that one. 23 Then the second one, the cessation. So 24 that language is verbatim out of the federal 25 register in the final rules that Jodi</p>	<p style="text-align: right;">Page 43</p> <p>1 referenced. So it does say the -- in fact, here 2 it says, "For the CCR landfills; permanent 3 cessation of coal fire boilers by a date 4 certain." That is the language verbatim out of 5 the federal regs. 6 So when you read yours, it almost 7 appears it's the landfills undergoing closure, 8 not the boiler. So that's the reason why that 9 was just -- just a clarification, to make sure 10 it was clear. 11 CHAIRMAN SHEPHERD: So landfill is 12 going -- is closing because of the boilers 13 closing, right? 14 MR. LAZARSKI: True. But if you're 15 going verbatim, for the federal register, which 16 in the rule, that's what the rule says. 17 CHAIRMAN SHEPHERD: Okay. 18 MR. RILEY: So, Tom, what's you're 19 saying is this language that's being proposed 20 by -- or the comment was that to add a semicolon 21 after secure landfills and strike undergoing -- 22 MR. LAZARSKI: Yes. 23 MR. RILEY: -- is the final language -- 24 MR. LAZARSKI: Yes. Yes. And I didn't 25 bring my -- usually I would have brought my</p>
<p style="text-align: right;">Page 44</p> <p>1 federal register, but today I didn't. 2 MR. RILEY: So you're asking us to 3 trust you? 4 MR. JOYCE: Or just doublecheck 5 consistency with the federal register. 6 MR. LAZARSKI: Yeah, good 7 recommendation. Verify, check it, and then it's 8 based on what you guys decide. Say based on 9 those changes and verification that guys can go 10 forward. 11 MS. REINHART: But will we not have to 12 vote on that today? I mean, the actual 13 language, we'd have to actually vote on that? 14 CHAIRMAN SHEPHERD: So we're going to 15 vote on a semicolon? 16 MR. RILEY: Semicolon and a word 17 strike. 18 MR. CATES: And the addition of health 19 based. 20 MR. LAZARSKI: So that -- again, that 21 the groundwater standards, when I look at 22 different rules -- in fact, a lot of times when 23 I'm out looking, if I have an issue out there, I 24 say, all right, what are the other standards, 25 other rules we have? And so if I'm the casual</p>	<p style="text-align: right;">Page 45</p> <p>1 reader and I go out and I find this, and I say, 2 oh, does this potentially apply to my facility, 3 even though I'm not coal ash facility? 4 And so it's just to make sure that 5 other -- for example, I think the only one of 6 those would be a cobalt led molly lithium. The 7 OWRB, I think, has a standard for led that's 8 much higher, and I can't remember if it's for 9 tissue, fish tissue, maybe, or something. But 10 the OWRB has not established anything for those 11 other parameters. 12 So that's why I was just making sure 13 we're careful with -- in terms of how others may 14 interpret that in the state. So in general I 15 support, I think, all of your changes with just, 16 you know, a little bit of a tweak. And that's 17 all I have, unless anyone else has any other 18 questions. 19 CHAIRMAN SHEPHERD: I do not. 20 MR. LAZARSKI: All right. Thank you. 21 MR. RILEY: I think we're looking at 22 federal language then. 23 MS. REINHART: Sure. 24 (Off-the-record discussion had.) 25 MR. RILEY: Well, so -- so we're not</p>

<p style="text-align: right;">Page 46</p> <p>1 seeing that change.</p> <p>2 MS. REINHART: So you're not seeing</p> <p>3 that in the federal register, that language,</p> <p>4 with the semicolon?</p> <p>5 MR. CATES: So in the federal register</p> <p>6 it was a little bit different than what we have</p> <p>7 here, in that it had a dash instead of a colon.</p> <p>8 And it had a number one, which would have --</p> <p>9 let's see, which we, I guess, moved down to that</p> <p>10 first -- the next level of -- and then we added</p> <p>11 the undergoing -- the word "undergoing".</p> <p>12 CHAIRMAN SHEPHERD: So what should it</p> <p>13 read, CCR landfills dash?</p> <p>14 MR. CATES: Permanent cessation.</p> <p>15 CHAIRMAN SHEPHERD: And permanent</p> <p>16 cessation of coal fire boilers by a day certain</p> <p>17 is number one?</p> <p>18 MR. CATES: No. It had "CCR</p> <p>19 landfills-1, permanent cessation".</p> <p>20 CHAIRMAN SHEPHERD: So 1, is it like</p> <p>21 (1), and then the one -- the number (1) that you</p> <p>22 have there becomes number two?</p> <p>23 MR. CATES: No, it -- we moved that</p> <p>24 to -- we moved it from the title down to the</p> <p>25 first indentation to fit our formatting.</p>	<p style="text-align: right;">Page 47</p> <p>1 CHAIRMAN SHEPHERD: Okay.</p> <p>2 MS. REINHART: But if we just say, "CCR</p> <p>3 landfills - permanent cessation of coal fire</p> <p>4 boiler by a certain date," that's exactly how it</p> <p>5 looks and reads in the federal register?</p> <p>6 MR. CATES: Yeah. And modified</p> <p>7 slightly to fit our citation.</p> <p>8 MS. REINHART: Right. Yeah. Yeah. So</p> <p>9 I think we could go with that, and strike the</p> <p>10 word undergoing and just put a dash there.</p> <p>11 MS. REINHART: So I'm going to ask you</p> <p>12 about the change of language that Mr. Lazarski</p> <p>13 talked about on page 14, the MCL versus the</p> <p>14 (inaudible). Do you think that would be</p> <p>15 confusing to the regulating community? Because</p> <p>16 you deal with all the legal issues of that.</p> <p>17 MR. JOYCE: Well, first of all, I think</p> <p>18 it's clear that it applies only to CCR, so I --</p> <p>19 I wouldn't be confused by it. I don't think --</p> <p>20 MS. REINHART: Okay. Appreciate that.</p> <p>21 MR. RILEY: I think also if you look at</p> <p>22 it as a whole, if you look at the section just</p> <p>23 before the changes occurring in parentheses two,</p> <p>24 but if you look at parentheses one just before</p> <p>25 it talks about constituents that have been</p>
<p style="text-align: right;">Page 48</p> <p>1 established under 40 CFR 141 for that. So we're</p> <p>2 clearly talking about federal standards and not</p> <p>3 OWRB standards. So it would be a stretch to try</p> <p>4 and apply these from the CCR rules that are</p> <p>5 referring to federal standards, to imply that</p> <p>6 they were somehow OWRB standards. If that's the</p> <p>7 concern for what -- so just for your</p> <p>8 consideration.</p> <p>9 MS. REINHART: I'm fine with that. You</p> <p>10 know, I'm good.</p> <p>11 CHAIRMAN SHEPHERD: Anymore questions</p> <p>12 or comments from the public?</p> <p>13 MR. CATES: Oh, I did -- I did get this</p> <p>14 one e-mail from Earl Hatley from the LEAD</p> <p>15 Agency, Riverkeeper from the LEAD Agency in</p> <p>16 response to providing, you know, a copy of our</p> <p>17 rule changes. He couldn't find it on our</p> <p>18 website. But he replied, he looked it over. I</p> <p>19 really appreciate your help with this. Reading</p> <p>20 through it, "I'm happy to see the changes</p> <p>21 requiring the liner. I hope you are successful</p> <p>22 in getting it through. Take care, Earl."</p> <p>23 CHAIRMAN SHEPHERD: Okay. So, to</p> <p>24 summarize, what changes are being made at this</p> <p>25 meeting before we vote; is that fair? So what</p>	<p style="text-align: right;">Page 49</p> <p>1 are we doing? What are we changing?</p> <p>2 MR. RILEY: What was the language --</p> <p>3 we're only proposing to change that one section.</p> <p>4 CHAIRMAN SHEPHERD: "CCR landfills -",</p> <p>5 and then striking the word "undergoing." That's</p> <p>6 it.</p> <p>7 MR. CATES: And then capitalize P for</p> <p>8 permanent.</p> <p>9 CHAIRMAN SHEPHERD: Okay. Does</p> <p>10 everybody understand that?</p> <p>11 MS. REINHART: Yeah, I'm good.</p> <p>12 CHAIRMAN SHEPHERD: Do I have a motion</p> <p>13 to approve?</p> <p>14 MR. LINN: So moved.</p> <p>15 MS. REINHART: Second.</p> <p>16 MS. FIELDS: Mr. Adcock?</p> <p>17 MR. ADCOCK: Yes.</p> <p>18 MS. FIELDS: Mr. Cleveland?</p> <p>19 MR. CLEVELAND: Aye.</p> <p>20 MS. FIELDS: Mr. Joyce?</p> <p>21 MR. JOYCE: Yes.</p> <p>22 MS. FIELDS: Mr. Linn?</p> <p>23 MR. LINN: Yes.</p> <p>24 MS. FIELDS: Ms. Reinhart?</p> <p>25 MS. REINHART: Yes.</p>

<p style="text-align: right;">Page 50</p> <p>1 MS. FIELDS: Ms. Sacha?</p> <p>2 MS. SACHA: Yes.</p> <p>3 MS. FIELDS: Mr. Shepherd?</p> <p>4 CHAIRMAN SHEPHERD: Yes.</p> <p>5 MS. FIELDS: Motion passed.</p> <p>6 CHAIRMAN SHEPHERD: So the next step is</p> <p>7 for us to present them to the board on the 19th.</p> <p>8 Are they going to -- and then from there they go</p> <p>9 to the legislature?</p> <p>10 MR. RILEY: Yes.</p> <p>11 CHAIRMAN SHEPHERD: All right.</p> <p>12 MR. RILEY: And then if approved, we</p> <p>13 prepare a package for EPA to approve our</p> <p>14 changes, to maintain approval to implement our</p> <p>15 program. EPA will follow the same process that</p> <p>16 they use for the initial approval of our CCR</p> <p>17 program, and that will require publication. I</p> <p>18 think there's notice in the federal register and</p> <p>19 then opportunity. Or they may have a --</p> <p>20 automatically have a hearing. That's my</p> <p>21 understanding.</p> <p>22 And I think that David actually wrote</p> <p>23 that up into your Fact sheet. So if we want to</p> <p>24 go back and review that, it's all in that,</p> <p>25 behind tab 7 in your packets, the process as I</p>	<p style="text-align: right;">Page 51</p> <p>1 recall. That would be the process.</p> <p>2 CHAIRMAN SHEPHERD: Okay. So the PFAS</p> <p>3 stuff will just change everything.</p> <p>4 MR. RILEY: And then we can add that as</p> <p>5 a standing agenda item, and we can leave CCR</p> <p>6 behind for a while and concentrate on something</p> <p>7 else.</p> <p>8 CHAIRMAN SHEPHERD: PFAS stuff is a</p> <p>9 mess.</p> <p>10 Item Number 7, Discussion of</p> <p>11 subcommittee review of closure and post-closure</p> <p>12 cost estimates. The subcommittee formed to</p> <p>13 conduct the five-year review of unit costs</p> <p>14 required by OAC the 252:515-27-4(a) will present</p> <p>15 information for discussion of potential action</p> <p>16 by council.</p> <p>17 MR. RILEY: All right. So a little</p> <p>18 context here. As you recall, financial</p> <p>19 assurance for closure and post-closure of</p> <p>20 landfill facilities prior to our current solid</p> <p>21 waste rules, 515. So this is pre 2000. There</p> <p>22 was no uniformity established -- or prescribed</p> <p>23 on how you would establish your closure costs.</p> <p>24 So there's no tasks specified, other than in the</p> <p>25 rules to general closure requirements, and there</p>
<p style="text-align: right;">Page 52</p> <p>1 were no unit costs.</p> <p>2 That created a lot of uncertainty</p> <p>3 around the accuracy of these estimates, so DEQ</p> <p>4 commissioned a consulting study to determine how</p> <p>5 there might be a way to establish uniform tasks</p> <p>6 and unit costs. And so that was done. It was</p> <p>7 adopted and rolled into the 515. So now we have</p> <p>8 worksheets that prescribe tasks and unit costs.</p> <p>9 So also as part of that engineering</p> <p>10 study, the recommendation was made to update the</p> <p>11 unit costs every year for inflation, and then to</p> <p>12 do a more comprehensive review every five years</p> <p>13 for economic forces outside of inflation that</p> <p>14 may swing costs one way or the other.</p> <p>15 So as you recall, at our September</p> <p>16 meeting we talked about establishing a</p> <p>17 subcommittee as a council and DEQ staff to</p> <p>18 review the closure costs and make</p> <p>19 recommendations that would be a part from in</p> <p>20 inflation, that if anything was needed -- if we</p> <p>21 needed to make adjustments, we would do that.</p> <p>22 So, Mr. Shepherd, you and Ms. Merchant,</p> <p>23 Mr. Adcock, and members of DEQ staff met, what</p> <p>24 was it, twice, reviewed the worksheets, and the</p> <p>25 recommendations were --</p>	<p style="text-align: right;">Page 53</p> <p>1 Mr. Shepherd, would you like to share?</p> <p>2 CHAIRMAN SHEPHERD: We're doubling</p> <p>3 everything.</p> <p>4 MR. RILEY: We might want to confirm</p> <p>5 that with Mr. Adcock.</p> <p>6 MR. ADCOCK: I dispute that.</p> <p>7 CHAIRMAN SHEPHERD: No, we didn't make</p> <p>8 any changes.</p> <p>9 MR. RILEY: Yeah, we decided --</p> <p>10 CHAIRMAN SHEPHERD: Decided to leave</p> <p>11 everything as is.</p> <p>12 MR. RILEY: So this five-year review</p> <p>13 has been accomplished in accordance with our</p> <p>14 rules and with no recommended changes.</p> <p>15 CHAIRMAN SHEPHERD: Is there anybody</p> <p>16 that has any comment on that?</p> <p>17 MR. JOYCE: I guess it's still applying</p> <p>18 to the inflation factor though.</p> <p>19 CHAIRMAN SHEPHERD: Yes.</p> <p>20 We don't need to vote on anything, do</p> <p>21 we?</p> <p>22 MR. RILEY: No. No. No action</p> <p>23 required.</p> <p>24 CHAIRMAN SHEPHERD: All right. If</p> <p>25 nobody has any questions or comments on that,</p>

<p style="text-align: right;">Page 54</p> <p>1 we'll move to Item Number 8., Open Discussion.</p> <p>2 Does anybody have anything they want to</p> <p>3 discuss?</p> <p>4 MR. JOYCE: Just one quick question</p> <p>5 back to the PFAS issue. Are preliminary drafts,</p> <p>6 any of that proposed legislation available for</p> <p>7 review?</p> <p>8 MR. RILEY: Yeah. And I don't --</p> <p>9 Karen, do you know if the bill has been</p> <p>10 filed yet?</p> <p>11 MS. JAYNE: No, I do not. In fact, I</p> <p>12 didn't know there was legislation until you told</p> <p>13 us.</p> <p>14 CHAIRMAN SHEPHERD: Do we know who's</p> <p>15 sponsoring the legislation?</p> <p>16 MR. RILEY: I don't know who the</p> <p>17 sponsor is either. But we can -- we can secure</p> <p>18 a draft and make that available to Council.</p> <p>19 CHAIRMAN SHEPHERD: This is coming from</p> <p>20 the DEQ?</p> <p>21 MR. RILEY: This is -- my understanding</p> <p>22 is, yes, it's initiated by DEQ, and they have</p> <p>23 found a sponsor. I don't know who that is, who</p> <p>24 will sponsor the bill. Or if it's been filed</p> <p>25 yet.</p>	<p style="text-align: right;">Page 55</p> <p>1 MS. JAYNE: We can certainly find out</p> <p>2 and then make it available.</p> <p>3 CHAIRMAN SHEPHERD: Is the wastewater</p> <p>4 people, they're -- they're going to be impacted</p> <p>5 by PFAS as well. What is -- is this legislation</p> <p>6 going to only deal with PFAS waste?</p> <p>7 MR. RILEY: Yes.</p> <p>8 CHAIRMAN SHEPHERD: Or is it going to</p> <p>9 impact -- because the -- the big -- it -- I</p> <p>10 mean, if you don't really know PFAS and PFOS,</p> <p>11 it's -- it's everywhere. It's in the carpets,</p> <p>12 it's in our clothes, it's -- it's everywhere.</p> <p>13 So it is coming out in wastewater discharge from</p> <p>14 treatment plants. Is that going to be --</p> <p>15 something going to be done about that?</p> <p>16 MR. RILEY: I don't -- I don't know,</p> <p>17 specifically.</p> <p>18 CHAIRMAN SHEPHERD: Okay.</p> <p>19 MR. RILEY: I know that the legislation</p> <p>20 proposes to define what PFAS waste would be, and</p> <p>21 one component of that might be like activated</p> <p>22 carbon containing PFAS from water treatment</p> <p>23 processes. I don't know if that includes</p> <p>24 municipal wastewater treatment process or just</p> <p>25 industrial wastewater treatment process. I</p>
<p style="text-align: right;">Page 56</p> <p>1 think some of those details need to be worked</p> <p>2 out.</p> <p>3 CHAIRMAN SHEPHERD: Okay.</p> <p>4 MR. RILEY: But the idea is to focus on</p> <p>5 high concentrations and high volumes of PFAS</p> <p>6 waste, not incidental waste streams, household</p> <p>7 waste streams, commercial waste streams that</p> <p>8 contain incidental amounts of PFAS products.</p> <p>9 CHAIRMAN SHEPHERD: Do we see a lot of</p> <p>10 the high concentration PFAS waste, a lot of it?</p> <p>11 MR. RILEY: I don't know that --</p> <p>12 CHAIRMAN SHEPHERD: Is there a lot of</p> <p>13 off-spec firefighting foam that's being disposed</p> <p>14 of?</p> <p>15 MR. RILEY: As regulations change, that</p> <p>16 may change as well. I don't know that we're</p> <p>17 seeing a lot of it now. That may change in the</p> <p>18 future, especially when other states take action</p> <p>19 to prohibit disposal of certain things. Now, if</p> <p>20 that were to occur -- I think this is an attempt</p> <p>21 for Oklahoma to be poised and to be ready to</p> <p>22 write rules as necessary to ensure the proper</p> <p>23 disposal and management of this type of waste,</p> <p>24 if it were to occur.</p> <p>25 CHAIRMAN SHEPHERD: Okay.</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. RILEY: It may not be a problem.</p> <p>2 It may not -- I mean, this may be more worry</p> <p>3 than is necessary, but it makes sense for us to</p> <p>4 be positioned so that we can be protected as</p> <p>5 needed.</p> <p>6 MR. JOYCE: There's a lot of kind of</p> <p>7 not-in-my-backyard associated with these wastes.</p> <p>8 And, you know, one that might be in the middle</p> <p>9 between the high volume waste and the wastewater</p> <p>10 discharges is the sludge from these municipal</p> <p>11 POTWs. You know, that's becoming a much bigger</p> <p>12 issue, too, so I don't know if that will be</p> <p>13 addressed or not.</p> <p>14 MR. RILEY: And there will certainly be</p> <p>15 a lot of that to manage.</p> <p>16 MR. JOYCE: Yes.</p> <p>17 MR. RILEY: So it will be something to</p> <p>18 look forward to as a council, to make sure that</p> <p>19 we write good rules.</p> <p>20 CHAIRMAN SHEPHERD: Okay. New</p> <p>21 business? Any new business?</p> <p>22 All right. Then I guess we are</p> <p>23 adjourned. Thanks everybody for coming.</p> <p>24 Appreciate it.</p> <p>25 (Meeting adjourned at 10:13 a.m.)</p>

<p style="text-align: center;">C E R T I F I C A T E</p> <p>STATE OF OKLAHOMA    )</p> <p style="text-align: center;">)</p> <p>COUNTY OF TULSA     )</p> <p>I, Tammie Shipman, Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the foregoing proceedings are a true and correct transcript of the record of the machine shorthand notes taken by me and transcribed into written form under my supervision, direction and control.</p> <p>I further certify that I'm neither related to nor attorney for any interested party in the named action, nor otherwise interested in the outcome of said action.</p> <p>WITNESS MY HAND, this 22nd day of January, 2021.</p> <p style="text-align: center;"><i>Tammie Shipman</i></p> <p style="text-align: center;">Tammie Shipman Shorthand Reporter CSR #1564</p>	



# SOLID WASTE MANAGEMENT ADVISORY COUNCIL

Attendance Record

January 14, 2021

Oklahoma City, Oklahoma

CHECK BOX TO COMMENT

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THE SOLID WASTE MANAGEMENT ADVISORY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title:

**OAC 252:517 DISPOSAL OF COAL COMBUSTION RESIDUALS FROM  
ELECTRIC UTILITIES**

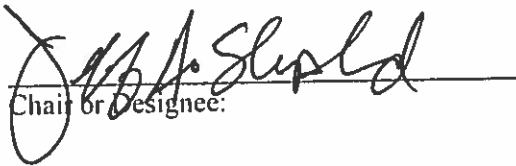
On January 14, 2021 the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

    X     permanent [take effect after legislative review]  
           emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,

  
Chair or Designee:

Date Signed: 1/14/2021

	VOTING TO APPROVE	VOTING AGAINST	ABSTAINING	ABSENT
Todd Adcock	✓			
Rodney Cleveland	✓			
Robert Joyce	✓			
Jim Linn	✓			
Brenda Merchant				✓
Greg Phillips				✓
Mary Jo Reinhart	✓			✓
April Sacha	✓			
Jeff Shepherd	✓			
Vacancy				



**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM  
(OPDES) STANDARDS**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Introduction

252:606-1-4 Date of federal regulations incorporated [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. § 2-2-101.

Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, 2-6-303, and 2-6-306.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 6, 2020

**COMMENT PERIOD:**

December 1, 2020, to January 12, 2021

**PUBLIC HEARING:**

January 12, 2021, Water Quality Management Advisory Council

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (Proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (Proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

**Incorporated standards:**

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2020."

**Incorporating rules:**

OAC 252:606-1-4

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The

standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTk=>

**GIST/ANALYSIS:**

The gist of this proposed rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department's delegation agreement with the Environmental Protection Agency (EPA), and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination System (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2018, to July 1, 2020. The federal regulation updates being incorporated are minor and intended to modernize regulations, promote submission of complete permit applications, and clarifies regulatory requirements to allow more timely development of NPDES permits that protect human health and the environment.

**CONTACT PERSON:**

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), [brian.clagg@deq.ok.gov](mailto:brian.clagg@deq.ok.gov) (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**SUBCHAPTER 1. INTRODUCTION**

**252:606-1-4. Date of federal regulations incorporated**

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on ~~July 1, 2018~~ July 1, 2020.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM  
(OPDES STANDARDS)**

**SUBCHAPTER 1. INTRODUCTION**

**252:606-1-4. Date of federal regulations incorporated**

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on ~~July 1, 2018~~ July 1, 2020.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM  
(OPDES) STANDARDS**

Before the Water Quality Management Advisory Council on January 12, 2021  
Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 1. Introduction

252:606-1-4 Date of federal regulations incorporated [AMENDED]

**DESCRIPTION:** The gist of this proposed rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department of Environmental Quality's (DEQ or the Department) delegation agreement with the Environmental Protection Agency (EPA), and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination system (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2018, to July 1, 2020. The federal regulation updates being incorporated are minor and are intended to modernize regulations, promote submission of complete permit applications, and clarifies regulatory requirements to allow more timely development of NPDES permits that protect human health and the environment.

**CLASSES OF PERSONS AFFECTED:** Current and future owners and operators of facilities that discharge to waters of the state.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** None anticipated.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** None submitted as of this date.

**CLASSES OF PERSONS BENEFITTED:** Current and future owners and operators of facilities that discharge to waters of the state and all citizens and visitors to Oklahoma and industries that require water through the protection of surface water bodies used for recreation, economic development and for drinking.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** There is no direct economic impact on facilities that discharge to waters of the state.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** None anticipated.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** None anticipated.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** None

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** None anticipated.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** None

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** There is no new funding necessary to implement and enforce this rule. Current funding sources include federal grant funds, user fees, and general revenue appropriations.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** None.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** DEQ does not anticipate the need for additional cooperation with political subdivisions associated with this rulemaking.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** N/A.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** None.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** None

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** This rulemaking updates the federal requirements that are designed to protect public health and the environment by limiting contaminants that are discharged into waters of the state. This update is not designed to reduce significant risks to the public health, safety and environment.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** There has been no determination of any detrimental effect on the public health, safety and environment.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** DEQ has not received any quantifiable or qualitative data of the impacts of the proposed updates.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** November 10, 2020

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM  
(OPDES) STANDARDS**

**EXECUTIVE SUMMARY:**

The gist of this proposed rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department of Environmental Quality's (DEQ or the Department) delegation agreement with the Environmental Protection Agency (EPA), and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination system (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2018, to July 1, 2020. The federal regulation updates being incorporated are minor and are intended to modernize regulations, promote submission of complete permit applications, and clarifies regulatory requirements to allow more timely development of NPDES permits that protect human health and the environment.

**DIFFERENCE FROM ANALOGOUS FEDERAL RULES:**

The proposed changes include in part updates to the adoption of the federal rules by reference; therefore, there are no differences from analogous federal rules.

**ENVIRONMENTAL BENEFIT STATEMENT:**

These rules are not more stringent than corresponding federal rules.

**SUMMARY OF COMMENTS AND RESPONSES:**

DEQ received no comments.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Introduction

252:631-1-3 Adoption of U.S. EPA regulations by reference [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. § 2-2-101.

Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, 2-6-303, and 2-6-306.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 6, 2020

**COMMENT PERIOD:**

December 1, 2020, to January 12, 2021

**PUBLIC HEARING:**

January 12, 2021, Water Quality Management Advisory Council

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (Proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (Proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

**Incorporated standards:**

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2020."

**Incorporating rules:**

OAC 252:631-1-3

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTk=>



**GIST/ANALYSIS:**

The gist of this rule and the underlying reason for the rulemaking is to update the rule concerning the date of the incorporation by reference of certain federal regulations from January 1, 2017, to July 1, 2020, which allows for inclusion of all pertinent CFR parts amended between January 1, 2017, and July 1, 2020, specifically allowing for newly approved alternative testing methods for contaminants listed at 40 CFR 141.21(f)(3) found in Appendix A to Subpart C of Part 141.

**CONTACT PERSON:**

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**SUBCHAPTER 1. INTRODUCTION****252:631-1-3. Adoption of U.S. EPA regulations by reference**

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on ~~January 1, 2017~~ July 1, 2020, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION**

**SUBCHAPTER 1. INTRODUCTION**

**252:631-1-3. Adoption of U.S. EPA regulations by reference**

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on ~~January 1, 2017~~ July 1, 2020, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION**

Before the Water Quality Management Advisory Council on January 12, 2021  
Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 1. Introduction

252:631-1-3 Adoption of U.S. EPA regulations by reference [AMENDED]

**DESCRIPTION:** The gist of this rule and the underlying reason for the rulemaking is to update the rule concerning the date of the incorporation by reference of certain federal regulations from January 1, 2017, to July 1, 2020, which allows for inclusion of all pertinent CFR parts amended between January 1, 2017, and July 1, 2020, specifically allowing for newly approved alternative testing methods for contaminants listed at 40 CFR 141.21(f)(3) found in Appendix A to Subpart C of Part 141.

**CLASSES OF PERSONS AFFECTED:** Classes of persons affected are those who operate or plan to operate a public water supply system and accredited laboratories that perform drinking water analyses. This will also affect customers of those systems, both in-state residents and out-of-state visitors, as well as incarcerated persons.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** There is no anticipated increase in costs as a result of these rule changes.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** DEQ has not received any information from other public or private entities concerning the cost impacts of the proposed regulations.

**CLASSES OF PERSONS BENEFITTED:** Those who operate or plan to operate a public water supply system and accredited laboratories that perform drinking water analyses will have more testing methods available to them.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** There is no anticipated increase in costs as a result of these rule changes.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** It is unlikely that the proposed rulemaking will have an economic impact on political subdivisions (e.g., municipalities and rural water associations). However, it is possible that laboratory costs could be reduced over time with more test methods available.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** DEQ has not identified any foreseeable adverse effect on small businesses (e.g., commercial entities that provide drinking water from their own public water supply system and accredited laboratories).

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** There are no proposed fee changes associated with this rulemaking.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** There are no anticipated additional costs to the DEQ to implement and enforce the proposed rules.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** There are no probable costs to other agencies associated with this rulemaking.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** There is no new funding necessary to implement and enforce this rule.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** None anticipated; the proposed rule does not alter neither the DEQ's fee structure nor the duties of DEQ or other agencies.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** DEQ does not anticipate the need for additional cooperation with political subdivisions associated with this rulemaking.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** No measures were identified to minimize compliance costs associated with this rulemaking as minimal or no increased costs are anticipated.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** DEQ has determined there are no less costly or non-regulatory methods of achieving the purpose of the proposed regulations.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** There is no specific anticipated effect on public health and safety at this time.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** This rulemaking is not designed to reduce significant risks to the public health, safety and environment. However, the current rule does protect public health through limiting the amount of contaminants in drinking water.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** There has been no determination of any detrimental effect on the public health, safety and environment.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** DEQ has not received any quantifiable or qualitative data of the impacts of the proposed updates.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** November 10, 2020

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 631. PUBLIC WATER SUPPLY OPERATION**

**EXECUTIVE SUMMARY:**

The gist of this proposed rule and the underlying reason for the rulemaking is to ensure the Oklahoma Public Water Supply Supervision (PWSS) Program is in compliance with the Department of Environmental Quality's (DEQ or the Department) Primacy agreement with the Environmental Protection Agency (EPA), and to ensure Oklahoma retains responsibility for administering the PWSS. Specifically, the reason for the rulemaking is to update the rule concerning the date of the incorporation by reference of certain federal regulations from January 1, 2017, to July 1, 2020, which allows for inclusion of all pertinent CFR parts amended between January 1, 2017, and July 1, 2020, specifically allowing for newly approved alternative testing methods for contaminants listed at 40 CFR 141.21(f)(3) found in Appendix A to Subpart C of Part 141.

**DIFFERENCE FROM ANALOGOUS FEDERAL RULES:**

The proposed changes include in part updates to the adoption of the federal rules by reference; therefore, there are no differences from analogous federal rules.

**ENVIRONMENTAL BENEFIT STATEMENT:**

These rules are not more stringent than corresponding federal rules.

**SUMMARY OF COMMENTS AND RESPONSES:**

DEQ received no comments.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Introduction

252:690-1-4.1 Date of federal regulations incorporated [AMENDED]

**AUTHORITY:**

Environmental Quality Board; 27A O.S. § 2-2-101.

Water Quality Management Advisory Council; 27A O.S. §§ 2-2-201, 2-6-103, 2-6-303, and 2-6-306.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 6, 2020

**COMMENT PERIOD:**

December 1, 2020, to January 12, 2021

**PUBLIC HEARING:**

January 12, 2021, Water Quality Management Advisory Council

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (Proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (Proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

**Incorporated standards:**

Date of 40 CFR provisions incorporated by reference in these rules is changed to "as published on July 1, 2020."

**Incorporating rules:**

OAC 252:690-1-4.1

**Availability:**

The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m., excluding state holidays. The standards may also be viewed on the Department of Environmental Quality Website at the following link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTIyNTk=>

**GIST/ANALYSIS:**

The gist of this rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department's delegation agreement with the Environmental Protection Agency (EPA), and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination System (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2016, to July 1, 2020. The most significant federal regulation update being incorporated is EPA and the Department of the Army's redefining and clarifying the scope of "Waters of the United States" federally regulated under the Clean Water Act consistent with the Executive Order signed on February 28, 2017 entitled "The Navigable Waters Protection Rule: Definition of Waters of the United States." This final rule implements the overall objective of the Clean Water Act and increases the predictability and consistency of Clean Water Act programs.

**CONTACT PERSON:**

Brian Clagg, Department of Environmental Quality, Water Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-8100 (phone), brian.clagg@deq.ok.gov (e-mail).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021.**

**SUBCHAPTER 1. INTRODUCTION****252:690-1-4.1. Date of federal regulations incorporated**

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on ~~July 1, 2016~~ July 1, 2020.



**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION**

**SUBCHAPTER 1. INTRODUCTION**

**252:690-1-4.1. Date of federal regulations incorporated**

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on ~~July 1, 2016~~ July 1, 2020.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION**

Before the Water Quality Management Advisory Council on January 12, 2021  
Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 1. Introduction

252:690-1-4.1 Date of federal regulations incorporated [AMENDED]

**DESCRIPTION:** The gist of this rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department of Environmental Quality's (DEQ or the Department) delegation agreement and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination system (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2016, to July 1, 2020. The most significant federal regulation update being incorporated is EPA and the Department of the Army's redefining and clarifying the scope of "Waters of the United States" federally regulated under the Clean Water Act consistent with the Executive Order signed on February 28, 2017. This final rule implements the overall objective of the Clean Water Act and increases the predictability and consistency of Clean Water Act programs.

**CLASSES OF PERSONS AFFECTED:** Current and future owners and operators of facilities that discharge to waters of the state.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** None anticipated.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** None submitted as of this date.

**CLASSES OF PERSONS BENEFITTED:** Current and future owners and operators of facilities that discharge to waters of the state and all citizens and visitors to Oklahoma and industries that require water through the protection of surface water bodies used for recreation, economic development and for drinking.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** There is no direct economic impact on facilities that discharge to waters of the state

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** None anticipated.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** None anticipated.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** None

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** None anticipated.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** None

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** There is no new funding necessary to implement and enforce this rule. Current funding sources include federal grant funds, user fees, and general revenue appropriations.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** None.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** DEQ does not anticipate the need for additional cooperation with political subdivisions associated with this rulemaking.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** N/A.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** None.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** None

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** This rulemaking updates the federal requirements that are designed to protect public health and the environment by limiting contaminants that are discharged into waters of the state. This update is not designed to reduce significant risks to the public health, safety and environment.

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** There has been no determination of any detrimental effect on the public health, safety and environment.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** DEQ has not received any quantifiable or qualitative data of the impacts of the proposed updates.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** November 10, 2020

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION**

**EXECUTIVE SUMMARY:**

The gist of this rule and the underlying reason for the rulemaking is to ensure the Oklahoma Pollutant Discharge Elimination System (OPDES) is in compliance with the Department of Environmental Quality's (DEQ or the Department) delegation agreement and to ensure Oklahoma retains responsibility for administering the National Pollutant Discharge Elimination system (NPDES) Program in Oklahoma. The Department proposes to update its rules concerning the date of the incorporation by reference for the Code of Federal Regulations from July 1, 2016, to July 1, 2020. The most significant federal regulation update being incorporated is EPA and the Department of the Army's redefining and clarifying the scope of "Waters of the United States" federally regulated under the Clean Water Act consistent with the Executive Order signed on February 28, 2017. This final rule implements the overall objective of the Clean Water Act and increases the predictability and consistency of Clean Water Act programs.

**DIFFERENCE FROM ANALOGOUS FEDERAL RULES:**

The proposed changes include in part updates to the adoption of the federal rules by reference; therefore, there are no differences from analogous federal rules.

**ENVIRONMENTAL BENEFIT STATEMENT:**

These rules are not more stringent than corresponding federal rules.

**SUMMARY OF COMMENTS AND RESPONSES:**

DEQ received no comments.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE  
TREATMENT SYSTEMS**

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

252:641-1-2 [AMENDED]

Subchapter 3. Soil Tests

252:641-3-2 [AMENDED]

252:641-3-4 [AMENDED]

Subchapter 12. Dispersal Fields

252:641-12-1 [AMENDED]

252:641-12-2 [AMENDED]

252:641-12-3 [AMENDED]

252:641-12-4 [AMENDED]

252:641-12-5 [AMENDED]

252:641-12-6 [AMENDED]

252:641-12-7 [AMENDED]

Subchapter 15. Lagoons

252:641-15-2 [AMENDED]

Appendix H. Size Charts for On-site Sewage Treatment Systems [REVOKED]

Appendix H. Size Charts for On-site Sewage Treatment Systems [NEW]

Appendix N. Examples of Chambers being Used for Storage and Dispersal [REVOKED]

**AUTHORITY:**

Environmental Quality Board, 27A O.S §§ 2-2-101, 2-2-201, 2-6-402, and 2-6-403; and 59 O.S. § 1158.

**COMMENT PERIOD:**

November 15, 2020 through December 16, 2020

**PUBLIC HEARING:**

January 12, 2021, Water Quality Management Board

February 19, 2021, Environmental Quality Board

**ADOPTION:**

February 19, 2021 (proposed)

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

October 8, 2020

**LEGISLATIVE APPROVAL:**

**LEGISLATIVE DISAPPROVAL:**

**APPROVED BY GOVERNOR'S DECLARATION:**

**FINAL ADOPTION:**

**EFFECTIVE:**

September 15, 2021 (proposed)

**SUPERSEDED EMERGENCY ACTIONS:**

Adopted January 4, 2021 (effective date)

**INCORPORATIONS BY REFERENCE:**

n/a

## **GIST/ANALYSIS:**

The gist of the rule that the Department is proposing is to: (1) add or amend definitions relating to chambers, manufactured media systems, and Zone 1; (2) establish sizing reduction guidelines for Conventional Subsurface Absorption systems (including manufactured media systems); (3) amend aerobic system surface application area totals and establish sizing criteria for small public aerobic systems; and (4) address numbering issues for Appendices referenced in rule text.

## **CONTACT PERSON:**

The contact person is Nicholas Huber. Nicholas may be contacted at: nicholas.huber@deq.ok.gov (e-mail) or (405) 702-6100 (phone). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250(5) AND 308(E), WITH AN EFFECTIVE DATE OF SEPTEMBER 15, 2021:**

## **SUBCHAPTER I. GENERAL PROVISIONS**

### **252:641-1-2. Definitions**

In addition to the definitions contained in the Environmental Quality Code (27A O.S. Section(s) 2-1-101 *et seq.*), the following words, terms and acronyms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Aerobic treatment unit"** means a treatment unit that provides digestion of organic matter through oxidation and has been tested and certified by an ANSI accredited certifier as meeting the most current ANSI/NSF Standard 40, whether or not it includes nitrogen reduction.

**"Alternative system"** means an on-site sewage treatment system that varies from the requirements of on-site sewage treatment systems described in this Chapter.

**"ANSI"** means the American National Standards Institute.

**"ASTM"** means the American Society for Testing and Materials.

**"Certified installer"** means a person in the business of installing or constructing on-site sewage treatment systems who has been certified by the DEQ to inspect and approve his/her own installations.

**"Certified soil profiler"** means a person who has been certified by the DEQ to perform soil profile descriptions to be used to design on-site sewage treatment systems.

~~**"Chamber"** means a molded rigid plastic, arch shaped, hollow structure with an open bottom area and sidewalls that are designed to allow effluent to flow into the surrounding soil while preventing soil from migrating into the chamber.~~

**"Conventional subsurface absorption field"** means a gravity-fed subsurface dispersal field, which may be preceded by a lift station, that provides treatment through soil absorption in media-filled (e.g., gravel, polystyrene, chamber, etc.) trenches. This does not include ET/A or shallow extended dispersal fields.

**"CSA"** means the Canadian Standards Association.

**"DEQ"** means the Department of Environmental Quality.

**"Designer"** means the person who conducts the soil test and/or completes the DEQ Form 641-581P or 641-581SP for submission to the DEQ.

**"Dispersal site"** means the ten-thousand-square-foot (10,000 ft<sup>2</sup>) rectangular area that contains the test holes used to design the dispersal field.

**"Distribution structure"** means a watertight concrete or plastic compartment, box, or solid piping that allows the distribution of sewage at the same elevation throughout the subsurface

treatment field.

**"Drip irrigation"** means the use of pressure to distribute aerobically treated effluent to a subsurface dispersal field using small diameter tubing equipped with pressure compensating emitters.

**"Evapotranspiration/absorption (ET/A)"** means the subsurface dispersal of sewage for treatment through evaporation, transpiration and absorption.

**"Flow equalization tank"** means a storage reservoir that contains an automatically controlled pump that is capable of delivering sewage to an on-site sewage treatment system at a specific hourly rate.

**"IAPMO"** means the International Association of Plumbing and Mechanical Officials.

**"Individual on-site sewage treatment system"** means an on-site sewage treatment system that treats sewage from one individual residence or a duplex with one owner.

**"Installer"** means any person who installs an on-site sewage treatment system or who is in the business of contracting to install or furnishing labor to install on-site sewage treatment systems.

**"Level"** means within a four-inch range of the same elevation.

**"Lift station"** means a short-term storage reservoir, containing an automatically controlled pump, that pumps sewage to a higher elevation for treatment.

**"Low pressure dosing"** means the use of pressure to distribute effluent evenly throughout the dispersal field through small diameter perforated piping.

**"Major earth fill area"** means any area where soil has been added to change the elevation from the original ground level by more than one (1) foot.

**"Manufactured Media System"** means a system containing a dispersal trench product utilizing a non-gravel, fines-free storage media specifically designed for the dispersal and treatment of sewage.

**"Modification"** means the expansion or relocation of any part of an existing on-site sewage treatment system, which does not fall under the definition of new installation.

**"New installation"** means the installation of a new on-site sewage treatment system. This includes the replacement of an existing lagoon, aerobic treatment unit and/or dispersal field, even when the existing septic tank is not replaced.

**"NSF"** means the National Sanitation Foundation.

**"On-site sewage treatment system"** means an individual or small public on-site sewage treatment system as defined in this Chapter.

**"Redoximorphic soil features"** means soil that, due to wetness, contains features that exhibit a color of less than or equal to two (2) chroma and greater than or equal to four (4) value in concentrations greater than five percent (5%) in two (2) consecutive intervals.

**"Repair"** means the repair of any part of an existing on-site sewage treatment system or the replacement of any part of an existing on-site sewage treatment system as long as the replacement part is placed in the exact same location that the original part had been located. Repair does not include excavation and replacement of a subsurface absorption trench.

