

REGULAR MEETING/HEARING AGENDA
AIR QUALITY ADVISORY COUNCIL
January 19, 2022, 9:00 a.m.
Department of Environmental Quality
707 North Robinson Avenue
Oklahoma City, OK

Please turn off cell phones

1. **Call to Order** – Laura Lodes, Chair
2. **Roll Call** – Quiana Fields
3. **Approval of Minutes** – October 20, 2021 Regular Meeting
4. **Election of Officers – Discussion and action by Council**
5. **Public Rulemaking Hearing**
 - A. **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

The Department is proposing to amend OAC 252:100, Subchapters 1, 7, and 8, to allow for certain construction activities to be conducted at the owner/operator's risk after submission of an administratively complete minor New Source Review (NSR) permit application but prior to issuance of the construction permit. The Department is also proposing to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to NESHAP and NSPS.

1. Presentation – Madison Miller, Supervising Attorney, Legal Division
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

- B. **Chapter 100. Air Pollution Control**
Subchapter 47. Control of Emissions from Existing Municipal Solid Waste Landfills

The Department is proposing to amend OAC 252:100, Subchapter 47, Control of Emissions from Existing Municipal Solid Waste Landfills to incorporate the federal guidelines in 40 C.F.R. Part 60, Subpart Cf into the state rules. Upon promulgation, the revised Subchapter 47 will be incorporated into Oklahoma's revised State 111(d) Plan.

1. Presentation – Malcolm Zachariah, EPS, Rules & Planning Section, AQD
2. Questions and discussion by the Council

3. Questions, comments and discussion by the public
4. Discussion and possible action by the Council

6. **Division Director's Report** – Kendal Stegmann, Division Director, AQD
7. **New Business** – Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.
8. **Adjournment** – The next regular meeting is scheduled for Wednesday, June 22, 2022, in Oklahoma City, Oklahoma.

Should you have a disability and need an accommodation, please notify the DEQ Air Quality Division three days in advance at 405-702-4177. Hearing impaired persons may call the text telephone (TDD) Relay Number at 1-800-722-0353 for TDD machine use only.

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

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:100-1-3 [AMENDED]

Subchapter 7. Permits for Minor Facilities

Part 1. General Provisions

252:100-7-1.1 [AMENDED]

252:100-7-2 [AMENDED]

Part 3. Construction Permits

252:100-7-15 [AMENDED]

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

Part 5. Permits for Part 70 Sources

252:100-8-4 [AMENDED]

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

252:100-47-2 [AMENDED]

252:100-47-3 [AMENDED]

252:100-47-5 [AMENDED]

252:100-47-6 [AMENDED]

252:100-47-7 [AMENDED]

252:100-47-8 [AMENDED]

252:100-47-9 [AMENDED]

252:100-47-10 [AMENDED]

252:100-47-11 [AMENDED]

252:100-47-12 [AMENDED]

252:100-47-13 [AMENDED]

252:100-47-14 [AMENDED]

SUMMARY:

The Department of Environmental Quality (Department or DEQ) is proposing to amend OAC 252:100, Subchapters 1, 7, and 8, to allow for certain construction activities to be conducted at the owner/operator's risk after submission of an administratively complete minor New Source Review (NSR) permit application but prior to issuance of the construction permit. The Department is also proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to NESHAP and NSPS.

The Department proposes to amend OAC 252:100, Subchapter 47, Control of Emissions from Existing Municipal Solid Waste Landfills. The gist of the proposed rule is to incorporate new federal guidelines into the state rules. The proposed rule would implement the provisions of 40 C.F.R. Part 60, Subpart Cf, the federal emission guidelines published by EPA in the Federal Register on August 29, 2016 (81 FR 59313). Upon promulgation, the revised Subchapter 47 will be incorporated into Oklahoma's revised State 111(d) Plan. The proposed rules affect municipal solid waste (MSW) landfills that commenced construction, modification, or reconstruction before July 17, 2014 and accepted waste after November 8, 1987, including closed landfills. Landfill gas collection and control systems will be required for landfills with design capacities of at least 2.5

million megagrams and 2.5 million cubic meters which have estimated emissions of at least 34 megagrams per year of non-methane organic compounds (NMOC). The previous NMOC threshold to install a control system was 50 megagrams per year.