**"Retention structure"** is a sealed concrete or plastic structure that retains sewage until it reaches a depth of ten inches (10") and then allows it to flow to another trench.

**"Rock fragments"** means unattached pieces of rock two millimeters (2 mm) in diameter or larger that are resistant to rupture (strongly cemented or extremely hard).

**"Scenic river corridor"** means the two-mile wide area surrounding each scenic river as designated in 82 O.S. Section(s) 1452, with the center of each scenic river being the center of the corridor.

**"Sewage"** means wastewater that originates as human waste from activities including but not limited to using toilet facilities, washing, bathing, preparing foods and washing laundry, excluding

industrial wastewater.

**"Small public on-site sewage treatment system"** means an on-site sewage treatment system, except one that serves an individual residence or duplex, that has an average daily flow of five thousand (5,000) gallons or less.

**"Soil profile description"** means the identification and characterization of soil at a specific site.

**"Soil texture"** means the percent by weight of sand, silt, and clay for particles smaller than two millimeters (2 mm) in diameter.

**"Storage media"** means a natural or manufactured material that provides void spaces for storage and dispersal of effluent in the trenches of a subsurface treatment system.

**"Water body"** means any reservoir or stream listed in either the most current "Lakes of Oklahoma" or "Water Quality in Oklahoma Integrated Report."

**"Water body protection area"** means the land area around a water body comprised of Zone 1 and Zone 2.

**"Water saturated soil"** means soil characterized by either the presence of groundwater or redoximorphic soil features.

**"Zone 1"** means the land within ~~six~~ three hundred sixty feet (~~660~~300') of the highest normal pool elevation established for a reservoir or within ~~six~~ three hundred sixty feet (~~660~~300') of a stream bed.

**"Zone 2"** means the land within one thousand three hundred twenty feet (1320') of the highest normal pool elevation established for a reservoir or within one thousand three hundred twenty feet (1320') of a stream bed.

### SUBCHAPTER 3. SOIL TESTS

#### 252:641-3-2. Soil Percolation test

(a) **Use of percolation tests.** A percolation test may only be used to identify dispersal sites for conventional subsurface absorption fields. Percolation tests, including pre-existing ones, may not be used to identify dispersal sites for on-site sewage systems:

- (1) in scenic river corridors, unless documentation that the site is not located within the scenic river watershed is provided to DEQ; and
- (2) in Zone 2 of a water body protection area.

(b) **Test hole requirements.** The following test hole requirements shall be met for percolation tests:

(1) **Configuration.** Three test holes shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft<sup>2</sup>), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft<sup>2</sup>). Additional test holes shall not be placed within fifty feet (50') of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations.

(2) **Size.** Test holes shall be dug or bored, four to twelve inches (4"-12") in diameter with vertical sides to a depth of at least twenty-four inches (24") and no more than thirty-six inches (36"). All test holes in the proposed dispersal site shall be the same depth. Test holes shallower than twenty-four inches (24") may be used to design conventional subsurface absorption fields under the alternative system approval process.

(3) **Soil surfaces.** The bottoms and sides of the test holes shall be scratched with a sharp-pointed instrument to relieve any smeared soil surfaces. Loose material shall be removed from



the hole prior to commencing the presoak.

(4) **Prohibitions.** Test holes dug through animal burrows, root channels or soil that is cracked due to dry weather conditions shall not be used.

(c) **Presoak period.** The presoak period shall commence no earlier than twenty-four (24) hours prior to the start of the percolation test procedure. Each test hole shall be presoaked by filling them with water and refilling them as necessary to maintain a water depth of at least twelve inches (12") for at least four (4) hours. When it is impossible to maintain a water depth of at least twelve inches (12") during the entire presoak period due to an excessive percolation rate, then the hole is deemed unacceptable and may not be:

- (1) used to calculate the percolation rate for the dispersal site; and
- (2) located in the dispersal site for a conventional subsurface absorption field.

(d) **Calculating the percolation rate for each hole.** At the completion of the presoak, the depth of the water shall be adjusted to ten inches (10") above the bottom of each test hole. A fixed reference point shall be established at or above the initial water level. Using the fixed reference point, the level of the water in each hole shall be measured and recorded. After seventy-five (75) minutes, the number of inches the water level has dropped in each hole shall be measured and recorded. To calculate the percolation rate for each individual hole, divide seventy-five (75) minutes by the number of inches the water level has dropped. Any hole that exhibits a percolation rate of greater than seventy-five (75) minutes per inch is deemed unacceptable and may not be:

- (1) used to calculate the percolation rate for the dispersal site; and
- (2) located in the dispersal site for a conventional subsurface absorption field.

(e) **Calculating the percolation rate for the dispersal site.** If the rates of any two (2) test holes in the proposed dispersal site vary by more than fifteen (15) minutes, the percolation rate for the dispersal site shall be considered the rate of the slowest test hole. Otherwise, the percolation rate for the dispersal site shall be determined by averaging the percolation rates for the three (3) test holes and then rounding the result to the nearest whole number. If there are more than three (3) test holes in the proposed dispersal site, then the percolation rate must be calculated using the three (3) slowest percolation rates.

(f) **Sizing the dispersal field.** The percolation rate for the dispersal site shall be used in conjunction with the charts in Appendix H, Figures 1 and 45 to size the conventional subsurface absorption field. ~~The chart in Appendix H, Figure 2 may be used to size conventional subsurface absorption fields utilizing chambers when designed using a percolation test.~~

(g) **Information to be reported.** The following information must be reported to the DEQ on DEQ Form 641-581P, "Report for On-Site Sewage Treatment" or in a format approved by the DEQ:

- (1) Property owner's name(s);
- (2) Address or finding directions for property;
- (3) Legal description of property, including lot and block number when available;
- (4) Lot size in square feet or acres;
- (5) Whether the system will be an individual or small public on-site sewage treatment system;
- (6) The estimated or actual average daily flow for the system as certified on DEQ Form 641-581Cert "Certification Documentation Form";
- (7) Whether the water supply for the property is public or private;
- (8) The location of each test hole (identified from two fixed reference points);
- (9) The depth and percolation rate, along with the depth to groundwater if encountered, for all test holes in the proposed dispersal field;
- (10) The percolation rate for the dispersal site;
- (11) The size of the septic tank, the minimum length of the conventional subsurface absorption field, and the minimum and maximum depth of the trenches;

- (12) The name and signature of the person performing the pre-soak;
- (13) The name, signature and registration number of the person conducting the percolation test; and
- (14) The date the percolation test was conducted.

#### **252:641-3-4. Soil profile description**

(a) **Test hole requirements.** Test holes may be augered borings, continuous core borings, or excavated pits.

(1) **Borings.** If borings are used, three test holes shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft<sup>2</sup>), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft<sup>2</sup>). Additional test holes shall not be placed within fifty feet of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations. Borings shall allow for the classification of the soil in six-inch intervals and shall be bored to a minimum depth of forty-eight inches (48") or until one of the following is encountered first:

- (A) a layer that is impervious to boring;
- (B) a six-inch interval classified as a Group 5 soil; or
- (C) water saturated soil.

(2) **Pits.** If excavated pits are used, three (3) pits shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft<sup>2</sup>), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft<sup>2</sup>). Additional test holes shall not be placed within fifty feet of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations. Pits shall:

- (A) have a depth of a minimum of forty-eight inches (48"), unless rock or water saturated soil is encountered at a shallower depth;
- (B) be a minimum of thirty-six inches (36") wide and sixty inches (60") long; and
- (C) have one end sloped or stepped to allow for entry.

(b) **Identification of limiting layers.** The shallowest limiting layer encountered in the test holes shall be the limiting layer for the entire dispersal site. The following are considered limiting layers and shall be identified by depth on DEQ Form 641-581SP, "Report for On-Site Sewage Treatment:"

- (1) a layer that is impervious to boring;
- (2) a six-inch interval classified as a Group 5 soil; and
- (3) water saturated soil.

(c) **Verifying limiting layers using pits.** Limiting layers may be verified using an excavated pit. The results of the pit(s) shall override the results of borings completed in the same proposed dispersal site.

(d) **Classifying soil intervals.** For each test hole, the soil group for each six-inch interval between the surface and the bottom of the test hole shall be identified using the guidelines found in the "DEQ/OSU Soil Classification Manual" and classified as one of the soil groups in Appendix B.

(e) **Determining the soil group for the separation range.** The soil group for the separation range establishes the required vertical separation between the dispersed effluent and the limiting layer. The separation range consists of the three (3) six-inch intervals above the interval containing a limiting layer or, if no limiting layer was identified, the separation range shall be the three (3) six-

inch intervals above the bottom of the test hole. To determine the soil group for the separation range:

- (1) Select the test hole in the dispersal site with the lowest clay content in the separation range; and
  - (2) Identify and record the most prevalent soil group in the separation range for that test hole.
- (f) **Identifying dispersal field options.** Based on the soil group identified in (e) of this Section, use Appendix A, Figure 1 to identify suitable dispersal fields along with their minimum separations distances from the limiting layer.
- (g) **Sizing the dispersal field(s).** Each suitable dispersal field shall be sized as follows:
- (1) **Determining sizing range.** Select the test hole in the dispersal site with the highest clay content in the sizing range for the chosen dispersal field. The applicable sizing range for each type of dispersal field is as follows:
    - (A) **Conventional subsurface absorption fields.** The sizing range for conventional subsurface absorption fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").
    - (B) **Low pressure dosing fields.** The sizing range for low pressure dosing fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").
    - (C) **ET/A fields.** The sizing range for ET/A fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").
    - (D) **Shallow extended subsurface absorption fields.** The sizing range for shallow extended subsurface absorption fields is the three (3) six-inch intervals between six inches (6") and twenty-four inches (24").
    - (E) **Drip irrigation fields.** The sizing range for drip irrigation fields is the three (3) six-inch intervals between ground level and eighteen inches (18").
    - (F) **Spray irrigation fields.** The sizing range for spray irrigation fields is the three (3) six-inch intervals between ground level and eighteen inches (18").
  - (2) **Identifying soil group in sizing range.** Determine the most prevalent soil group in the sizing range for the test hole selected in (1) of this subsection;
  - (3) **Sizing dispersal field.** Based on the soil group identified in (2) of this subsection, size the dispersal field using the charts in Appendix H, Figures ~~32-4~~ and ~~5-226-19~~; and
  - (4) **Sizing additional dispersal field options.** Repeat (1) through (3) of this subsection for each dispersal field option.
- (h) **Information to be reported.** After completion of the soil profile, the soil profiler shall submit an accurate, completed DEQ Form 641-581SP to the local DEQ office.

## SUBCHAPTER 12. DISPERSAL FIELDS

### 252:641-12-1. General provisions

- (a) **Primary settling.** Prior to being conveyed to a dispersal field, all sewage must first pass through a septic tank or trash tank for primary settling.
- (b) **Delivery method.** All sewage shall be conveyed to the dispersal field through solid pipe, which shall meet the specifications listed in Appendix C.
- (c) **Surface water.** Surface water shall be diverted around or away from the dispersal field.
- (d) **Types of dispersal fields.** The following are the allowed types of dispersal fields:
  - (1) Conventional subsurface absorption fields;
  - (2) Shallow extended subsurface absorption fields;
  - (3) Evapotranspiration/absorption (ET/A) fields;
  - (4) Low pressure dosing fields;

- (5) Drip irrigation fields; and
- (6) Spray irrigation fields.
- (e) **Specifications for storage media.** Storage media shall meet the following requirements:
  - (1) **Storage capacity.** All storage media shall provide a storage capacity of:
    - (A) at least five (5) gallons per linear foot in the bottom ten inches (10") of a twenty-four inch-wide trench in a conventional subsurface absorption field or ET/A field; or
    - (B) at least three and one-half (3-1/2) gallons per linear foot in the bottom six inches (6") of a twenty-four-inch-wide trench in a low pressure dosing field or a shallow extended subsurface absorption field.
  - (2) **Media size.** Storage media shall be one-half to two and one-half inches (1/2" to 2-1/2") in diameter with no more than ten percent (10%) by weight passing through a one-half inch (1/2") screen.
  - (3) **Media with specific gravity of less than 1.0.** If the specific gravity of the storage media is less than 1.0, it shall be bundled with a netting sleeve.
  - (4) **Resistant to degradation.** The storage media shall be non-degradable by septic tank effluent.
  - (5) **Hardness of natural media.** Natural materials (e.g., rock, etc.) used as storage media shall have a Mohs hardness of at least 3.0.
  - (6) **Deflection rate for manufactured media.** Manufactured materials (e.g., glass, plastic, polystyrene, etc.) used as storage media shall have a deflection rate of ten percent (10%) or less when subjected to a minimum of ten (10) psi for ninety-six (96) hours (ASTM D2221-01).
- (f) **Dispersal Systems.** Systems utilized for the treatment of sewage shall meet the following requirements:
  - (1) **Perforated pipe with storage media.** When perforated pipe and storage media are used to disperse and store effluent throughout the trenches, the following requirements shall apply:
    - (A) **Perforated pipe.** The perforated pipe shall:
      - (i) meet the minimum specifications listed in Appendix C;
      - (ii) extend the entire length of the trenches;
      - (iii) be installed in the center of the storage media and the trench.
    - (B) **Storage Media.** The storage media shall:
      - (i) be at least twenty-four inches (24") wide the entire length of the trench;
      - (ii) be level:
        - (I) in each trench; and
        - (II) across the dispersal field, unless installed in trenches of different elevations.
  - (2) **Manufactured Media Systems.** When manufactured media systems are used to disperse and store effluent throughout the trenches, the systems shall:
    - (A) have a minimum exterior width of twenty-two inches (22");
    - (B) have a permeable sidewall interface evenly distributed along the manufactured media system. If the manufactured media system does not meet the storage media minimum height requirement, then the trench shall be backfilled with storage media to the depth required for the dispersal field being installed;
    - (C) has been tested and certified by an ANSI accredited third party certifier as having a minimum load rating of American Association of State Highway and Transportation Officials H-10 with 12 inches of compacted soil cover over the top of the manufactured media system;
    - (D) be fabricated from durable, non-deteriorating materials;
    - (E) extend the entire length of the trenches;
    - (F) be level;

- (i) in each trench; and
- (ii) across the dispersal field, unless installed in trenches of different elevations.

## **252:641-12-2. Conventional subsurface absorption fields**

(a) **Location.** All conventional subsurface absorption fields shall be:

- (1) located in the identified dispersal site; and
- (2) installed more than five feet (5') from the septic tank or aerobic treatment unit.

(b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:

- (1) highest point of the storage media in the conventional subsurface absorption field; or
- (2) highest point of the permeable sidewall openings of a chamber manufactured media system used in the conventional subsurface absorption field.

(c) **Minimum linear length.** All conventional subsurface absorption fields must meet the minimum length requirements set forth in Appendix H, Figures 1-56. An optional reduction of the required minimum length is available as set forth in Appendix H, Figures 3 and 4. A reduction of fifteen (15) percent is established for Net Evaporation Zones 6-8 and a reduction of thirty (30) percent is established for Net Evaporation Zones 9 and 10. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted as part of the overall required length of the conventional subsurface absorption field.

(d) **Trench length limitation.** Conventional subsurface absorption fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe or manufactured media system chambers in any given path.

(e) **Trench spacing.** The trenches in a conventional subsurface absorption field shall be spaced at least eight feet (8') apart, center to center.

(f) **Trench width.** All trenches in a conventional subsurface absorption field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in a conventional subsurface absorption field shall have a uniform depth of at least eighteen inches (18"), and no more than thirty inches (30"). The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in a conventional subsurface absorption field shall contain a zone for the dispersal and storage of effluent with a total depth of at least ten inches (10"), comprised of either perforated pipe and storage media; or chambers a manufactured media system.

~~(1) **Perforated pipe with storage media.** When perforated pipe and storage media are used to disperse and store effluent throughout the trenches, the following requirements shall apply:~~

~~(A) **Perforated pipe.** The perforated pipe shall:~~

- ~~(i) meet the minimum specifications listed in Appendix C.~~
- ~~(ii) extend the entire length of the trenches.~~

~~(B) **Storage Media.** The storage media shall:~~

- ~~(i) be at least ten inches (10") deep and at least twenty-four inches (24") wide the entire length of the trench;~~
- ~~(ii) be installed with at least two inches (2") of storage media above and two inches (2") of storage media below the perforated pipe;~~
- ~~(iii) be level:~~

~~(I) in each trench; and~~

~~(II) across the dispersal field, unless installed in trenches of different elevations.~~

~~(2) **Chambers.** When chambers are used to disperse and store effluent throughout the trenches, the chambers shall:~~

- ~~(A) have a minimum bottom width of twenty-two inches (22");~~
- ~~(B) have a minimum sidewall height of ten inches (10") with the sidewalls having evenly distributed open space. If the sidewall height is less than ten inches (10"), then the trench shall be backfilled with storage media to meet the ten-inch height requirement;~~
- ~~(C) meet the most current IAPMO PS 63 standard;~~
- ~~(D) extend the entire length of the trenches;~~
- ~~(E) be level:~~
  - ~~(i) in each trench; and~~
  - ~~(ii) across the dispersal field, unless installed in trenches of different elevations.~~
- (i) **Retention structure.** Retention structures must be used between trenches of different elevations in conventional subsurface absorption fields. When a retention structure is used:
  - (1) the bottom of the outlet pipe of a retention structure or the bottom of the outlet pipe of a manufactured media system chamber being used as a retention structure shall be ten inches (10") above the trench bottom; and
  - (2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.
- (j) **Backfill.** For conventional subsurface absorption fields:
  - (1) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and
  - (2) the backfill shall consist of at least eight inches (8") of topsoil.
- (k) **Layout examples.** There are examples of conventional subsurface system layouts in Appendix K, Figures 1, 2, and 4; examples of retention and distribution structures in Appendix L; and examples of trench installation in Appendix M, Figures 1 and 2; ~~and examples of chambers installed in trenches in Appendix N.~~

### **252:641-12-3. Shallow extended subsurface absorption fields**

- (a) **Location.** All shallow extended subsurface absorption fields shall be:
  - (1) located in the identified dispersal site; and
  - (2) installed more than five feet (5') from the septic tank or aerobic treatment unit.
- (b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the:
  - (1) highest point of the storage media in the shallow extended subsurface absorption field; or
  - (2) highest point of the permeable sidewall openings of a manufactured media system used chamber in the shallow extended subsurface absorption field.
- (c) **Minimum linear length.** All shallow extended subsurface absorption fields must meet the minimum length requirements set forth in Appendix H, Figures ~~6 and 7~~ and 8. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted as part of the overall required length of the shallow extended subsurface absorption field.
- (d) **Trench length limitation.** Shallow extended subsurface absorption fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe or manufactured media system chambers in any given path.
- (e) **Trench spacing.** The trenches in a shallow extended subsurface absorption field shall be spaced at least eight feet (8') apart, center to center.
- (f) **Trench width.** All trenches in a shallow extended subsurface absorption field shall be twenty-four inches (24") wide.
- (g) **Trench depth.** Each trench in a shallow extended subsurface absorption field shall have a uniform depth of at least fourteen inches (14"), and no more than seventeen inches (17").

bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in a shallow extended subsurface absorption field shall contain a zone for the dispersal and storage of effluent with a total depth of at least six inches (6"), comprised of either perforated pipe and storage media; ~~or chambers~~ a manufactured media system.

~~(1) **Perforated pipe with storage media.** When perforated pipe and storage media are used to disperse and store effluent throughout the trenches, the following requirements shall apply:~~

~~(A) **Perforated pipe.** The perforated pipe shall:~~

~~(i) meet the minimum specifications listed in Appendix C.~~

~~(ii) extend the entire length of the trenches.~~

~~(B) **Storage Media.** The storage media shall:~~

~~(i) be at least six inches (6") deep and at least twenty-four inches (24") wide the entire length of the trench;~~

~~(ii) be installed with at least one inch (1") of storage media above and one inch (1") of storage media below the perforated pipe;~~

~~(iii) be level:~~

~~(I) in each trench; and~~

~~(II) across the dispersal field, unless installed in trenches of different elevations.~~

~~(2) **Chambers.** When chambers are used to disperse and store effluent throughout the trenches, the chambers shall:~~

~~(A) have a minimum bottom width of twenty-two inches (22");~~

~~(B) have a minimum sidewall height of six inches (6") with the sidewalls having evenly distributed open space;~~

~~(C) meet the most current IAPMO PS 63 standard;~~

~~(D) extend the entire length of the trenches;~~

~~(E) be level:~~

~~(i) in each trench; and~~

~~(ii) across the dispersal field, unless installed in trenches of different elevations.~~

(i) **Retention structure.** Retention structures must be used between trenches of different elevations in shallow extended subsurface absorption fields. When a retention structure is used:

(1) the bottom of the outlet pipe of a retention structure or the bottom of the outlet pipe of a manufactured media system ~~chamber~~ being used as a retention structure shall be six inches (6") above the trench bottom; and

(2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.

(j) **Backfill.** For shallow extended subsurface absorption fields:

(1) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and

(2) the backfill shall consist of at least eight inches (8") of topsoil.

#### **252:641-12-4. Low pressure dosing fields**

(a) **Location.** All low pressure dosing fields shall be:

(1) located in the identified dispersal site;

(2) installed more than five feet (5') from the septic tank or aerobic treatment unit; and

(3) preceded by a low pressure dosing tank.

(b) **Header line.** The header pipe (i.e., the pipe between the pump tank and the manifold) shall:

(1) have a diameter the same as the diameter of the outlet of the low pressure dosing pump; and

(2) be no longer than thirty feet (30').

- (c) **Total linear length.** All low pressure dosing fields shall meet the total linear length requirements set forth in Appendix H, Figures 8 and 9 and 10.
- (d) **Trench length.** Each trench in a low pressure dosing field shall be forty feet (40') long.
- (e) **Trench spacing.** The trenches in a low pressure dosing field shall be spaced six feet (6') apart, center to center.
- (f) **Trench width.** All trenches in a low pressure dosing field shall be twenty-four inches (24") wide.
- (g) **Trench depth.** Each trench in a low pressure dosing field shall have a uniform depth of at least fourteen inches (14") and no more than thirty inches (30"). The bottom of the trenches shall be level.
- (h) **Dispersal and storage.** Each trench in a low pressure dosing field shall contain a zone for the dispersal and storage of effluent with a total depth of at least six inches (6"), comprised of low pressuring dosing pipe and storage media or a low pressure dosing pipe and a manufactured media system. Low pressure dosing pipe shall:
- (1) meet the minimum specifications listed in Appendix C;
  - (2) have one-fourth inch (1/4") diameter holes spaced five feet (5') apart the entire length of the pipe;
  - (3) extend the entire length of the trenches; and
  - (4) have all of the joints glued.
- ~~(1) **Low pressure dosing pipe.** Low pressure dosing pipe shall:~~
- ~~(A) meet the minimum specifications listed in Appendix C;~~
  - ~~(B) have one-fourth inch (1/4") diameter holes spaced five feet (5') apart the entire length of the pipe;~~
  - ~~(C) extend the entire length of the trenches; and~~
  - ~~(D) have all of the joints glued.~~
- ~~(2) **Storage media.** The storage media shall:~~
- ~~(A) be at least six inches (6") deep and at least twenty-four inches (24") wide the entire length of the trench;~~
  - ~~(B) be installed with at least two inches (2") of the storage media above and two inches (2") of storage media below the low pressure dosing pipe; and~~
  - ~~(C) be level:~~
    - ~~(i) in each trench; and~~
    - ~~(ii) across the low pressure dosing field.~~
- (i) **Retention structures prohibited.** Retention structures may not be used in low pressure dosing fields.
- (j) **Backfill.** For low pressure dosing fields:
- (1) the depth of the backfill shall be consistent and shall not vary more than four inches (4"); and
  - (2) the backfill shall consist of at least eight inches (8") of topsoil.
- (k) **Layout examples.** There are layout examples located in Appendix K, Figure 3, and Appendix M, Figure 3.

## **252:641-12-5. Evapotranspiration/absorption (ET/A) fields**

- (a) **Location.** All ET/A fields shall be:
- (1) located in the identified dispersal site; and
  - (2) installed more than five feet (5') from the septic tank or aerobic treatment unit.
- (b) **Fall.** Unless a pump is utilized, there shall be a minimum fall of two inches (2") from the bottom of the outlet of the septic tank to the ~~highest point of the storage media in the ET/A field.~~



- (1) highest point of the storage media in the ET/A field; or
- (2) highest point of the permeable sidewall of a manufactured media system used in the ET/A field.

(c) **Minimum linear length.** All ET/A fields must meet the minimum length requirements set forth in Appendix H, Figures ~~10 and 11~~ and 12. If perforated pipe is used between distribution structures and installed in accordance with the trench requirements of this Section, it may be counted as part of the overall required length of the ET/A field.

(d) **Trench length limitation.** ET/A fields shall be constructed so that no sewage flows through more than a total of one hundred fifty linear feet (150') of perforated pipe in any given path.

(e) **Trench spacing.** The trenches in an ET/A field shall be spaced at least eight feet (8') apart, center to center.

(f) **Trench width.** All trenches in an ET/A field shall be twenty-four inches (24") wide.

(g) **Trench depth.** Each trench in an ET/A field shall have a uniform depth of at least eighteen inches (18") and no more than twenty-four inches (24"). The bottom of the trenches shall be level.

(h) **Dispersal and storage.** Each trench in an ET/A field shall contain a zone for the dispersal and storage of effluent with a total depth of at least ten inches (10"), comprised of perforated pipe and storage media or a manufactured media system.

~~(1) **Perforated pipe.** The perforated pipe shall:~~

~~(A) meet the minimum specifications listed in Appendix C; and~~

~~(B) extend the entire length of the trenches.~~

~~—(2) **Storage media.** The storage media used shall:~~

~~(A) be at least ten inches (10") deep and at least twenty four inches (24") wide the entire length of the trench;~~

~~(B) be installed with at least two inches (2") of the storage media above and two inches (2") of storage media below the perforated pipe;~~

~~(C) be level:~~

~~(i) in each trench; and~~

~~(ii) across the ET/A field, unless installed in trenches of different elevations.~~

(i) **Retention structure.** Retention structures must be used between trenches of different elevations in ET/A fields. When a retention structure is used:

(1) the bottom of the outlet pipe of a retention structure shall be ten inches (10") above the trench bottom; and

(2) the line from the outlet of a retention structure to the next distribution point shall be constructed of solid pipe and shall be backfilled with compacted native soil.

(j) **Backfill.** For ET/A fields:

(1) the trenches shall be backfilled with at least six inches (6") of clean sand to within two inches (2") of the ground level;

(2) the sand used to backfill the trenches shall be separated from the storage media by material that allows the flow of water but prevents the flow of sand; and

(3) after a trench is backfilled with sand, two to four inches (2"-4") of sandy loam soil shall be mounded over the trench.

(k) **Layout examples.** There are layout examples located in Appendix K, Figures 1, 2, and 4, Appendix L, and Appendix M, Figure 2.

## **252:641-12-6. Drip irrigation fields**

(a) **Location.** All drip irrigation fields shall be:

(1) preceded by an aerobic treatment unit;

(2) preceded by a filter capable of filtering particles larger than one hundred (100) microns;

and

(3) located in the identified dispersal site.

(b) **Components.** All components used in the drip irrigation field shall be designed and manufactured specifically for use in wastewater treatment systems.

(c) **Pump.** The pump shall:

(1) be set to distribute no more than one fourth (1/4) of the designed daily flow to the drip irrigation pipe during each pumping interval over a twenty-four hour (24) period;

(2) when in operation, maintain a minimum pressure of ten (10) psi and a maximum pressure of forty-five (45) psi throughout the drip irrigation pipe; and

(3) have a high-water alarm set to activate and alert the owner/operator if the pump tank becomes more than one-half (1/2) full.

(d) **Minimum linear length.** All drip irrigation fields shall meet the minimum length requirements set forth in Appendix H, Figure ~~12~~13.

(e) **Drip irrigation pipe.** The pipe used in drip irrigation fields shall be designed and manufactured for the purpose of distributing wastewater and comply with the minimum specifications in Appendix C.

(f) **Installation of pipe.** The pipe used in drip irrigation fields shall be:

(1) installed eight to ten inches (8-10") deep;

(2) installed at least two feet (2') apart, center to center;

(3) installed according to the manufacturer's specifications; and

(4) equipped with emitters spaced:

(A) one foot (1') apart in soil groups 1, 4, and 5; and

(B) two feet (2') apart in soil groups 2, 2a, 3, and 3a.

(g) **Emitters.** The emitters shall be pressure compensating to deliver uniform distribution regardless of the pressure entering the drip line.

(h) **Prevent backflow.** To prevent backflow, at least one (1) vacuum relief valve, located in a valve box lined with gravel, shall be located at the highest point on both the supply manifold and the return manifold.

(i) **Back flush.** There shall be a method to flush the drip irrigation pipe. The flush water shall be returned to the trash tank, aerobic treatment unit or pump tank.

## **252:641-12-7. Spray irrigation fields**

(a) **Location.** All spray irrigation fields shall:

(1) be preceded by an aerobic treatment unit;

(2) be located in the identified dispersal site, when a soil profile test is used to size the irrigation field;

(3) utilize at least two sprinkler heads to disperse the treated effluent; and

(4) be vegetated and landscaped, and/or terraced to prevent runoff.

(b) **Sizing.** The spray irrigation field shall be sized according to Appendix H, Figures ~~13-22~~14-19. When calculating the overall area of the spray irrigation field, areas of overlap may only be counted once.

(c) **Sprinklers.** The sprinklers shall be designed to:

(1) provide uniform distribution of treated effluent over the entire spray irrigation field without misting; and

(2) have a trajectory of no more than fifteen-degrees (15°) to keep the spray stream low to the ground surface.

(d) **Spray irrigation.** The spray irrigation shall be:

(1) adjusted and maintained at a rate to prevent runoff; and

(2) controlled by a timing device to take place daily between 1:00 a.m. and 6:00 a.m.

## **SUBCHAPTER 15. LAGOONS**

### **252:641-15-2. Lagoon design**

(a) **Sizing.** The lagoon shall be designed according to Appendix H, Figures ~~23 and 24~~20 and 21. No lagoon shall have bottom dimensions smaller than ten feet (10') by ten feet (10') or, for round lagoons, have a diameter smaller than fifteen feet (15').

(b) **Uniform shape.** The shape of the lagoon shall be essentially square or round with no islands or peninsulas.

(c) **Total Depth.** The total depth of the lagoon shall be at least seven feet (7').

**APPENDIX H. SIZE CHARTS FOR ON-SITE SEWAGE TREATMENT  
SYSTEMS [REVOKED]**

**APPENDIX H. SIZE CHARTS FOR ON-SITE SEWAGE TREATMENT  
SYSTEMS [NEW]**

**Figure 1. Individual Conventional Subsurface Absorption Fields Designed Using a  
Percolation Test**  
Minimum Trench Length in Feet

Soil Percolation Rate min/inch	NUMBER OF BEDROOMS IN RESIDENCE							
	Two or Fewer		Three		Four		Each Add. Bedroom	
	Gravel	Manufactured Media	Gravel	Manufactured Media	Gravel	Manufactured Media	Gravel	Manufactured Media
<b>0-15</b>	200	160	270	215	340	270	70	55
<b>16-30</b>	310	250	410	330	510	410	100	80
<b>31-45</b>	420	340	560	450	700	560	140	110
<b>46-60</b>	590	470	790	630	990	790	200	160
<b>61-75</b>	770	620	1030	830	1290	1040	260	210
<b>&gt;75</b>	Prohibited							

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 2. Individual Conventional Subsurface Absorption Fields Designed Using a Soil  
Profile Description**  
Minimum Trench Length in Feet

Soil Group	NUMBER OF BEDROOMS IN RESIDENCE							
	Two or Fewer		Three		Four		Each Add. Bedroom	
	Gravel	Manufactured Media	Gravel	Manufactured Media	Gravel	Manufactured Media	Gravel	Manufactured Media
<b>1</b>	Prohibited							
<b>2</b>	160	120	210	160	260	195	50	40
<b>2a</b>	250	190	330	250	410	310	80	60
<b>3</b>	340	255	450	340	550	415	100	75
<b>3a</b>	500	375	665	500	830	625	165	120
<b>4</b>	660	500	880	660	1,100	825	220	160
<b>5</b>	Prohibited							

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 3. Minimum Length Requirements Using a Soil Profile Description (Net Evaporation Zones 6-8) [See Figure 22 in this Appendix]**

Minimum Trench Length in Feet

Soil Group	NUMBER OF BEDROOMS IN RESIDENCE							
	Two or Fewer		Three		Four		Each Add. Bedroom	
	Gravel	Manufactured Media	Gravel	Manufactured Media	Gravel	Manufactured Media	Gravel	Manufactured Media
<b>1</b>	Prohibited							
<b>2</b>	135	120	175	160	220	195	50	40
<b>2a</b>	215	190	280	250	350	310	80	60
<b>3</b>	290	255	380	340	465	415	100	75
<b>3a</b>	425	375	565	500	705	625	165	120
<b>4</b>	560	500	750	660	935	825	220	160
<b>5</b>	Prohibited							

†

These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average. Abit S. 2019: Modeling Soil Treatment Area Requirements for Conventional Septic Systems across a Climate Gradient, Oklahoma State University.

**Figure 4. Minimum Length Requirements Using a Soil Profile Description (Net Evaporation Zones 9-10) [See Figure 22 in this Appendix]**

Minimum Trench Length in Feet

Soil Group	NUMBER OF BEDROOMS IN RESIDENCE							
	Two or Fewer		Three		Four		Each Add. Bedroom	
	Gravel	Manufactured Media	Gravel	Manufactured Media	Gravel	Manufactured Media	Gravel	Manufactured Media
<b>1</b>	Prohibited							
<b>2</b>	115	115	150	150	185	185	50	40
<b>2a</b>	175	175	230	230	290	290	80	60
<b>3</b>	240	240	315	315	385	385	100	75
<b>3a</b>	350	350	465	465	580	580	165	120
<b>4</b>	460	460	620	620	770	770	220	160
<b>5</b>	Prohibited							

†

These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average. Abit S. 2019: Modeling Soil Treatment Area Requirements for Conventional Septic Systems across a Climate Gradient, Oklahoma State University.

**Figure 5. Small Public Conventional Subsurface Absorption Fields Designed Using a Percolation Test**

Minimum Linear Feet Per Gallon per Day

<b>PERCOLATION RATE FOR DISPERSAL SITE</b>	<b>LINEAR FEET PER GALLON PER DAY</b>
0-15 minutes per inch	1.2
16-30 minutes per inch	1.5
31-45 minutes per inch	2
46-60 minutes per inch	2.5
61-75 minutes per inch	3.85
>75 minutes per inch	Prohibited

**Figure 6. Small Public Conventional Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Linear Feet per Gallon per Day

<b>SOIL GROUP</b>	<b>LINEAR FEET PER GALLON PER DAY</b>
<b>1</b>	Prohibited
<b>2</b>	0.8
<b>2a</b>	1.3
<b>3</b>	1.7
<b>3a</b>	2.5
<b>4</b>	3.3
<b>5</b>	Prohibited

**Figure 7. Individual Shallow Extended Subsurface Absorption Fields Designed Using a Soil Profile Description**

SOIL GROUP	Minimum Trench Length in Feet			
	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
<b>1</b>	Prohibited			
<b>2</b>	260	340	420	80
<b>2a</b>	400	530	660	130
<b>3</b>	540	720	900	180
<b>3a</b>	800	1,060	1,320	260
<b>4</b>	1,060	1,410	1,760	350
<b>5</b>	Prohibited			

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 8. Small Public Shallow Extended Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Linear Feet per Gallon per Day	
SOIL GROUP	LINEAR FEET PER GALLON PER DAY
<b>1</b>	Prohibited
<b>2</b>	1.3
<b>2a</b>	2.1
<b>3</b>	2.7
<b>3a</b>	4.0
<b>4</b>	5.3
<b>5</b>	Prohibited

**Figure 9. Individual Low Pressure Dosing Fields Designed Using a Soil Profile Description**  
Total Linear Trench Length in Feet

SOIL GROUP <sup>††</sup>	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Five
<b>1</b>	120	160	200	240
<b>2</b>	160	200	240	280
<b>2a, 3, 3a, 4, &amp; 5</b>	Prohibited			

<sup>†</sup>

These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

<sup>††</sup>

Low pressure dosing fields may be allowed in soil groups 2a, 3, 3a and 4 when designed and approved as an alternative on-site sewage treatment system.

**Figure 10. Small Public Low Pressure Dosing Fields Designed Using a Soil Profile Description**

Total Linear Trench Length in Feet

SOIL GROUP <sup>†</sup>	AVERAGE DAILY FLOW IN GALLONS			
	200	275	350	400 <sup>††</sup>
<b>1</b>	120	160	200	240
<b>2</b>	160	200	240	280
<b>2a, 3, 3a, 4 &amp; 5</b>	Prohibited			

<sup>†</sup>

Low pressure dosing fields may be allowed in soil groups 2a, 3, 3a and 4 when designed and approved as an alternative on-site sewage treatment system.

<sup>††</sup>

Low pressure dosing fields may be allowed for average daily flows over 400 gpd, but they will have to be designed and approved as an alternative on-site sewage treatment system.



**Figure 11. Individual ET/A Fields Designed Using a Soil Profile Description - Soil Group 5 Only**

Minimum Trench Length in Feet

<b>ZONE</b> [See Figure 25 in this Appendix (relating to net evaporation zones)]	<b>NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup></b>			
	<b>Two or Fewer</b>	<b>Three</b>	<b>Four</b>	<b>Each Additional Bedroom</b>
<b>1</b>	2,059	2,745	3,432	686
<b>2</b>	1,872	2,496	3,120	624
<b>3</b>	1,647	2,196	2,745	549
<b>4</b>	1,471	1,961	2,451	490
<b>5</b>	1,373	1,830	2,288	457
<b>6</b>	1,144	1,525	1,907	381
<b>7</b>	958	1,277	1,596	319
<b>8</b>	792	1,056	1,320	264
<b>9</b>	675	900	1,125	225
<b>10</b>	580	773	967	193

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 12. Small Public ET/A Fields Designed Using a Soil Profile Description - Soil Group 5 Only**

Minimum Trench Length in Feet

<b>AVERAGE DAILY FLOW</b> In Gallons	<b>ZONE</b>									
	[See Figure 25 in this Appendix (relating to net evaporation zones)]									
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
<b>25</b>	261	238	209	187	174	145	122	100	86	70
<b>50</b>	522	475	418	373	348	290	243	200	171	141
<b>75</b>	783	712	626	560	522	435	364	300	257	212
<b>100</b>	1,044	949	835	746	696	580	485	401	342	282
<b>200</b>	2,088	1,898	1,670	1,491	1,392	1,160	971	803	684	564
<b>300</b>	3,131	2,847	2,505	2,237	2,088	1,740	1,456	1,204	1,027	846
<b>400</b>	4,175	3,796	3,340	2,982	2,784	2,320	1,942	1,606	1,369	1,128
<b>500</b>	5,219	4,745	4,175	3,728	3,479	2,899	2,427	2,007	1,711	1,411
<b>600</b>	6,263	5,694	5,010	4,473	4,175	3,479	2,913	2,409	2,053	1,693
<b>700</b>	7,307	6,642	5,845	5,219	4,871	4,059	3,398	2,810	2,396	1,975
<b>800</b>	8,351	7,591	6,680	5,965	5,567	4,639	3,884	3,112	2,738	2,257
<b>900</b>	9,394	8,540	7,515	6,710	6,263	5,219	4,369	3,613	3,080	2,539
<b>1,000</b>	10,438	9,489	8,351	7,456	6,959	5,799	4,855	4,015	3,422	2,821
<b>1,100</b>	11,482	10,438	9,186	8,201	7,655	6,379	5,340	4,416	3,765	3,105
<b>1,200</b>	12,526	11,387	10,021	8,947	8,351	6,959	5,826	4,818	4,107	3,385
<b>1,300</b>	13,570	12,336	10,856	9,693	9,046	7,539	6,311	5,219	4,449	3,667
<b>1,400</b>	14,613	13,285	11,691	10,438	9,742	8,119	6,797	5,621	4,791	3,950
<b>1,500</b>	15,657	14,234	12,526	11,184	10,438	8,698	7,282	6,022	5,134	4,232
<b>1,600</b>	16,701	15,183	13,361	11,929	11,134	9,278	7,768	6,423	5,476	4,514
<b>1,700</b>	17,745	16,132	14,196	12,675	11,830	9,858	8,253	6,825	5,818	4,796
<b>1,800</b>	18,789	17,081	15,031	13,420	12,526	10,438	8,739	7,226	6,160	5,078
<b>1,900</b>	19,832	18,030	15,866	14,166	13,222	11,018	9,224	7,628	6,502	5,360
<b>2,000</b>	20,876	18,978	16,701	14,912	13,918	11,598	9,710	8,029	6,845	5,642
<b>2,500</b>	26,095	23,718	20,876	18,640	17,397	14,498	12,138	10,037	8,556	7,053
<b>3,000</b>	31,314	28,458	25,052	22,367	20,876	17,397	14,565	12,044	10,267	8,463
<b>3,500</b>	36,533	33,212	29,227	26,096	24,356	20,296	16,993	14,052	11,978	9,874
<b>4,000</b>	41,753	37,957	33,402	29,823	27,835	23,196	19,420	16,059	13,689	11,284
<b>4,500</b>	46,972	42,702	37,578	33,551	31,314	26,096	21,848	18,066	15,401	12,695
<b>5,000</b>	52,191	47,446	41,573	37,279	34,794	28,995	24,275	20,073	17,112	14,106