AUTHORITY:

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

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

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

Oklahoma Uniform Permitting Act; 27A O.S. §§ 2-14-101 through 2-14-304.

COMMENT PERIOD:

Written comments may be submitted to the contact person from December 15, 2021, through January 14, 2022. Oral comments may be made at the January 19, 2022 Air Quality Advisory Council meeting (or on the alternate date of January 26, 2022 in the event of inclement weather) and at the February 18, 2022 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, January 19, 2022, at the DEQ Headquarters, 707 N. Robinson, Oklahoma City, OK 73102. In case of inclement weather, an alternate date is scheduled for Wednesday, January 26, 2022, at the same location. In the event the alternate date is needed, the comment period will extend through that date.

If due to inclement weather the public hearing scheduled for January 19, 2022 is cancelled, notice announcing the hearing cancellation will be posted on the DEQ web site (<https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/>) at least 24 hours prior to the scheduled time for the hearing. Interested parties may call (405) 702-4100 to find out if the hearing has been cancelled.

If the Council recommends adoption, the proposed rules will be considered by the Environmental Quality Board at its meeting scheduled for 9:30 a.m. on Friday, February 18, 2022, at the DEQ Headquarters, 707 N. Robinson Avenue, Oklahoma City, OK 73102.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 and 27A O.S. § 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 C.F.R. Part 70 and 27A O.S. § 2-5-112(B)(9).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Department requests that business entities or any other members of the public affected by these rules provide the Department, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rules.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, or reviewed online at <https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/>.

RULE IMPACT STATEMENTS:

Pursuant to 75 O.S. § 303(D), a rule impact statement was prepared and is available on the DEQ website at <https://www.deq.ok.gov/council-meetings/air-quality-advisory-council/>. Copies may also be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Melanie Foster, Environmental Programs Manager, who can be reached by phone at (405) 702-4100. Please email written comments to

AQDRuleComments@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, ATTN: Melanie Foster. The Air Quality Division fax number is (405) 702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend the public hearing but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405) 702-4177. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

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

Official AQAC Approved
at January 19, 2022 meeting

Notice of Public Meeting – The Air Quality Advisory Council (AQAC) convened for its Regular Meeting at 9:00 a.m. on October 20, 2021. Notice of the meeting was forwarded to the Office of Secretary of State on November 4, 2020. The agenda was posted at the DEQ twenty-four hours prior to the meeting. Also, Ms. Beverly Botchlet-Smith acted as Protocol Officer and convened the hearings by the AQAC in compliance with the Oklahoma Administrative Procedures Act and Title 40 CFR Part 51 and Title 27A, Oklahoma Statutes, Sections 2-2-201 and 2-5-101 through 2-5-117. She entered the agenda and the Oklahoma Register Notice into the record and announced that if you wish to make a statement when it's time for public comments, complete the form at the registration table and you will be called upon at the appropriate time. Ms. Laura Lodes, Chair, called the meeting to order. Ms. Quiana Fields called roll and confirmed that a quorum was present.

MEMBERS PRESENT

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

MEMBERS ABSENT

None

DEQ STAFF PRESENT

Kendal Stegmann
Beverly Botchlet-Smith
Leon Ashford
Madison Miller
Brooks Kirlin
Melanie Foster
Phillip Fielder
Travis Couch
Jonathan Truong
Michelle Wynn
Mark Hildebrand
Bruce Vande Lune
Tom Richardson
Malcolm Zachariah
Christina Hagens
Quiana Fields

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

See transcript pages 3 - 5

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

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

See transcript pages 5 - 7

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

Chapter 100. Air Pollution Control

Subchapter 2. Incorporation By Reference [AMENDED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