**Figure 13. Drip Irrigation Fields Designed Using a Soil Profile Description**  
Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>				Small Public Systems
	Two or Fewer	Three	Four	Each Additional Bedroom	Feet per Gallon per Day
<b>1</b>	125	165	205	40	0.70
<b>2</b>	160	210	260	50	0.80
<b>2a</b>	250	330	410	80	1.3
<b>3</b>	340	450	550	100	1.7
<b>3a</b>	500	665	830	165	2.5
<b>4</b>	660	880	1,100	220	3.3
<b>5</b>	1,000	1,330	1,660	330	5.0

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 14. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 1 and 2** [See Figure 22 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
<b>1</b>	2,920	3,885	4,862	963
<b>2</b>	3,212	4,273	5,348	1,084
<b>2a</b>	3,504	4,662	5,835	1,156
<b>3</b>	3,796	5,050	6,321	1,252
<b>3a</b>	4,088	5,439	6,807	1,348
<b>4</b>	4,380	5,827	7,293	1,445
<b>5</b>	5,840	7,770	9,725	1,927

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 15. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 3** [See Figure 22 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
<b>1</b>	2,335	3,107	3,890	770
<b>2</b>	2,568	3,418	4,279	847
<b>2a</b>	2,802	3,729	4,668	924
<b>3</b>	3,035	4,039	5,057	1,001
<b>3a</b>	3,269	4,350	5,446	1,078
<b>4</b>	3,502	4,661	5,835	1,156
<b>5</b>	4,670	6,215	7,780	1,541

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 16. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–Net Evaporation Zone 4 and 5** [See Figure 22 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
<b>1</b>	1,821	2,428	3,034	607
<b>2</b>	2,003	2,670	3,337	667
<b>2a</b>	2,185	2,913	3,641	728
<b>3</b>	2,367	3,156	3,944	789
<b>3a</b>	2,549	3,399	4,248	850
<b>4</b>	2,731	3,641	4,551	910
<b>5</b>	3,641	4,855	6,068	1,214

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 17. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–  
Net Evaporation Zone 6 and 7** [See Figure 22 in this Appendix (relating to net evaporation  
zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
<b>1</b>	1,324	1,766	2,207	447
<b>2</b>	1,456	1,942	2,427	486
<b>2a</b>	1,589	2,119	2,648	530
<b>3</b>	1,721	2,295	2,868	574
<b>3a</b>	1,854	2,475	3,089	618
<b>4</b>	1,986	2,648	3,310	662
<b>5</b>	2,648	3,531	4,413	883

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 18. Individual Spray Irrigation Fields Designed Using a Soil Profile Description–  
Net Evaporation Zone 8, 9, and 10** [See Figure 22 in this Appendix (relating to net  
evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
<b>1</b>	940	1,253	1,566	313
<b>2</b>	1,033	1,378	1,723	345
<b>2a</b>	1,127	1,504	1,879	377
<b>3</b>	1,221	1,629	2,036	408
<b>3a</b>	1,315	1,754	2,192	430
<b>4</b>	1,409	1,880	2,349	471
<b>5</b>	1,879	2,506	3,132	627

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 19. Small Public Spray Irrigation Fields Designed Using a Soil Profile Description– [See Figure 22 in this Appendix (relating to net evaporation zones)]**

Minimum Spray Irrigation Area in Square Feet per Gallon per day

SOIL GROUP	NET EVAPORATION ZONES				
	1 and 2	3	4 and 5	6 and 7	8,9, and 10
<b>1</b>	15	12	9	7	5
<b>2</b>	16	13	10	7	5
<b>2a</b>	18	14	11	8	6
<b>3</b>	19	15	12	9	6
<b>3a</b>	21	16	13	9	7
<b>4</b>	22	18	14	10	7
<b>5</b>	29	23	18	13	9

**Figure 20. Individual Lagoons**

Length in Feet of Each Side of the Bottom of a Square Individual Lagoon

<b>ZONE</b> [See Figure 25 in this Appendix (relating to net evaporation zones)]	<b>NUMBER OF BEDROOMS IN RESIDENCE<sup>†</sup></b>			
	<b>Two or Fewer</b>	<b>Three</b>	<b>Four</b>	<b>Five</b>
<b>1</b>	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2			
<b>2</b>				
<b>3</b>	40	50	60	65
<b>4</b>	35	45	55	60
<b>5</b>	30	40	50	55
<b>6</b>	25	35	45	50
<b>7</b>	20	30	35	45
<b>8</b>	20	25	30	35
<b>9</b>	15	20	25	30
<b>10</b>	10	15	20	25

Diameter in Feet of the Bottom of a Round Individual Lagoon

<b>ZONE</b> [See Figure 25 in this Appendix (relating to net evaporation zones)]	<b>NUMBER OF BEDROOMS IN RESIDENCE<sup>†</sup></b>			
	<b>Two or Fewer</b>	<b>Three</b>	<b>Four</b>	<b>Five</b>
<b>1</b>	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2			
<b>2</b>				
<b>3</b>	50	60	70	80
<b>4</b>	45	55	65	75
<b>5</b>	40	50	60	70
<b>6</b>	35	45	50	60
<b>7</b>	30	40	45	55
<b>8</b>	25	30	40	45
<b>9</b>	20	30	35	40
<b>10</b>	15	25	30	35

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 21. Small Public Lagoons**

Length in Feet of Each Side of the Bottom of a Square Small Public Lagoon

<b>AVERAGE DAILY FLOW</b> In Gallons	<b>ZONE</b> [See Figure 25 of this Appendix (relating to net evaporation zones)]									
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
<b>100</b>	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2		18	16	14	10	Prohibited			
<b>200</b>			38	35	32	27	22	17	14	11
<b>300</b>			54	49	46	40	34	28	24	20
<b>400</b>			67	61	58	51	44	37	32	27
<b>500</b>			78	72	69	60	52	45	39	34
<b>600</b>			88	82	78	69	60	52	46	40
<b>700</b>			98	91	87	77	68	59	52	46
<b>800</b>			107	99	95	84	74	65	58	51
<b>900</b>			115	107	102	91	81	71	63	56
<b>1,000</b>			123	114	110	97	87	76	68	61
<b>1,100</b>			130	122	116	104	92	81	73	65
<b>1,200</b>			138	128	123	110	98	86	77	69
<b>1,300</b>			144	135	129	115	103	91	82	73
<b>1,400</b>			151	141	135	121	108	95	86	77
<b>1,500</b>			157	147	141	126	113	100	90	81
<b>1,600</b>			163	153	147	131	117	104	94	85
<b>1,700</b>			169	158	152	136	122	108	98	88
<b>1,800</b>			175	164	157	141	126	112	101	92
<b>1,900</b>			181	169	162	146	131	116	105	95
<b>2,000</b>			186	174	167	150	135	120	108	98
<b>2,500</b>			212	198	190	171	154	137	125	114
<b>3,000</b>			235	220	212	191	172	154	140	127
<b>3,500</b>			256	240	231	209	188	168	153	140
<b>4,000</b>			276	259	249	225	203	182	166	151
<b>4,500</b>			295	276	266	240	218	195	178	163
<b>5,000</b>			312	293	282	255	231	207	189	173



Diameter in Feet of the Bottom of a Round Small Public Lagoon

AVERAGE DAILY FLOW In Gallons	ZONE									
	[See Figure 25 of this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
100	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2		25	22	20	15	Prohibited			
200			47	43	40	34	29	23	20	16
300			65	59	56	49	42	35	31	26
400			79	73	70	61	53	45	40	35
500			92	85	81	72	63	54	49	43
600			104	96	92	81	72	62	56	50
700			114	106	102	90	80	69	63	56
800			124	116	111	99	88	76	70	62
900			134	125	119	106	95	82	76	68
1,000			143	133	128	114	102	89	81	73
1,100			151	141	135	121	108	94	87	78
1,200			159	149	143	128	114	100	92	83
1,300			167	156	150	134	120	105	97	88
1,400			174	163	156	140	126	110	102	92
1,500			181	170	163	146	131	115	106	96
1,600			188	176	169	152	136	120	111	100
1,700			195	183	175	158	142	125	115	104
1,800			202	189	181	163	147	129	119	108
1,900			208	195	187	168	151	133	124	112
2,000			214	201	193	173	156	138	128	116
2,500			243	228	219	197	178	157	146	133
3,000			269	252	243	219	198	175	163	149
3,500			293	275	265	239	216	192	178	163
4,000			315	296	285	258	233	207	193	176
4,500			336	316	304	275	249	221	206	189
5,000			356	335	322	292	264	235	219	201

**Figure 22. Net Evaporation Zones**

COUNTY	ZONE	COUNTY	ZONE	COUNTY	ZONE
Adair	1	Grant	9	Nowata	5
Alfalfa	9	Greer	9	Okfuskee	7
Atoka	6	Harmon	9	Oklahoma	8
Beaver	10	Harper	9	Okmulgee	6
Beckham	9	Haskell	4	Osage	7
Blaine	9	Hughes	6	Ottawa	2
Bryan	6	Jackson	9	Pawnee	7
Caddo	9	Jefferson	9	Payne	7
Canadian	9	Johnston	7	Pittsburg	5
Carter	7	Kay	8	Pontotoc	7
Cherokee	3	Kingfisher	9	Pottawatomie	7
Choctaw	4	Kiowa	9	Pushmataha	3
Cimarron	10	Latimer	3	Roger Mills	9
Cleveland	8	LeFlore	1	Rogers	5
Coal	6	Lincoln	7	Seminole	7
Comanche	9	Logan	8	Sequoyah	3
Cotton	9	Love	7	Stephens	8
Craig	4	McClain	8	Texas	10
Creek	7	McCurtain	1	Tillman	9
Custer	9	McIntosh	5	Tulsa	6
Delaware	1	Major	9	Wagoner	5
Dewey	9	Marshall	7	Washington	6
Ellis	9	Mayes	5	Washita	9
Garfield	9	Murray	7	Woods	9
Garvin	8	Muskogee	5	Woodward	9
Grady	9	Noble	8		

**APPENDIX N. EXAMPLES OF CHAMBERS BEING USED FOR STORAGE  
AND DISPERSAL [REVOKED]**

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE  
TREATMENT SYSTEMS**

Before the Water Quality Management Advisory Council on September 29, 2020  
Before the Environmental Quality Board on February 19, 2021

**RULE IMPACT STATEMENT**

Subchapter 1. General Provisions

252:641-1-2 [AMENDED]

Subchapter 3. Soil Test

252:641-3-2 [AMENDED]

252:641-3-4 [AMENDED]

Subchapter 12. Dispersal Fields

252:641-12-1 [AMENDED]

252:641-12-2 [AMENDED]

252:641-12-3 [AMENDED]

252:641-12-4 [AMENDED]

252:641-12-5 [AMENDED]

252:641-12-6 [AMENDED]

252:641-12-7 [AMENDED]

Subchapter 15. Lagoons

252:641-15-2 [AMENDED]

Appendix H. Size Charts for On-site Sewage Treatment Systems [REVOKED]

Appendix H. Size Charts for On-site Sewage Treatment Systems [NEW]

Appendix N. Examples of Chambers being Used for Storage and Dispersal [REVOKED]

**DESCRIPTION:** The Department is proposing to: (1) add or amend definitions relating to chambers, manufactured media systems, and Zone 1; (2) establish sizing reduction guidelines for Conventional Subsurface Absorption systems (including manufactured media systems); (3) amend aerobic system surface application area totals and establish sizing criteria for small public aerobic systems; and (4) address numbering issues for Appendices referenced in rule text.

**CLASSES OF PERSONS AFFECTED:** Classes of persons affected are those property owners that will be utilizing an onsite sewage treatment system and those persons engaged in the installation of onsite sewage treatment systems, and those businesses serving as a distributor of manufactured media systems.

**CLASSES OF PERSONS WHO WILL BEAR COSTS:** There are no anticipated increase to costs associated with the proposed rule changes.

**INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** DEQ has not received any information from other public or private entities concerning the cost impacts of the proposed regulations.

**CLASSES OF PERSONS BENEFITTED:** Current and new property owners will benefit from an increase in the available system options contained in this Chapter with the reduction of the distance associated with Zone 1 Waterbody Protection Area and the reduction in spray application areas for most of Oklahoma.

**PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** The probable economic impact on the affected classes of persons is that the required capital for the construction of on-site sewage treatment system will be reduced based on the amount of property required to meet the proposed sizing requirements when utilizing an aerobic system with spray. The economic impact will vary based on location, but in many cases, it will result in less property that will be required for the installation of the on-site sewage treatment system.

**PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** There was no probable economic impact on political subdivision identified.

**POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** There were not any adverse effects noted relating to small business with these proposed rule changes.

**LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** There are no fee increases associated with these proposed rules.

**PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:** There is no additional cost anticipated with these proposed changes. The benefit to these changes will be the further expansion of allowable systems for large portions of Oklahoma.

**PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** There were no probable cost and benefits to other agencies to implement and enforce with the proposed rule changes.

**SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:** Revenue available for the implementation and enforcement of these proposed rules will come from fees generated from the associated program and from general revenue.

**PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** There is no projected net loss or gain in revenues for DEQ and/or other agencies associated with these proposed changes.

**COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** There is no cooperation of political subdivisions required for the implementation or enforcement of these proposed rule changes.

**EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** There is no anticipated change in the cost for compliance with the proposed rule changes. Stakeholder outreach will be conducted to assist in the implementation of the approved changes prior to implementation.

**DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** There were no other methods identified for implementing the proposed changes.

**DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The proposed rule changes are intended to provide appropriate system installation and reduce the incident of inadequate non-compliant system installation (bootlegged systems). These changes will result in a reduction in the overall impact to the environment due to surfacing sewage.

**IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed rules should significantly reduce the risk that: (a) untreated sewage will surface and cause a public health problem; and (b) untreated sewage will contaminate waters of the State

**DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** Not adopting these changes has the potential to cause an increase in the amount of untreated sewage that may cause a public health problem and impact to ground water and surface water.

**PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** There are no identifiable impacts on business entities associated with these proposed rules.

**THIS RULE IMPACT STATEMENT WAS PREPARED ON:** August 18, 2020 and modified on October 27, 2020.

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE  
TREATMENT SYSTEMS**

**EXECUTIVE SUMMARY:**

The gist of the rule that the Department is proposing is to: (1) add or amend definitions relating to chambers, manufactured media systems, and Zone 1; (2) establish sizing reduction guidelines for Conventional Subsurface Absorption systems (including manufactured media systems); (3) amend aerobic system surface application area totals and establish sizing criteria for small public aerobic systems; and (4) address numbering issues for Appendices referenced in rule text.

**DIFFERENCE FROM ANALOGOUS FEDERAL RULES:**

There are no analogous federal rules.

**ENVIRONMENTAL BENEFIT STATEMENT:**

No Environmental Benefit Statement is required.

**COMMENT PERIOD:**

November 15, 2020 through December 16, 2020

**SUMMARY OF COMMENTS AND RESPONSES:**

No comments were received during the posted period or during the hearing held before the Water Quality Management Advisory Council on January 12, 2021.

**DRAFT MINUTES**  
**WATER QUALITY MANAGEMENT ADVISORY COUNCIL**  
**January 12, 2021**  
**Oklahoma Department of Environmental Quality**  
**Multipurpose Room**  
**Oklahoma City, Oklahoma**

**Official WQMAC**

**To be approved at the May 11, 2021 Meeting**

**Notice of Public Meeting** – The Water Quality Management Advisory Council (WQMAC) convened for a Regular Meeting at 2:00 p.m. at the Oklahoma Department of Environmental Quality (DEQ), 707 North Robinson, Oklahoma City, Oklahoma. The meeting was held in accordance with the Open Meeting Act, with notice of the meeting given to the Secretary of State on November 4, 2020. The agenda was posted at DEQ twenty-four hours prior to the meeting. Mr. Brian Duzan, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

**MEMBERS PRESENT**

Brian Duzan  
Mary Mach  
Mark Matheson  
Rick Moore  
Bill Smith  
Steve Sowers  
Duane Winegardner

**MEMBERS ABSENT**

Robert Carr  
Jon Nelson  
Debbie Wells  
Terry Wyatt

**DEQ STAFF PRESENT**

Shellie Chard  
Karen Steele  
Brian Clagg  
Nicholas Huber  
Mark Hildebrand  
April Eberle  
Michelle Wynn  
Quiana Fields

**OTHERS PRESENT**

Tammie Shipman, Court Reporter

**Approval of Minutes from the September 29, 2020 Meeting** – Mr. Duzan called for a motion to approve the Minutes of the September 29, 2020 Regular Meeting. Mr. Winegardner moved to approve and Mr. Sowers made the second.

	<i>See transcript pages 4 – 5</i>		
Mary Mach	Yes	Steve Sowers	Yes
Mark Matheson	Abstain	Duane Winegardner	Yes
Rick Moore	Yes	Brian Duzan	Yes
Bill Smith	Yes		

**ELECTION OF THE VICE-CHAIR** – Mr. Duzan opened discussion for nominations for Vice-Chair. Mr. Winegardner nominated Mr. Sowers for Vice-Chair and Mr. Duzan made the second.

	<i>See transcript pages 5 – 6</i>		
Mary Mach	Yes	Steve Sowers	Yes
Mark Matheson	Yes	Duane Winegardner	Yes
Rick Moore	Yes	Brian Duzan	Yes
Bill Smith	Yes		



**ELECTION OF THE CHAIR** – Mr. Sowers opened discussion for nominations for Chair. Mr. Sowers nominated Mr. Duzan for Chair and Mr. Winegardner made the second.

*See transcript pages 6 – 7*

Mary Mach	Yes	Steve Sowers	Yes
Mark Matheson	Yes	Duane Winegardner	Yes
Rick Moore	Yes	Brian Duzan	Yes
Bill Smith	Yes		

**PERMANENT RULEMAKING OAC 252:641 – INDIVIDUAL AND SMALL PUBLIC ONSITE SEWAGE TREATMENT SYSTEMS** – Mr. Nicholas Huber, Environmental Programs Manager of the ECLS Division, stated that the DEQ staff will be proposing to make permanent rule changes that are identical to the emergency rulemaking approved at the September 29, 2020, WQMAC meeting and that were subsequently approved at the November 10, 2020, Environmental Quality Board meeting, that include: amend and establish certain definitions, under certain situations allow a reduction of the minimum size of subsurface absorption fields for individual on-site sewage treatment systems, establish sizing criteria for manufactured media systems, and revise and combine the minimum spray area size for aerobic systems, most of which will result in a reduction of overall application areas. Hearing no questions or comments by the Council or by the public, Mr. Duzan called for a motion. Ms. Mach moved to approve the changes and Mr. Smith made the second.

*See transcript pages 7 – 11*

Mary Mach	Yes	Steve Sowers	Yes
Mark Matheson	Yes	Duane Winegardner	Yes
Rick Moore	Yes	Brian Duzan	Yes
Bill Smith	Yes		

**PERMANENT RULEMAKING OAC 252:606 – OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS** – Mr. Brian Clagg, Environmental Programs Manager of the WQD, stated that the DEQ staff will be proposing to: update the rule concerning the date of incorporation by reference of certain federal regulations from July 1, 2018, to July 1, 2020. The federal regulation updates being incorporated are minor and are intended to modernize regulations, promote submission of complete permit applications and clarify regulatory requirements to allow more timely development of NPDES permits that protect human health and the environment. Following questions by the Council and none by the public, Mr. Duzan called for a motion. Mr. Matheson moved to approve and Ms. Mach made the second.

*See transcript pages 11 – 16*

Mary Mach	Yes	Steve Sowers	Yes
Mark Matheson	Yes	Duane Winegardner	Yes
Rick Moore	Yes	Brian Duzan	Yes
Bill Smith	Yes		

**PERMANENT RULEMAKING OAC 252:631 – PUBLIC WATER SUPPLY OPERATION** – Mr. Clagg stated that the DEQ staff will be proposing to: update the rule concerning the date of incorporation by reference of certain federal regulations from January 1, 2017, to July 1, 2020. This allows inclusion of all pertinent CFR parts amended between January 1, 2017 and July 1, 2020, specifically allowing for newly approved alternative testing methods for contaminants listed at 40 CFR 141.21(f)(3) found in Appendix A to Subpart C of

Part 141. Hearing no questions or comments by the Council or by the public, Mr. Duzan called for a motion. Dr. Moore moved to approve and Mr. Smith made the second.

*See transcript pages 16 – 19*

Mary Mach	Yes	Steve Sowers	Yes
Mark Matheson	Yes	Duane Winegardner	Yes
Rick Moore	Yes	Brian Duzan	Yes
Bill Smith	Yes		

**PERMANET RULEMAKING OAC 252:690 – WATER QUALITY STANDARDS IMPLEMENTATION** – Mr. Clagg stated that DEQ staff will be proposing to: update the rule concerning the date of incorporation by reference of certain federal regulations from July 1, 2016, to July 1, 2020. The most significant federal regulation update being incorporated is EPA and the Department of the Army’s redefining and clarifying the scope of “Waters of the United States” federally regulated under the Clean Water Act consistent with the Executive Order signed on February 28, 2017 entitled “The Navigable Waters Protection Rule: Definition of Waters of the United States.” This final rule implements the overall objective of the Clean Water Act and increases the predictability and consistency of Clean Water Act programs. Following questions by the Council and none by the public, Mr. Duzan called for a motion. Mr. Smith moved to approve and Ms. Mach made the second.

*See transcript pages 19 – 22*

Mary Mach	Yes	Steve Sowers	Yes
Mark Matheson	Yes	Duane Winegardner	Yes
Rick Moore	Yes	Brian Duzan	Yes
Bill Smith	Yes		

**DIRECTOR’S REPORT** – Ms. Shellie Chard, Division Director of WQD, provided an update on other division activities.

*See transcript pages 22 – 45*

**NEW BUSINESS** – None

**ANNOUNCEMENTS** – The next scheduled meeting is on Tuesday, May 11, 2021, 2:00 p. m. at DEQ.

**ADJOURNMENT** – Mr. Duzan called for a motion to adjourn. Mr. Sowers moved to adjourn and Mr. Matheson made the second. The meeting was adjourned at 2:55 p.m.

*See transcript pages 45 – 46*

Robert Carr	Yes	Steve Sowers	Yes
Mary Mach	Yes	Debbie Wells	Yes
Mark Matheson	Yes	Duane Winegardner	Yes
Jon Nelson	Yes	Brian Duzan	Yes
Bill Smith	Yes		

**Transcript and Attendance Sheet are attached as an official part of these Minutes.**

DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER QUALITY MANAGEMENT ADVISORY COUNCIL

WATER QUALITY MANAGEMENT ADVISORY COUNCIL MEETING

JANUARY 12, 2021 - 2:00 P.M.

REPORTED BY: TAMMIE SHIPMAN, CSR

<p>Page 2</p> <p>1 COUNCIL MEMBERS PRESENT:</p> <p>2</p> <p>3 MR. BRIAN DUZAN, CHAIRMAN</p> <p>4 MR. STEVE SOWERS, VICE-CHAIRMAN</p> <p>5 MS. MARY MACH</p> <p>6 DR. RICK MOORE</p> <p>7 MR. WILLARD SMITH</p> <p>8 MR. DUANE WINEGARDNER</p> <p>9 MR. MARK MATHESON</p> <p>10 MR. ROBERT CARR - Absent</p> <p>11 MR. JON NELSON - Absent</p> <p>12 MS. DEBBIE WELLS - Absent</p> <p>13 MS. TERRY WYATT - Absent</p> <p>14</p> <p>15 Also Present:</p> <p>16 Ms. Quiana Fields, Secretary of Board and Council</p> <p>17 Mr. Nicholas Huber, On-Site Total Retention Lagoon</p> <p>18 Program Manager</p> <p>19</p> <p>20 Ms. Shellie Chard, Director of Water Quality Division</p> <p>21</p> <p>22 Mr. Brian Clagg, Environmental Programs Manager, Water</p> <p>23 Quality Division</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1 (Meeting called to order at 2:00 p.m.)</p> <p>2 CHAIRMAN DUZAN: This regular meeting</p> <p>3 of the Water Council -- Water Quality Management</p> <p>4 Advisory Council was called in accordance with</p> <p>5 the Open Meeting Act. Notice for this</p> <p>6 January 12th, 2021, regular meeting was filed</p> <p>7 with The Secretary of State on November 4th,</p> <p>8 2020. The agenda was duly posted at DEQ 24</p> <p>9 hours prior to the meeting. Only matters</p> <p>10 appearing on the posted agenda may be considered</p> <p>11 at this regular meeting.</p> <p>12 In the event that this meeting is</p> <p>13 continued or reconvened, public notice of the</p> <p>14 date, time and place of the continued meeting</p> <p>15 will be given by announcement at this meeting.</p> <p>16 Only matters appearing on the agenda of the</p> <p>17 meeting which is continued may be discussed at</p> <p>18 the continued or reconvened meeting.</p> <p>19 I would also like to make an</p> <p>20 announcement, since we're all kind of spread</p> <p>21 out, if the members of the Council can state</p> <p>22 your name before speaking so that they can get</p> <p>23 it all nice and neat on the record.</p> <p>24 So we'll have a roll call for</p> <p>25 attendance.</p>
<p>Page 4</p> <p>1 MS. FIELDS: Mr. Carr is absent.</p> <p>2 Ms. Mach?</p> <p>3 MS. MACH: Present.</p> <p>4 MR. MATHESON: Mr. Matheson?</p> <p>5 MS. FIELDS: Present.</p> <p>6 MS. FIELDS: Dr. Moore?</p> <p>7 DR. MOORE: Here.</p> <p>8 MS. FIELDS: Mr. Nelson is absent.</p> <p>9 Mr. Smith?</p> <p>10 MR. SMITH: Here.</p> <p>11 MS. FIELDS: Mr. Sowers?</p> <p>12 MR. SOWERS: Here.</p> <p>13 MS. FIELDS: Ms. Wells is absent.</p> <p>14 Mr. Winegardner?</p> <p>15 MR. WINEGARDNER: Here.</p> <p>16 MS. FIELDS: Ms. Wyatt is absent.</p> <p>17 Mr. Duzan?</p> <p>18 CHAIRMAN DUZAN: Here.</p> <p>19 MS. FIELDS: We have a quorum.</p> <p>20 CHAIRMAN DUZAN: Okay. The next thing</p> <p>21 is the approval of the minutes from the</p> <p>22 September 29th, 2020, meeting, which I believe</p> <p>23 everybody should have had a chance to look at.</p> <p>24 MR. WINEGARDNER: Make a motion to</p> <p>25 approve.</p>	<p>Page 5</p> <p>1 MR. SOWERS: I'll second that.</p> <p>2 CHAIRMAN DUZAN: Okay.</p> <p>3 MR. SOWERS: And Steve Sower.</p> <p>4 CHAIRMAN DUZAN: We have a motion and a</p> <p>5 second.</p> <p>6 Vote.</p> <p>7 MS. FIELDS: Ms. Mach?</p> <p>8 MS. MACH: Yes.</p> <p>9 MS. FIELDS: Mr. Matheson?</p> <p>10 MR. MATHESON: I abstain. I wasn't</p> <p>11 here at the last meeting.</p> <p>12 MS. FIELDS: Dr. Moore?</p> <p>13 DR. MOORE: Yes.</p> <p>14 MS. FIELDS: Mr. Smith?</p> <p>15 MR. SMITH: Yes.</p> <p>16 MS. FIELDS: Mr. Sowers?</p> <p>17 MR. SOWERS: Yes.</p> <p>18 MS. FIELDS: Mr. Winegardner?</p> <p>19 MR. WINEGARDNER: Yes.</p> <p>20 MS. FIELDS: Mr. Duzan?</p> <p>21 CHAIRMAN DUZAN: Yes.</p> <p>22 MS. FIELDS: Motion passed.</p> <p>23 CHAIRMAN DUZAN: Okay. The next thing</p> <p>24 is the selection of the Vice Chair for 2021. I</p> <p>25 will accept nominations.</p>

<p style="text-align: right;">Page 6</p> <p>1 MR. WINEGARDNER: I would like to 2 nominate Steve Sowers for Vice Chair. 3 CHAIRMAN DUZAN: This is Brian. I'll 4 second. Any other nominations? 5 We'll have a vote. 6 MS. FIELDS: Ms. Mach? 7 MS. MACH: Yes. 8 MS. FIELDS: Mr. Matheson? 9 MR. MATHESON: Yes. 10 MS. FIELDS: Dr. Moore? 11 DR. MOORE: Yes. 12 MS. FIELDS: Mr. Smith? 13 MR. SMITH: Yes. 14 MS. FIELDS: Mr. Sowers? 15 MR. SOWERS: Yes. 16 MS. FIELDS: Mr. Winegardner? 17 MR. WINEGARDNER: Yes. 18 MS. FIELDS: Mr. Duzan? 19 CHAIRMAN DUZAN: Yes. 20 MS. FIELDS: Motion passed. 21 CHAIRMAN DUZAN: Okay. Now I'll turn 22 it over to Steve for the next item, which is the 23 election of the Chair. 24 MR. SOWERS: Do we have any nominations 25 for the Chair position?</p>	<p style="text-align: right;">Page 7</p> <p>1 I would nominate Brian Duzan. 2 MR. WINEGARDNER: I would second that. 3 CHAIRMAN DUZAN: So we'll take a vote. 4 MS. FIELDS: Ms. Mach? 5 MS. MACH: Yes. 6 MS. FIELDS: Mr. Matheson? 7 MR. MATHESON: Yes. 8 MS. FIELDS: Dr. Moore? 9 DR. MOORE: Yes. 10 MS. FIELDS: Mr. Smith? 11 MR. SMITH: Yes. 12 MS. FIELDS: Mr. Sowers? 13 MR. SOWERS: Yes. 14 MS. FIELDS: Mr. Winegardner? 15 MR. WINEGARDNER: Yes. 16 MS. FIELDS: Mr. Duzan? 17 CHAIRMAN DUZAN: Yes. 18 MS. FIELDS: Motion passed. 19 CHAIRMAN DUZAN: Okay. The next big 20 thing on the agenda is Number 6, Permanent 21 Rulemaking, 252:641, Individual and Small Public 22 Onsite Sewage Treatment Systems. And we have a 23 presentation from Nicholas Huber of the DEQ. 24 MR. HUBER: Yes. Hello. It's nice to 25 see everybody. I think I prefer this type of</p>
<p style="text-align: right;">Page 8</p> <p>1 meeting than the Zoom meeting we had. 2 As Brian just mentioned, my name is 3 Nicholas Huber, the On-site and total Retention 4 Program Manager for Environmental Complaints and 5 Local Services Division. Today I'll be talking 6 to the Council about changes to Chapter 641. 7 These changes were initially presented 8 as emergency rules, at the September 29th, 2020, 9 Water Quality Management Advisory Council 10 Meeting. The Water Quality Board approved -- 11 provided their approval of this action in -- at 12 the November 10th, 2020, meeting. We received 13 notice from the Governor's office approving 14 these emergency actions dated January 4th, 2021, 15 making the changes effective. 16 This action is required to replace the 17 emergency rules that will expire the 14th of 18 September, 2021. This version has been updated 19 to reflect listed changes on the red-marked 20 pages that were provided by the office of 21 Administrative Rules. The noted changes address 22 formatting issues that were found in Subchapter 23 12-4. No additional changes have been made to 24 this chapter that were seen in the September 25 2020.</p>	<p style="text-align: right;">Page 9</p> <p>1 Throughout this process we continue to 2 rely on our stakeholders to assist in the 3 revision of Chapter 641 by including significant 4 contributions by many of the certified 5 installers in Oklahoma, along with industry 6 professionals in manufacturing. 7 Three virtual outreach meetings were 8 held during the end of August and beginning of 9 September to solicit comments. As part of this 10 permanent rulemaking process, a public comment 11 hearing was held from November 15th to 12 December 16th, 2020. 13 Two virtual meetings were held during 14 this posted public comment period to provide 15 another opportunity to solicit input concerning 16 the proposed amendments. No comments were 17 received during those meetings or during the 18 comment period. This revision, as we discussed 19 at the September meeting, includes changes to 20 definitions, expansion of dispersal system 21 requirements, the addition of an optional 22 reduction for conventional subsurface absorption 23 systems, and changes to sizing criteria 24 contained in Appendix H of the chapter. 25 If there are questions, I'll take them</p>

<p style="text-align: right;">Page 10</p> <p>1 at this time.</p> <p>2 CHAIRMAN DUZAN: Any questions from the</p> <p>3 Council?</p> <p>4 Are there any questions from the</p> <p>5 public?</p> <p>6 Okay. I guess we can -- if there's no</p> <p>7 questions or comments, we can entertain a</p> <p>8 motion.</p> <p>9 MS. MACH: This is Mary Elizabeth Mach.</p> <p>10 I make a motion to approve the changes.</p> <p>11 MR. SMITH: This is Bill Smith. I</p> <p>12 second.</p> <p>13 CHAIRMAN DUZAN: Okay. Vote.</p> <p>14 MS. FIELDS: Ms. Mach?</p> <p>15 MS. MACH: Yes.</p> <p>16 MS. FIELDS: Mr. Matheson?</p> <p>17 MR. MATHESON: Yes.</p> <p>18 MS. FIELDS: Dr. Moore?</p> <p>19 DR. MOORE: Yes.</p> <p>20 MS. FIELDS: Mr. Smith?</p> <p>21 MR. SMITH: Yes.</p> <p>22 MS. FIELDS: Mr. Sowers?</p> <p>23 MR. SOWERS: Yes.</p> <p>24 MS. FIELDS: Mr. Winegardner?</p> <p>25 MR. WINEGARDNER: Yes.</p>	<p style="text-align: right;">Page 11</p> <p>1 MS. FIELDS: Mr. Duzan?</p> <p>2 CHAIRMAN DUZAN: Yes.</p> <p>3 MS. FIELDS: Motion passed.</p> <p>4 CHAIRMAN DUZAN: Seems like we've went</p> <p>5 over that enough by now.</p> <p>6 The next thing is Number 7, Permanent</p> <p>7 Rulemaking to OAC 252:606, The Oklahoma</p> <p>8 Pollutant Discharge Elimination System, OPDES</p> <p>9 standards. For this, we have a presentation</p> <p>10 from Brian Clagg from the DEQ.</p> <p>11 MR. CLAGG: All right. Good -- can you</p> <p>12 all hear me?</p> <p>13 (Inaudible conversation.)</p> <p>14 MR. CLAGG: Okay. Thank you. All</p> <p>15 right. Good afternoon. I'm Brian Clagg, and</p> <p>16 I'm an environmental programs manager for the</p> <p>17 Water Quality Division here at DEQ. As</p> <p>18 discussed at the September 29th, 2020, Water</p> <p>19 Quality Management Advisory Council Meeting, the</p> <p>20 department is proposing to update the</p> <p>21 incorporation by reference date of federal</p> <p>22 regulations for three of our chapters.</p> <p>23 It is necessary that we update these as</p> <p>24 part of our delegation agreement with EPA. We</p> <p>25 have identified three that need to be updated.</p>
<p style="text-align: right;">Page 12</p> <p>1 These are Chapter 606, The Oklahoma Pollutant</p> <p>2 Discharge Elimination System Standards; Chapter</p> <p>3 631, Public Water Supply Operation; and Chapter</p> <p>4 690, Water Quality Standards Implementation.</p> <p>5 So I will go through each of these</p> <p>6 individually. I would also like to note that we</p> <p>7 did hold two informal public meetings regarding</p> <p>8 these proposed updates. They were virtual, and</p> <p>9 the first was on November 18th and the second on</p> <p>10 November 20th. The DEQ has not received any</p> <p>11 written comments regarding the proposed updates</p> <p>12 to these rules.</p> <p>13 So I will begin with Chapter 606. This</p> <p>14 is our chapter of rules that implement The</p> <p>15 Oklahoma Pollutant Discharge Elimination System</p> <p>16 Act. Your materials include copies of the rule</p> <p>17 text change, notice of the rulemaking intent,</p> <p>18 and rule impact statement. In looking at those,</p> <p>19 the text shows that we are proposing to update</p> <p>20 the incorporation by reference date from</p> <p>21 July 1st, 2018, to July 1st, 2020.</p> <p>22 Following the texts it denotes the</p> <p>23 Rulemaking Intent. In the summary of the NRI it</p> <p>24 notes: The federal regulation updates being</p> <p>25 incorporated are minor and are intended to</p>	<p style="text-align: right;">Page 13</p> <p>1 modernize regulations, promote submission of</p> <p>2 complete permit applications, and clarifies</p> <p>3 regulatory requirements to allow more timely</p> <p>4 development of NPDES permits that protect human</p> <p>5 health and the environment.</p> <p>6 Modernize is the keyword here. These</p> <p>7 changes include updating contact information</p> <p>8 such as web addresses for electronic databases.</p> <p>9 It makes current several references that were</p> <p>10 outdated. It includes changes to permit</p> <p>11 applications to require e-mail addresses and</p> <p>12 requires facilities to indicate if they use</p> <p>13 cooling water, and, if so, the source, and if</p> <p>14 they are requesting certain variances. And as</p> <p>15 it relates to public notice, it allows for</p> <p>16 public website posting in lieu of newspaper</p> <p>17 publication.</p> <p>18 Lastly, in your materials is the Rule</p> <p>19 Impact Statement. We do not anticipate these</p> <p>20 updates to have any economic impact on the</p> <p>21 regulated facilities, as these are minor</p> <p>22 regulatory changes directed at updating</p> <p>23 requirements and improving the permitting</p> <p>24 process.</p> <p>25 So that concludes my presentation on</p>

<p style="text-align: right;">Page 14</p> <p>1 Chapter 606.</p> <p>2 CHAIRMAN DUZAN: Okay. Questions or</p> <p>3 comments from the Council?</p> <p>4 MS. MACH: This is Mary Elizabeth, and</p> <p>5 I actually do have a question. And it will be</p> <p>6 the same for all three of these proposed rule</p> <p>7 changes.</p> <p>8 It states that there's a date -- you</p> <p>9 know, the date of July 30, 2020, is -- and this</p> <p>10 might go back to a question that I had asked</p> <p>11 Director Chard at the last meeting. Can we</p> <p>12 not -- again, if this is a silly question, just</p> <p>13 let me know.</p> <p>14 Why can we not just say the -- can we</p> <p>15 adopt the most current CFR instead of putting a</p> <p>16 date? And so each time that that CFR changes</p> <p>17 you have to go through this process; is that</p> <p>18 correct?</p> <p>19 MS CHARD: So this is Shellie Chard,</p> <p>20 Water Quality Division Director. And the answer</p> <p>21 is, it's a legal issue. We can't incorporate by</p> <p>22 reference something that we don't know what it</p> <p>23 is as we sit here, and have a public meeting to</p> <p>24 discuss. So we are updating what essentially</p> <p>25 becomes almost a year behind, but that is a</p>	<p style="text-align: right;">Page 15</p> <p>1 legal process that we have to follow.</p> <p>2 MS. MACH: Just a legal --</p> <p>3 MS. CHARD: It -- we cannot adopt</p> <p>4 something that has not been presented.</p> <p>5 MS. MACH: Sure.</p> <p>6 MS. CHARD: And the end effect is</p> <p>7 federal law.</p> <p>8 MS. MACH: Okay. Thank you.</p> <p>9 MS. CHARD: You're welcome.</p> <p>10 CHAIRMAN DUZAN: Any other questions or</p> <p>11 comments from the Council?</p> <p>12 Questions or comments from the public?</p> <p>13 Okay. Being no questions or comments,</p> <p>14 we'll entertain a motion.</p> <p>15 MR. MATHESON: I'll make a motion to</p> <p>16 approve. This is Mark Matheson.</p> <p>17 MS. MACH: Mary Elizabeth Mach. I</p> <p>18 second that motion.</p> <p>19 CHAIRMAN DUZAN: Okay. We'll have a</p> <p>20 vote.</p> <p>21 MS. FIELDS: Ms. Mach?</p> <p>22 MS. MACH: Yes.</p> <p>23 MS. FIELDS: Mr. Matheson?</p> <p>24 MR. MATHESON: Yes.</p> <p>25 MS. FIELDS: Dr. Moore?</p>
<p style="text-align: right;">Page 16</p> <p>1 DR. MOORE: Yes.</p> <p>2 MS. FIELDS: Mr. Smith?</p> <p>3 MR. SMITH: Yes.</p> <p>4 MS. FIELDS: Mr. Sowers?</p> <p>5 MR. SOWERS: Yes.</p> <p>6 MS. FIELDS: Mr. Widegardner?</p> <p>7 MR. WIDEGARDNER: Yes.</p> <p>8 MS. FIELDS: Mr. Duzan?</p> <p>9 CHAIRMAN DUZAN: Yes.</p> <p>10 MS. FIELDS: Motion passed.</p> <p>11 CHAIRMAN DUZAN: Okay. Moving onto</p> <p>12 252:631, Public Water Supply Operation. Again,</p> <p>13 Brian Clagg.</p> <p>14 MR. CLAGG: Yes. This is Chapter 631.</p> <p>15 It's our Public Water Supply Operation Rule.</p> <p>16 The rule text in the material shows that we are</p> <p>17 proposing to update the incorporation by</p> <p>18 reference date of January 1st, 2017 to July 1st,</p> <p>19 2020. The summary section of the Notice of</p> <p>20 Rulemaking Intent states that this will, "Allow</p> <p>21 for inclusion of all pertinent CFR parts amended</p> <p>22 between July 1st of 2017, and July 1st of 2020,</p> <p>23 specifically allowing for newly approved</p> <p>24 alternative testing methods for contaminants</p> <p>25 listed at 40 CFR, part 141."</p>	<p style="text-align: right;">Page 17</p> <p>1 Now, I need to note here that there was</p> <p>2 a scrivener error that we discovered in the</p> <p>3 summary section of the Notice of Rulemaking</p> <p>4 Intent. It incorrectly states the month of</p> <p>5 July 2017 instead of January 2017 as the</p> <p>6 incorporation from date. So from advice from</p> <p>7 counsel, the notice was drafted clarifying the</p> <p>8 scrivener error. It is in your materials.</p> <p>9 Should be right behind the Notice of Rulemaking</p> <p>10 Intent. And this notice is also posted on our</p> <p>11 website where all of the other materials related</p> <p>12 to this meeting are posted.</p> <p>13 So moving on to the updates. When EPA</p> <p>14 determines that an alternative political method</p> <p>15 is equally effective, for example, is as</p> <p>16 effective as the method that has already been</p> <p>17 promulgated in the regulations, then the Safe</p> <p>18 Drinking Water Act allows EPA to approve the use</p> <p>19 of the alternative testing method through</p> <p>20 publication of the federal register. In this</p> <p>21 case about 100 alternative testing methods were</p> <p>22 added to Appendix A to Subpart C of Part 141.</p> <p>23 So the last thing in your materials is</p> <p>24 the Rule Impact Statement. We don't anticipate</p> <p>25 increase in costs as a result of these changes.</p>