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

See transcript pages 9 - 12

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

Chapter 100. Air Pollution Control

Subchapter 1. General Provisions

Subchapter 7. Permits for Minor Facilities

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

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

See transcript pages 12 - 37

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

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

See transcript pages 38 - 39

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

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

See transcript pages 39 - 43

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

Chapter 100. Air Pollution Control

Subchapter 13. Open Burning

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

See transcript pages 44 - 48

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

Chapter 100. Air Pollution Control

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

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

See transcript pages 48 - 57

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

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

See transcript page 57

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

New Business – None

Adjournment – Ms. Lodes called for a motion to adjourn the meeting. Mr. Taylor moved to approve and Mr. Caves made the second. The next scheduled regular meeting is on Wednesday, January 19, 2022. Meeting adjourned at 10:20 a.m.

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

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY ADVISORY COUNCIL

PUBLIC MEETING

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

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

707 North Robinson

1st Floor, Multi-Purpose Room

Oklahoma City, Oklahoma

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REPORTED BY DEBRA GARVER, CSR, RPR

<p style="text-align: right;">Page 2</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>Council Members:</p> <p>Matt Caves</p> <p>Gary Collins</p> <p>Dr. Robert Delano</p> <p>Gregory Elliott</p> <p>Garry Keele II, Vice Chair</p> <p>Stephen Landers</p> <p>John Privrat</p> <p>Jeffrey Taylor</p> <p>Laura Lodes, Chair</p> <p>Presenters:</p> <p>Beverly Botchlet-Smith, Asst. Div. Director</p> <p>Christina Hagens, EPS, Rules & Planning Section</p> <p>Madison Miller, Supervising Attorney, Legal</p> <p>Melanie Foster, EPM, Rules & Planning Section</p> <p>Leon Ashford, EPS, Rules & Planning Section</p> <p>Malcolm Zachariah, EPS, Rules & Planning Section</p> <p>Also Present:</p> <p>Quiana Fields, DEQ Administration</p> <p>Kendal Stegmann, Division Director</p> <p>Jeremy Jewell, Trinity Consultants</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>CHAIR LODES: All right. We'll call today's meeting to order.</p> <p>Quiana, will you please call roll.</p> <p>MS. FIELDS: Mr. Caves.</p> <p>MR. CAVES: Here.</p> <p>MS. FIELDS: Mr. Collins.</p> <p>MR. COLLINS: Here.</p> <p>MS. FIELDS: Dr. Delano.</p> <p>DR. DELANO: Here.</p> <p>MS. FIELDS: Mr. Elliot.</p> <p>MR. ELLIOTT: Here.</p> <p>MS. FIELDS: Mr. Keele.</p> <p>MR. KEELE: Here.</p> <p>MS. FIELDS: Mr. Landers.</p> <p>MR. LANDERS: Here.</p> <p>MS. FIELDS: Mr. Privrat.</p> <p>MR. PRIVRAT: Here.</p> <p>MS. FIELDS: Mr. Taylor.</p> <p>MR. TAYLOR: Here.</p> <p>MS. FIELDS: Ms. Lodes.</p> <p>CHAIR LODES: Here.</p> <p>MS. FIELDS: We have a quorum.</p> <p>CHAIR LODES: The next item on today's Agenda is the approval of the minutes from the June 16, 2021,</p>
<p style="text-align: right;">Page 4</p> <p>regular meeting.</p> <p>Do we have any questions or comments from the council on the minutes?</p> <p>(No response.)</p> <p>CHAIR LODES: Hearing no comments, do we have a motion to approve the minutes?</p> <p>MR. CAVES: I will make a motion to approve.</p> <p>MR. TAYLOR: I'll second it.</p> <p>CHAIR LODES: I have a motion and a second.</p> <p>Quiana, will you please call roll.</p> <p>MS. FIELDS: Mr. Caves.</p> <p>MR. CAVES: Yes.</p> <p>MS. FIELDS: Mr. Collins.</p> <p>MR. COLLINS: Yes.</p> <p>MS. FIELDS: Dr. Delano.</p> <p>DR. DELANO: Yes.</p> <p>MS. FIELDS: Mr. Elliot.</p> <p>MR. ELLIOTT: Yes.</p> <p>MS. FIELDS: Mr. Keele.</p> <p>MR. KEELE: Yes.</p> <p>MS. FIELDS: Mr. Landers.</p> <p>MR. LANDERS: Yes.</p> <p>MS. FIELDS: Mr. Privrat.</p> <p>MR. PRIVRAT: Yes.</p> <p>MS. FIELDS: Mr. Taylor.</p>	<p style="text-align: right;">Page 5</p> <p>MR. TAYLOR: Yes.</p> <p>MS. FIELDS: Ms. Lodes.</p> <p>CHAIR LODES: Yes.</p> <p>MS. FIELDS: Motion passed.</p> <p>CHAIR LODES: Thank you.</p> <p>The next item on today's Agenda is the meetings scheduled for calendar year 2021. The staff-suggested dates are Wednesday, January 19th, 2022, in Oklahoma City; Wednesday, May 4th, 2022, in Oklahoma City; and Wednesday, October 5th, 2022, in Oklahoma City.</p> <p>They've moved up the May date to give more time before the Environment Quality Board meeting in June, if we need it, and to cover things.</p> <p>Do you have any questions or comments regarding the dates?</p> <p>(No response.)</p> <p>CHAIR LODES: None.</p> <p>Did they set the next EFO meeting? It wasn't set when we had the pre-meeting, we looked.</p> <p>BUD GROUND: I think it's the 10th, 11th, and 12th --</p> <p>CHAIR LODES: Okay. So we are good on that one.</p> <p>BUD GROUND: -- that same week in October.</p> <p>CHAIR LODES: Okay.</p>