<p style="text-align: right;">Page 18</p> <p>1 They do provide potential benefit to 2 laboratories and the regulated community in 3 having more approved testing methods available 4 to them. And that concludes the presentation on 5 Chapter 631. 6 CHAIRMAN DUZAN: Questions or comments 7 from the Council? 8 Questions or comments from the public? 9 And then we'll entertain a motion. 10 DR. MOORE: Rick Moore, and I'd like to 11 make that motion to approve. 12 MR. SMITH: Bill Smith. Second. 13 CHAIRMAN DUZAN: We'll have a vote. 14 MS. FIELDS: Ms. Mach? 15 MS. MACH: Yes. 16 MS. FIELDS: Mr. Matheson? 17 MR. MATHESON: Yes. 18 MS. FIELDS: Dr. Moore? 19 DR. MOORE: Yes. 20 MS. FIELDS: Mr. Smith? 21 MR. SMITH: Yes. 22 MS. FIELDS: Mr. Sowers? 23 MR. SOWERS: Yes. 24 MS. FIELDS: Mr. Winegardner? 25 MR. WINEGARDNER: Yes.</p>	<p style="text-align: right;">Page 19</p> <p>1 MS. FIELDS: Mr. Duzan? 2 CHAIRMAN DUZAN: Yes. 3 MS. FIELDS: Motion passed. 4 CHAIRMAN DUZAN: Okay. Now onto 5 252:690, Water Quality Standards Implementation. 6 Again, Brian Clagg. 7 MR. CLAGG: All right. Regarding this 8 one, the rule text in your materials shows that 9 we are proposing to update the incorporation by 10 reference date from July 1st, 2016 to July 1st, 11 2020. The summary section of the Notice of 12 Rulemaking Intent states, "The most significant 13 federal regulation update being incorporated is 14 EPA and the Department of the Army's redefining 15 and clarifying the scope of waters of the United 16 States federally regulated under The Clean Water 17 Act consistent with the executive order signed 18 on February 28th, 2017, and entitled The 19 Navigable Waters Protection Rule, definition of 20 Waters of the United States." 21 So, basically, this final rule 22 implements the overall objective of the Clean 23 Water Act and improves the predicability and 24 consistency of the Clean Water Act program. 25 Lastly, in your materials is the rule impact</p>
<p style="text-align: right;">Page 20</p> <p>1 statement: We do not anticipate much, if any, 2 effect as this relates to our permitting 3 processes. Oklahoma has its own definition of 4 waters of the state, as I'm sure most of you are 5 aware. 6 That concludes my presentation on 7 Chapter 690. Thank you. 8 CHAIRMAN DUZAN: Questions or comments 9 from the Council? 10 MR. SMITH: Bill Smith. I have a 11 question. 12 If, because this was ruled back by an 13 Executive Order by President Trump, if, when the 14 new administration comes in and it's, I'm going 15 to say, reimplemented or changed in some other 16 way, then we would have to go back through and 17 do this again in a new update each time; is that 18 correct? 19 MR. CLAGG: I believe that would be -- 20 MR. SMITH: The Oklahoma statute is 21 subservient to the federal standard, although it 22 could be more restrictive; is that right? 23 MS. CHARD: This is Shellie Chard, 24 Water Quality Division Director. So if there is 25 a rule change, we would have to update our rule.</p>	<p style="text-align: right;">Page 21</p> <p>1 In this particular set of rules, the state 2 definition is more broad and encompasses more 3 types of water bodies. So we are more 4 restrictive than the federal, which is allowed. 5 If we were less restrictive than the federal at 6 any given time, then we would have to 7 immediately undertake rulemaking. So in this 8 case, our state definition gives us what we need 9 to continue to implement the plan while we would 10 undergo any rulemaking that was needed. 11 CHAIRMAN DUZAN: Okay. Any other 12 questions or comments from the Council? 13 Questions or comments from the public? 14 I will entertain any motion. 15 MR. SMITH: This is Bill Smith. I make 16 a motion. 17 MS. MACH: Mary Elizabeth Mach. I 18 second that motion. 19 CHAIRMAN DUZAN: We'll have a vote. 20 MS. FIELDS: Ms. Mach? 21 MS. MACH: Yes. 22 MS. FIELDS: Mr. Matheson? 23 MR. MATHESON: Yes. 24 MS. FIELDS: Dr. Moore? 25 DR. MOORE: Yes.</p>



<p style="text-align: right;">Page 22</p> <p>1 MS. FIELDS: Mr. Smith?</p> <p>2 MR. SMITH: Yes.</p> <p>3 MS. FIELDS: Mr. Sowers?</p> <p>4 MR. SOWERS: Yes.</p> <p>5 MS. FIELDS: Mr. Winegardner?</p> <p>6 MR. WIDEGARDNER: Yes.</p> <p>7 MS. FIELDS: Mr. Duzan?</p> <p>8 CHAIRMAN DUZAN: Yes.</p> <p>9 MS. FIELDS: Motion passed.</p> <p>10 CHAIRMAN DUZAN: Okay. Thanks, Brian.</p> <p>11 Next on the list is the director's</p> <p>12 report.</p> <p>13 Shellie.</p> <p>14 MS. CHARD: Okay. Thank you all so</p> <p>15 much for being here with us today. It's nice to</p> <p>16 see you in person instead of just seeing a</p> <p>17 little square of you. It's going to continue to</p> <p>18 be interesting and fascinating as we navigate</p> <p>19 whatever our new normal looks like and feels</p> <p>20 like.</p> <p>21 And I feel like I'm kind of trying to</p> <p>22 see everybody, and it's a little bit harder with</p> <p>23 us arranged this way. So I'm not ignoring those</p> <p>24 of you (inaudible).</p> <p>25 So a couple of things that I wanted to</p>	<p style="text-align: right;">Page 23</p> <p>1 start out with are internal to the agency and to</p> <p>2 Water Quality. I'm sure many of you have heard</p> <p>3 Terry Lyhane, my assistant director over the</p> <p>4 last several years, retired. And I'm happy to</p> <p>5 announce Karen Steele, who was our wastewater</p> <p>6 manager for all of our wastewater compliance</p> <p>7 permitting and enforcement services.</p> <p>8 So, Karen, waive to everybody.</p> <p>9 So hopefully many of you are --</p> <p>10 (Applauding begins.)</p> <p>11 MS. CHARD: Yes. We're very excited.</p> <p>12 Very excited to have Karen in her new role .</p> <p>13 Also departing through retirement,</p> <p>14 Chris Wisniewski had worked for the agency for</p> <p>15 40 years when he retired from the manager of our</p> <p>16 operators' certification program. That is a</p> <p>17 position that, because of budget and because of</p> <p>18 the way retirement is calculated, and some of</p> <p>19 the vacation time payout and those types of</p> <p>20 things, that's a position that we will have</p> <p>21 vacant for at least a few months.</p> <p>22 We do have some really good staff and a</p> <p>23 senior manager who will be taking on some of</p> <p>24 those responsibilities, and we're continuing to</p> <p>25 work with our partners to develop online</p>
<p style="text-align: right;">Page 24</p> <p>1 training and some different types of training</p> <p>2 that maybe we've had in the past, so there will</p> <p>3 continue to be changes there. But for those of</p> <p>4 you accustom to contacting Chris any time you</p> <p>5 have operator certification questions, for now</p> <p>6 David Pruitt is your contact and he'll be able</p> <p>7 to get with the staff and get whatever that you</p> <p>8 need done.</p> <p>9 We also have had a change in our</p> <p>10 supervising attorney for Water. April, she was</p> <p>11 already on staff with DEQ. She was one of our</p> <p>12 staff attorneys, so she is moving into that</p> <p>13 role. Betsey Streuli is still with the agency.</p> <p>14 She's taking on some more of the legal research</p> <p>15 aspects of the program.</p> <p>16 If you haven't noticed, water's a big</p> <p>17 deal across the country with EPA. And there's</p> <p>18 so many things flying at us fast and furious,</p> <p>19 that she's going to be spending her time trying</p> <p>20 to keep that under control and keep us up to</p> <p>21 date and informed on what we need to know on</p> <p>22 some of these new and changing program</p> <p>23 requirements.</p> <p>24 We also are in the process -- since</p> <p>25 Karen has moved into her new role, that created</p>	<p style="text-align: right;">Page 25</p> <p>1 a gap in our wastewater program. And we have</p> <p>2 undertaken kind of a slow, deliberate look at</p> <p>3 how we might move forward. We don't want to</p> <p>4 just replace a position, because we've always</p> <p>5 had one, we should keep having one. So we are</p> <p>6 going to be doing a little bit of reorganization</p> <p>7 within the division in order to kind of divide</p> <p>8 things a little bit differently, be a little</p> <p>9 more efficient. We think it will be a really</p> <p>10 good use of our resources. And as we are</p> <p>11 looking at potential budget cuts or certainly</p> <p>12 budget impacts on the state and the federal</p> <p>13 level, where we can be more efficient and where</p> <p>14 we can kind of divide and conquer in a new way.</p> <p>15 Sometimes that's what we need to do.</p> <p>16 We're not quite ready to announce that.</p> <p>17 We're waiting on a couple of more pieces to fall</p> <p>18 into place, but before the end of the month we</p> <p>19 will have that reorganization completed. Your</p> <p>20 key staff people will still be here. Most of</p> <p>21 the managers will still be here unless they</p> <p>22 retire, and so we will -- may see a few changes,</p> <p>23 but we think it's going to be great for the</p> <p>24 division and improve some efficiency.</p> <p>25 Budget, you know, it's January. We</p>

<p style="text-align: right;">Page 26</p> <p>1 start talking about that. The Governor's budget 2 will be released in his budget book soon. The 3 legislature will be in session in a couple of 4 weeks.</p> <p>5 I don't know, you may have heard, a 6 pandemic's going on. It has an economic effect 7 for the state and for the federal government. 8 We've also had oil and gas adventures. Those 9 come and they go, but they definitely leave a 10 mark on the State budget when they do. So we 11 don't really know for sure how that's going to 12 impact us, but we are quite sure that the 13 potential for budget cuts is out there, either 14 from the state funding, federal funding, 15 combination of both.</p> <p>16 And, of course, many of our programs 17 are fee funded based on permits, construction, 18 those types of things. So we are watching that 19 very closely and being very mindful when we fill 20 positions, if we anticipate that we would have 21 the funding for that to continue on long term. 22 So that's something we'll be watching and will 23 report back to you at the next meeting.</p> <p>24 Some good news, the Water Quality 25 Division did win the EPA Data Quality Award this</p>	<p style="text-align: right;">Page 27</p> <p>1 past quarter, I believe is when that was 2 awarded. Based on the amount of data that we 3 received, that we enter, that we have to QA/QC, 4 that goes into the federal system and then is 5 released publicly. And we have a long history 6 of having very good data and very reliable data, 7 and so we thought that was a great recognition 8 for that staff that are so, oftentimes, out of 9 sight, out of mind.</p> <p>10 We also had a drinking water state 11 revolving fund project that was awarded the 12 Aquarius Award by EPA. That is an award for 13 innovation for drinking water projects, and this 14 was the award for innovative partnership. There 15 are only five awards, one in each category that 16 are given each year, so we had one of the top 17 five projects in the country.</p> <p>18 There were five honorable mentions. 19 Texas had one of those. So Region 6 was well 20 represented on those projects. But that's a 21 great consolidation, regionalization, however 22 you want to call it, that basically brought 23 together a lot of small drinking water systems 24 that were struggling to comply with Safe 25 Drinking Water Act standards.</p>
<p style="text-align: right;">Page 28</p> <p>1 We were able to put together a great 2 funding package involving the Cherokee Nation, 3 the Water Board Financial Assistance Program, 4 USDA Rural Development, I believe the Indian 5 Health Service may have -- I know they were at 6 the table. I don't know how much money they 7 contributed. But it was a great opportunity for 8 us to work with those assistants and our funding 9 partners and provide safe drinking water in that 10 part of the state.</p> <p>11 So now some more regulatory news, 12 which, you know, nobody ever views as good news, 13 but it is news. Just in the last few weeks 14 we've had three pretty big rules that have been 15 released by EPA. One of them was very quietly 16 done. In fact, most of the states have not 17 heard of it until it was published, and it 18 relates to NPDES criminal statutes and what 19 constitutes an environmental crime in the Clean 20 Water Act.</p> <p>21 It doesn't get into the details, but 22 this rule does clarify some information for 23 state programs that -- clarifying that they do 24 not have to match exactly with the federal. 25 There's a lot of confusion about that, and some</p>	<p style="text-align: right;">Page 29</p> <p>1 being charged and some not being charged because 2 of subtle differences. So that's out there. I 3 don't know that it has any real impact. But 4 sometimes our consultants or lawyers see the 5 title, and it usually results in quite a few 6 phone calls. So that one's out there.</p> <p>7 There was guidance released on the Maui 8 Supreme Court case. That was a case that was 9 the Hawaii Wildlife Fund vs. the County of Maui. 10 That ruling essentially said in that case, 11 although it -- Maui did have an underground 12 injection control permit, they should have also 13 had a NPDES permit.</p> <p>14 It's kind of interesting in that 15 discharges to groundwater are typically not 16 permitted under the Clean Water Act. Those are 17 typically state permits only. And in this case 18 it was a little bit unusual in that -- you know, 19 I'm not a lawyer, but -- this isn't my 20 jurisdiction, so I get to play one a little bit 21 here and there. To me this should have been an 22 enforcement case, not you need a permit.</p> <p>23 You know, if I were in charge of the 24 world I would have said, No, you need to 25 properly operate and maintain your UIC permit.</p>

<p style="text-align: right;">Page 30</p> <p>1 However, that was not the decision that was 2 made. It did state that there was a functional 3 equivalent to a discharge to waters of the US. 4 That is a new term. We have not had "functional 5 equivalent" before. 6 EPA has acknowledged in their guidance 7 that there's going to be more uncertainty, 8 because we don't really know everything that is 9 functionally equivalent. 10 There are two other types of cases that 11 are similar, that will likely cause EPA to do 12 other guidance or update this guidance. Those 13 are results from leaking coal ash ponds, in 14 Tennessee primarily. And the lawsuit was 15 brought saying they should have a NPDES permit 16 because they were leaking a waste from the 17 bottom of those ponds into groundwater. So that 18 was a point source. 19 There's also been cases related to the 20 leaking of pipelines. And since that was a 21 leak, that should be a point source and, 22 therefore, should be required to be permitted. 23 There's a strong contingency that says elicit 24 discharges should not be permitted. They should 25 be what they are, a violation in and of itself,</p>	<p style="text-align: right;">Page 31</p> <p>1 and repaired, stopped. 2 I have no earthly idea where this whole 3 issue will end up. EPA has talked in their 4 guidance about this new functional equivalency. 5 They've also talked about how it's going to be 6 case by case that the design of the treatment 7 units -- and if there is some form of natural 8 attenuation that occurs, all of that should play 9 into whether or not a point or discharge permit 10 should be issued for something that goes into 11 state regulated groundwater. 12 I tell you that so you know it's out 13 there. We will be hearing more about it. 14 Certainly as the other cases make their way 15 through the court system, to see what happens, 16 but it's just -- stay tuned. We don't really 17 know for sure where that's going to go. 18 In Oklahoma we do have groundwater 19 water quality standards. We also have an 20 aquifer storage and recovery set of rules and 21 program. There's some that would question, 22 okay, does that now meet this functional 23 equivalent? Does it not? Is it really just a 24 UIC situation? We have one project that is a 25 little questionable, which side of the fence it</p>
<p style="text-align: right;">Page 32</p> <p>1 falls. So that's something we'll be watching 2 and trying to figure out over the next few 3 months. 4 We have new PFAS discharge permits 5 guidance from EPA. The PFAS compounds, if you 6 remember, those are the per and poly fluoral 7 alkyl substances. We hear most about it on the 8 drinking water side and in the remediation 9 cleanup sites. 10 EPA now has released guidance that 11 is -- right now applies specifically to any 12 NPDES permit that EPA issues. Right now, in 13 Oklahoma, they would only issue permits that are 14 on tribal trust land, or if, for some reason, 15 they had over filed or retained jurisdiction, 16 which we do not have any of those. 17 The language is interesting, because as 18 you heard Brian talk about laboratory methods 19 and these methods being approved and 20 incorporated into federal rule and, ultimately, 21 in state rules, EPA has language in its guidance 22 that directs permit writers to insert language 23 to require PFAS monitoring in wastewater as soon 24 as a laboratory method is posted on their 25 website. So that's a little unusual, certainly.</p>	<p style="text-align: right;">Page 33</p> <p>1 It requires monitoring of wastewater 2 for five or six of the known PFAS compounds, and 3 it also, because the -- as soon as something is 4 posted as opposed to as soon as it becomes law. 5 I don't really know how that's going to play 6 out. 7 The guidance also talks about 8 developing training modules for NPDES permit 9 writers across the country, which indicates that 10 they're planning to make this a requirement for 11 the states. And that's typically what happens, 12 they'll apply it to the EPA region for a couple 13 of years and then the states start seeing it. 14 So that's definitely something we're 15 watching from the state perspective, but anyone 16 who holds an individual NPDES discharge permit 17 may want to pay attention to that as well. 18 There are some cases we're seeing in 19 New England where these requirements are being 20 put on stormwater permits also. Not the 21 construction stormwater, but the industrial, 22 multi-sector and the MS-4 stormwater permits. 23 So that was going to be challenging, but we will 24 continue to watch that. 25 The biggest rulemaking that's kind of</p>

<p style="text-align: right;">Page 34</p> <p>1 been in the works for a very long time is the 2 Lead and Copper Revised Rule. They call it 3 revised. The limits or the MCLs and the action 4 levels, the health goals, state the same for 5 both lead and copper, and that's about all that 6 copper had mentioned, and it's really a lead 7 rule.</p> <p>8       There's been a new action level of ten 9 that is opposed to the current action level of 10 15. We have now a trigger level. This rule is 11 extremely data heavy. A lot of new data. A lot 12 of new laboratory testing. Sample methods are 13 changed. It's not a first liter sample, it's 14 now a fifth liter sample that has to be 15 analyzed.</p> <p>16       There are monitoring samples to be done 17 in schools and daycares that do not count toward 18 compliance of the water system but still have to 19 be reported into the federal data system. There 20 are some different monitoring requirements for 21 the public water supply system.</p> <p>22       There are new lead service line 23 inventory and lead service line replacement 24 plans that have to be developed. Those are 25 going to be pretty significant, because usually</p>	<p style="text-align: right;">Page 35</p> <p>1 when you ask a city that's 100 years old, Do you 2 have any lead service lines? I don't know. Do 3 you know where all of your lines are? I don't 4 know. Just a fact that that's where we are. So 5 those are the things that are going to be 6 extremely interesting to try to work through and 7 figure out how the systems comply.</p> <p>8       There's also what EPA is calling small 9 system flexibility. They have used a new 10 definition for "small." Typically the 11 definition is 3,300; it's now 10,000. Which is, 12 by and large, the most of our drinking water 13 system.</p> <p>14       And what it does is, one of the big 15 items is a system says they can't afford lead 16 service line replacements, they can install 17 point of use systems. So that would mean a 18 public water system would have to purchase and 19 install a filtration unit in a home. They would 20 own it. They would have to go in to do 21 maintenance and monitor its performance. I'm 22 sure we'll have to figure out how that could 23 even possibly work or how that would even make 24 sense.</p> <p>25       MR. MATHESON: I can't see how that</p>
<p style="text-align: right;">Page 36</p> <p>1 would be cheaper than replacing the service 2 lines.</p> <p>3       MS. CHARD: I -- I'm with ya. Yeah, I 4 have no idea. I mean, if you're talking about a 5 system of 26, you know, maybe there's a 6 conversation there. But with those units, the 7 other problem that we have at the moment, not 8 only with those units but also with the rule as 9 a whole, all of this new data has to be reported 10 to the federal data system, and the federal data 11 system cannot support any of this information.</p> <p>12       So EPA has been working about the last 13 ten years to update the drinking water data 14 system, and we're still working with EPA on 15 updating that data system.</p> <p>16       The point of use system that they have 17 put forward as a potential solution can only 18 accept, right now, up to 100 of those being 19 entered into the data system. So if 10,000 is 20 the number that's eligible to do this, and you 21 have 101 sites where you want to do this, we're 22 back into this federal data management issue. 23 So there's a lot going on there.</p> <p>24       There's going to be a lot of data 25 collection, data analysis. There are new</p>	<p style="text-align: right;">Page 37</p> <p>1 reporting requirements submitted to the state, 2 where the state must review and approve changes 3 in sources for drinking water. If you go from 4 this lake to that lake or groundwater to surface 5 water, we will have to review that and have to 6 review and approve all of the corrosion control 7 plans.</p> <p>8       Any system that currently uses 9 corrosion control, there's a requirement of 10 re-optimization, which means everybody has to 11 submit to the state a corrosion control plan and 12 we would have to review and approve it. So 13 there are a lot of things out there that are 14 kind of mind blowing about how we're going to 15 figure out how to do all of this.</p> <p>16       We also know EPA has removed the 17 approval of calcium based corrosion control, so 18 we're going to primarily orthophosphate. EPA 19 estimates that that will only increase the 20 amount of phosphorus being discharged into 21 surface water bodies by one or two percent.</p> <p>22       Well, okay, it's one or two percent, 23 but on the wastewater we're talking about parts 24 per million, parts per billion permit limits for 25 water quality standards. That's a little</p>

<p style="text-align: right;">Page 38</p> <p>1 frightening for the water systems -- or for the 2 wastewater systems. 3       There's kind of a mixed message now of 4 you have to add phosphorus to your drinking 5 water, but phosphorus is bad in your wastewater. 6 And then we get into, why are you making me put 7 bad phosphorus in my drinking water. 8       So the messaging is going to be 9 challenging, but that's something we hope that 10 we're going to get a little more guidance, a 11 little more help from EPA. 12       At this point when the Office of 13 Wastewater Management, the Office of Science and 14 Technology, and Offices of Wetlands, Oceans and 15 Watersheds, they'll say, Oh, that's a drinking 16 water rule. I'm like, right. But there's this 17 whole wastewater component. 18       And so they have not been engaged yet 19 in that conversation, so I'm hoping that they 20 will soon, because that's going to be critically 21 important. The cost for the water systems and 22 the wastewater systems are born by the same rate 23 payers, so we're going to have to try to figure 24 out how we can deal with that a little bit. 25       With all of the lead service line</p>	<p style="text-align: right;">Page 39</p> <p>1 replacement, items would be changes in 2 chemicals, which may require a change in plant 3 construction or operation certainly. We start 4 looking at funding, where is that going to come 5 from? 6       Lead service line replacement is going 7 to be a very high priority for all of the 8 federal funding sources, so that may impact the 9 ability to fund projects related to some other 10 disinfection byproducts or bacteria or nitrates, 11 other important parameters. 12       EPA did acknowledge that there's 13 probably going to be some cost on the wastewater 14 side, but they did not take into account things 15 like harmful algae blooms or the eutrophication 16 or anything like that. So it's going to be 17 something where the states that have combined 18 water and wastewater programs are really going 19 have to figure out how we balance all of it. 20       And I'm so happy to be in one of those 21 states that I don't have to figure out how to 22 work with an entirely different state agency, to 23 try and put this all together for a holistic 24 state program. 25       So that's definitely something that</p>
<p style="text-align: right;">Page 40</p> <p>1 we're going to be watching. There's -- there's 2 been some more groups formed by the Association 3 of State Drinking Water Administrators. They've 4 broken the rule down into eight key pieces. 5 This ninth piece is really that wastewater 6 impact, and that's kind of not on the table 7 right now. It's dealing more with the true 8 health-driven issues first. 9       But it has been divided into eight work 10 groups, and DEQ does have a representative on 11 each of those work groups. And then we have a 12 PhD drinking water engineer overseeing our 13 internal team that includes the Water Quality 14 drinking water staff, our state environmental 15 laboratory and environmental complaints and local 16 services, so that we can kind of figure out 17 what's happening and stay on top of all of that. 18       So one more quick group of topics and 19 then I will be done. A couple of bills I just 20 wanted to put out there that we have heard are 21 coming. I haven't seen them yet to know exactly 22 what they're going to say. There's one related 23 to design build, construction delivery method. 24       We have worked with several entities, 25 including the Chickasaw Nation and a couple of</p>	<p style="text-align: right;">Page 41</p> <p>1 projects and legislators. And had we not had a 2 pandemic, the language probably would have 3 passed last year. This year we've gotten quite 4 a few comments and questions about it. I know 5 it's something that several of our systems are 6 really wanting to pursue, several of the 7 engineering companies really wanted to pursue, 8 but I have no idea where that's going to go at 9 this point. But if you have that interest, that 10 may be out there. 11       The other is water quality trading. 12 This is an issue that's of particular interest 13 to our cabinet secretary and some of our systems 14 in Eastern Oklahoma. It is believed that to 15 truly develop a water quality standard -- or a 16 water quality training program, that we would 17 need some changes to the water quality standards 18 established by the Water Resources Board. So 19 there is some discussion that there may be a 20 bill that would direct the water quality -- or 21 Oklahoma Water Resources Board, Water Quality 22 Division, to develop that language. 23       And then based on language that's 24 currently in statute, any time the Water Board 25 changes the water quality standards, the</p>

<p style="text-align: right;">Page 42</p> <p>1 environmental agencies have to update our water 2 quality standards implementation rules. So for 3 this group that's important because that's 4 Chapter 690. If the Water Board would put in 5 that language, we would then have to come up 6 with appropriate language in how we would 7 implement our permitting program to include such 8 an option. 9 So that -- you know, time will tell 10 what happens. The legislature is not officially 11 here yet, so we'll see if those bills are filed 12 or if they're substituted later or if they're 13 just great ideas that never go anywhere. It's 14 too early to know, but those are a couple of 15 things that the Water Quality Division will be 16 following pretty closely. 17 So with that, I will stop. And if you 18 all have questions, I am happy to answer. 19 CHAIRMAN DUZAN: Thanks for the 20 information. 21 Any questions or comments from the 22 Council? 23 MR. SMITH: I have -- this is Bill 24 Smith. I have two or three. 25 One, when you reorganize, will there be</p>	<p style="text-align: right;">Page 43</p> <p>1 a new organization chart for this period or do 2 you do an organization chart? 3 MS. CHARD: We do have organizational 4 charts. We don't typically just send them out. 5 But certainly, as a council member, if you would 6 like a copy to see that could help or organize, 7 we can make sure that you get a copy. 8 MR. SMITH: The other question I had, 9 when you were talking about PFAS, does EPA have 10 jurisdiction on our military bases in Oklahoma 11 or does the state? 12 MS. CHARD: Yes. 13 MR. SMITH: You said the tribes -- the 14 tribes are -- the tribes come under EPA, I know, 15 but I didn't know about the military bases. 16 MS. CHARD: So we issue permits 17 primarily for the military bases. We have 18 permits with several of them. There have been 19 times where that has been questioned, but we do 20 issue those permits and have a really pretty 21 good working relationship with our military 22 facilities and we participate with them. They 23 have a group -- it's the Oklahoma Military 24 Environmental something. We do work with OMEG. 25 Maybe it's military group.</p>
<p style="text-align: right;">Page 44</p> <p>1 We do work with the military bases on 2 all types of compliance issues that the DEQ has 3 responsibility. And we have permits for several 4 bases, and up until recently had an enforcement 5 action against one of them, so it is us. 6 MR. SMITH: My last question is on the 7 bill that you just talked about. If OWRB is 8 initiating a new water quality standard, do they 9 work with you during the preparation of that or 10 are you -- does DEQ have to provide comments 11 when they go out for public comments, or is 12 there a -- so that it's worked out beforehand, 13 or do you just have to respond like anybody 14 else? 15 MS. CHARD: So I'm going to answer this 16 two ways. So I'm going to start with the legal 17 answer, which is it's the Water Board's 18 responsibility. And we review and we offer 19 comments, as anyone else, and participate in 20 their public meeting. 21 However, generally, the agencies try to 22 work is that, while it is -- in this case, it 23 would be the Water Board's responsibility. You 24 know, we try to work together as much as 25 possible upfront. Not that they have to take</p>	<p style="text-align: right;">Page 45</p> <p>1 our comments or questions or suggestions, but we 2 try, you know, not to air our dirty laundry in 3 public. 4 I would be a liar if I said it always 5 worked that way. But maybe best answer is, 6 certainly when we're doing rulemaking that 7 affects other state agencies, we treat them as 8 equals behind the scenes. We try to address 9 everybody's concerns as best we can so that when 10 we have something that's presented to the 11 public, it truly is an opportunity for the 12 public, not an opportunity for the agencies to 13 bicker or anything like that. 14 CHAIRMAN DUZAN: Okay. Any other 15 questions? 16 Okay. We'll move on then to new 17 business. I believe we have no new business. 18 So announcements. The next scheduled 19 meeting is May 11th, 2021, 2:00 p.m. The 20 multi-purpose room, first floor, DEQ Building, 21 707 North Robinson, Oklahoma City. That is this 22 room. So May 11th, 2 o'clock. 23 Now, I'll take a motion for 24 adjournment. 25 MR. SOWERS: Motion made.</p>

<p>Page 46</p> <p>1 MR. MATHESON: I'll second it.  2 MS. FIELDS: Who made the motion?  3 CHAIRMAN DUZAN: Steve Sowers.  4 MS. FIELDS: Okay. Thank you.  5 CHAIRMAN DUZAN: And we'll take a vote.  6 MS. FIELDS: Ms. Mach?  7 MS. MACH: Yes.  8 MS. FIELDS: Mr. Matheson?  9 MR. MATHESON: Yes.  10 MS. FIELDS: Dr. Moore?  11 DR. MOORE: Yes.  12 MS. FIELDS: Mr. Smith?  13 MR. SMITH: Yes.  14 MS. FIELDS: Mr. Sowers?  15 MR. SOWERS: Yes.  16 MS. FIELDS: Mr. Winegardner?  17 MR. WINEGARDNER: Yes.  18 MS. FIELDS: Mr. DUZAN?  19 CHAIRMAN DUZAN: Yes.  20 MS. FIELDS: Motion passed.  21 CHAIRMAN DUZAN: So we are adjourned.  22 (Proceedings concluded at 2:55 p.m.)  23  24  25</p>	<p>Page 47</p> <p>C E R T I F I C A T E</p> <p>STATE OF OKLAHOMA )  )  COUNTY OF TULSA )</p> <p>I, Tammie Shipman, Certified Shorthand Reporter  in and for the State of Oklahoma, do hereby certify  that the foregoing proceedings are a true and correct  transcript of the record of the machine shorthand  notes taken by me and transcribed into written form  under my supervision, direction and control.</p> <p>I further certify that I'm neither related to nor  attorney for any interested party in the named action,  nor otherwise interested in the outcome of said  action.</p> <p>WITNESS MY HAND, this 18th day of January, 2021.  <u>Tammie Shipman</u>  Tammie Shipman  Shorthand Reporter  CSR #1564</p>



# WATER QUALITY MANAGEMENT ADVISORY COUNCIL

## Attendance Record

January 12, 2021

Department of Environmental Quality  
Oklahoma City, Oklahoma

CHECK BOX TO COMMENT

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Pete Smith	WQMAC member	918-625-2449
Shelli Chavel	DEQ-WQ	405-702-8157
Brian Clagg	DEQ-WA	405-702-8118
Nicholas Huber	DEQ-ECLS	405-702-6188
Chris Eberle	DEQ-Legal	405-702-7189
Brian Puzan	OCT	918-828-9977
Karen Steele	DEQ-WQ	405-702-8184
Duane Winegardner	WQMAC	405-620-0075
MARY E Malt	WQMAC	405-269-6884
Rick Moore	WQMAC	405-615-9557
Mark Matheson	WQMAC	405 249 5736
Mark Hillebrand	DEQ-ECLS	405-702-6177
Steve Sowles	DEQ	405-601-2540
Michelle Wynn	DEQ	405/702-7163
Lauren Brannum	Webco	405-740-1214
Jeff Everett	OGE	405 808 7298
Quiana Field	DEQ	



THE WATER QUALITY MANAGEMENT ADVISORY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title:

**OAC 252:606 OKLAHOMA POLLUTANT DISCHARGE ELIMINATION  
SYSTEM (OPDES) STANDARDS**


On January 12, 2021, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

  X   permanent [take effect after legislative review]  
       emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,

  
\_\_\_\_\_  
Chair or Designee

Date Signed: 1/12/21

	VOTING TO APPROVE	VOTING AGAINST	ABSTAINING	ABSENT
Robert Carr				✓
Brian Duzan	✓			
Mary Mach	✓			
Mark Matheson	✓			
Rick Moore	✓			
Jon Nelson				✓
Willard Smith	✓			
Steve Sowers	✓			
Debbie Wells				✓
Terry Wyatt				✓
Duane Winegardner	✓			

THE WATER QUALITY MANAGEMENT ADVISORY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title:

**OAC 252:631 PUBLIC WATER SUPPLY OPERATION**

On **January 12, 2021**, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:


    X     permanent [take effect after legislative review]

           emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

This Council authorizes the Department to prepare this recommended rulemaking for the Board, making any changes approved by the Council, correcting typographical, grammatical and reference errors, and formatting them as required by the Office of Administrative Rules. This is to be done with the understanding that such changes shall neither alter the sense of what this Council recommends nor invalidate this recommendation.

Respectfully,

  
Chair or Designee

Date Signed: 1/12/21

	VOTING TO APPROVE	VOTING AGAINST	ABSTAINING	ABSENT
Robert Carr				✓
Brian Duzan	✓			
Mary Mach	✓			
Mark Matheson	✓			
Rick Moore	✓			
Jon Nelson				✓
Willard Smith	✓			
Steve Sowers	✓			
Debbie Wells				✓
Terry Wyatt				✓
Duane Winegardner	✓			

THE WATER QUALITY MANAGEMENT ADVISORY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title:

**OAC 252:690 WATER QUALITY STANDARDS IMPLEMENTATION**

On **January 12, 2021**, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

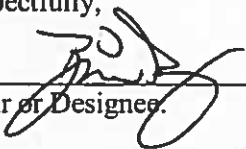
    X     permanent [take effect after legislative review]

           emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

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Respectfully,

  
\_\_\_\_\_  
Chair of Designee

Date Signed: 1/12/21

	VOTING TO APPROVE	VOTING AGAINST	ABSTAINING	ABSENT
Robert Carr				✓
Brian Duzan	✓			
Mary Mach	✓			
Mark Matheson	✓			
Rick Moore	✓			
Jon Nelson				✓
Willard Smith	✓			
Steve Sowers	✓			
Debbie Wells				✓
Terry Wyatt				✓
Duane Winegardner	✓			

THE WATER QUALITY MANAGEMENT ADVISORY COUNCIL  
RULEMAKING RECOMMENDATION  
TO THE ENVIRONMENTAL QUALITY BOARD

**Identification of Proposed Rulemaking:**

Chapter Number and Title:

**OAC 252:641 INDIVIDUAL AND SMALL PUBLIC ONSITE SEWAGE  
TREATMENT SYSTEMS**

On January 12, 2021, the members of this Council, by authority vested in them by the Oklahoma Environmental Quality Code (27 O.S. Sec. 2-2-201), by roll call vote, recommended to the Environmental Quality Board that the rulemaking described above be adopted as:

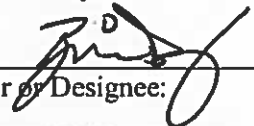
    X     permanent [take effect after legislative review]

           emergency [temporary, to take effect upon approval by the Governor because of time]

This Council has considered the proposed rulemaking and comments about it and determined, to the best of its knowledge, that all applicable requirements of the Oklahoma Administrative Procedures Act have been followed.

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Respectfully,

  
Chair or Designee:

Date Signed: 1/12/21

	VOTING TO APPROVE	VOTING AGAINST	ABSTAINING	ABSENT
Robert Carr				✓
Brian Duzan	✓			
Mary Mach	✓			
Mark Matheson	✓			
Rick Moore	✓			
Jon Nelson				✓
Willard Smith	✓			
Steve Sowers	✓			
Debbie Wells				✓
Terry Wyatt				✓
Duane Winegardner	✓			

# DEQ Environmental Quality Board Meeting



## **FY 2021 FINANCIAL OVERVIEW**

(FOR THE PERIOD JULY 1, 2020 TO DECEMBER 31, 2020)

**FEBRUARY 19, 2021**

**KATHY AEBISCHER  
CHIEF FINANCIAL OFFICER**

# FY21 Total Revenues By Division

## For the Period July 1, 2020 – December 31, 2020

2

	Current Fiscal Year Activity (FY2021)				Comparison to Previous Year (FY2020)			
Division	FY2021 Projections	FY2021 Collections for July - Dec	% of Total Projections	Projected Revenue Remaining	FY2020 Projections	Collections Same Time Period	% of Total Projections	Variance Compared to FY2021
SELS	\$2,138,288	\$907,283	42.4%	(\$1,231,005)	\$2,193,500	\$891,971	40.7%	\$15,312
ECLS	2,408,000	1,774,306	73.7%	(633,694)	2,398,000	1,469,529	61.3%	\$304,777
AQD	13,289,402	11,248,671	84.6%	(2,040,731)	12,853,827	10,825,282	84.2%	\$423,389
WQD	8,803,500	7,683,631	87.3%	(1,119,869)	9,052,000	7,762,927	85.8%	(\$79,296)
LPD	13,393,000	6,177,344	46.12%	(7,215,656)	13,712,000	6,806,970	49.6%	(\$629,626)
	<b>\$40,032,190</b>	<b>\$27,791,235</b>	<b>69.4%</b>	<b>(\$12,240,955)</b>	<b>\$40,209,327</b>	<b>\$27,756,679</b>	<b>69.0%</b>	<b>\$34,556</b>

# FY21 Budget Versus Actual

## All Funding Sources

### As of December 31, 2020

3

Expenditure Type	Original Budget	Budget Revision	Current Budget	Expenses	Encumbered	Remaining
Salaries and other Compensation Expenses	47,996,218	-	47,996,218	20,813,317	25,203,720	1,979,182
Professional Services	24,249,850	(6,500,000)	17,749,850	4,336,870	9,810,339	3,602,642
Travel Expenses	955,239	-	955,239	51,298	9,525	894,416
Administrative Expenses	7,567,255	-	7,567,255	2,315,408	3,754,003	1,497,845
Lab Equipment, Furniture & Building Construction, and Air Monitoring Sites	3,043,169	378,016	3,421,185	102,114	541,643	2,777,428
Local Governments & Non-Profit Projects and Programs	19,646,251	-	19,646,251	2,327,386	9,125,623	8,193,242
<b>Total Expenses</b>	<b>103,457,982</b>	<b>(6,121,984)</b>	<b>97,335,998</b>	<b>29,946,391</b>	<b>48,444,853</b>	<b>18,944,754</b>

# FY21 Budget Versus Actual

## All Funding Sources

### As of December 31, 2020

4

FUNDING SOURCES	Budget	Budget Revision	Current Budget	Expenses	Encumbered	Remaining
<b>19011 Lab Equipment Appropriation<sup>1</sup></b>	-	285,526	285,526	-	214,337	71,189
<b>Rural Water Sustainable</b>						
<b>19101 Infrastructure/TA Support</b>	478,668	-	478,668	17,494	390,279	70,895
<b>19101 General Appropriations</b>	6,710,211	-	6,710,211	3,150,138	3,128,651	431,422
<b>20000 Revolving Fund</b>	44,465,570	-	44,465,570	16,269,034	22,947,153	5,249,383
<b>21000 Environmental Education Fund</b>	19,000	-	19,000	950	-	18,050
<b>22000 Hazardous Waste Penalty Fund</b>	100,000	-	100,000	-	2,149	97,851
<b>22500 Certificate Fund</b>	910,000	-	910,000	277,356	478,739	153,905
<b>40000 Federal Funds<sup>2</sup></b>	36,853,135	(6,407,510)	30,445,625	8,592,950	14,951,610	6,901,065
<b>40300 Brownfields Revolving Loan Fund</b>	300,000	-	300,000	-	-	300,000
<b>Environmental Settlement Fund</b>						
<b>40500 (Federal)</b>	5,718,113	-	5,718,113	405,618	1,022,452	4,290,043
<b>41000 Water Management Federal Fund</b>	7,903,285	-	7,903,285	1,232,851	5,309,484	1,360,950
<b>TOTAL FUNDING SOURCES</b>	<b>103,457,982</b>	<b>(6,121,984)</b>	<b>97,335,998</b>	<b>29,946,391</b>	<b>48,444,854</b>	<b>18,944,754</b>

<sup>1</sup>Carryover of remaining balance of General Appropriations for Lab Equipment for SELS.

<sup>2</sup>FY21 Budget Revision due to delay in awarding \$6.5 million LPD Federal grant funds and alignment of the Multi-Purpose grant awarded to ODEQ into the correct division. ODEQ was recently approved to expend \$92,490 of Multi-Purpose grant funds on a project within SELS.



# Questions?