<p style="text-align: right;">Page 6</p> <p>1 MR. ELLIOTT: So we are not planning to do a 2 Tulsa meeting? 3 CHAIR LODES: With Covid, I think they had 4 decided to keep the meetings for now in Oklahoma City. 5 I guess we could change that back to Tulsa if we wanted 6 to next year at some point. Correct? If we vote on it? 7 How does that work? 8 MS. MILLER: Yes. 9 MS. STEGMANN: I think if we do proper 10 noticing. 11 MS. MILLER: Yes, we can modify it with the 12 Secretary of State. 13 CHAIR LODES: Yeah. But at this time, with 14 the travel and everything, the staff felt it was easier 15 just to keep it in Oklahoma City. 16 MR. ELLIOTT: Okay. 17 CHAIR LODES: Any other questions or comments 18 on the proposed meeting dates? 19 Hearing none, do I have a motion to approve? 20 MR. ELLIOTT: I'll make a motion to approve 21 the dates. 22 MR. LANDERS: I'll second. 23 CHAIR LODES: Okay. I have a motion and a 24 second. 25 Quiana, will you please call roll.</p>	<p style="text-align: right;">Page 7</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. Elliot. 8 MR. ELLIOTT: Yes. 9 MS. FIELDS: Mr. Keele. 10 MR. KEELE: Yes. 11 MS. FIELDS: Mr. Landers. 12 MR. LANDERS: Yes. 13 MS. FIELDS: Mr. Privrat. 14 MR. PRIVRAT: Yes. 15 MS. FIELDS: Mr. Taylor. 16 MR. TAYLOR: Yes. 17 MS. FIELDS: Ms. Lodes. 18 CHAIR LODES: Yes. 19 MS. FIELDS: Motion passed. 20 CHAIR LODES: We will now enter the public 21 rulemaking portion of it. 22 Beverly. 23 MS. BOTCHLET-SMITH: Good morning. I'm 24 Beverly Botchlet-Smith, assistant director of the Air 25 Quality Division. As such, I'll serve as the protocol</p>
<p style="text-align: right;">Page 8</p> <p>1 officer for today's hearing. 2 The hearings will be convened by the Air Quality 3 Council in compliance with the Oklahoma Administrative 4 Procedures Act and Title 40 of the Code of Federal 5 Regulations, Part 51, as well as the authority of 6 Title 27 A of the Oklahoma Statute, Section 2-2-201 and 7 Sections 2-5-101 through 2-5-117. 8 Notice of the October 20, 2021, hearings were 9 advertised in the Oklahoma Register for the purpose of 10 receiving comments pertaining to the proposed OAC 11 Title 252 Chapter 100 rules as listed on the Agenda and 12 will be entered into each record along with the Oklahoma 13 Register filing. 14 Notice of the meeting was filed with the Secretary 15 of State on November 4, 2020. The Agenda was posted 24 16 hours prior to this meeting here at the DEQ. 17 If you wish to make a statement, it's very 18 important for you to complete the form at the 19 registration table. You'll be called upon at the 20 appropriate time. 21 Audience members, please come to the podium for 22 your comments and please state your name prior to making 23 those comments. 24 At this time we'll proceed with what is marked as 25 Agenda Item 5A on the Hearing Agenda.</p>	<p style="text-align: right;">Page 9</p> <p>1 This is Chapter 100, Air Pollution Control; 2 Subchapter 2, Incorporation by Reference [AMENDED]; 3 Appendix Q, Incorporation by Reference [REVOKED]; and 4 Appendix Q, Incorporation by Reference, [NEW]. 5 The presentation for this will be given by 6 Christina Hagens, Environmental Programs Specialist with 7 the Rules & Planning staff. 8 MS. HAGENS: Thank you. 9 Good morning, Madam Chair and members of the 10 council. My name is Christina Hagens. I am an 11 Environmental Programs Specialist in the Air Quality 12 Division. 13 The Department is proposing to update language in 14 Subchapter 2, Incorporation by Reference, to reflect the 15 new date of incorporation for Appendix Q. 16 In addition, the Department is proposing to revoke 17 the current Chapter 100 Appendix Q, Incorporation by 18 Reference, and adopt a new Appendix Q. 19 This proposal is part of the annual update of 20 Title 40, Code of Federal Regulations, Incorporation by 21 Reference in Chapter 100. 22 The Oklahoma rules on Rulemaking dictates the 23 procedure for amending a rule appendix by revoking the 24 old and creating an entirely new appendix. 25 The proposed changes to Appendix Q reflect federal</p>

<p style="text-align: right;">Page 10</p> <p>1 regulations, mostly New Source Performance Standards, 2 (NSPS), and National Emission Standards for Hazardous 3 Air Pollutants (NESHAP), which have been implemented as 4 of June 30, 2021.</p> <p>5 The update would incorporate any amendments to 6 standards currently listed in Appendix Q. These changes 7 also include the addition of Part 60, Subpart Cf for 8 Municipal Solid Waste Landfills and the updated name of 9 Part 60 Subpart WWW, also related to MSW landfills.</p> <p>10 A list of the standards that are currently included 11 in Appendix Q, which have been modified since July 1, 12 2020, was provided in your packet.</p> <p>13 A Notice of the proposed changes was published in 14 the Oklahoma Register on September 15, 2021. Written 15 comments from the public and other interested parties 16 was requested in the Notice, and no comments have been 17 received as of today.</p> <p>18 Staff requests the Council recommend this 19 rulemaking to the Environmental Quality Board for 20 permanent adoption.</p> <p>21 Thank you.</p> <p>22 MS. BOTCHLET-SMITH: At this time we'll have 23 discussion of the council and any questions for 24 Christina.</p> <p>25 (No response.)</p>	<p style="text-align: right;">Page 11</p> <p>1 MS. BOTCHLET-SMITH: Hearing none.</p> <p>2 I haven't received any notice of public comments 3 from the audience. Does anyone wish to comment or ask a 4 question about this rule?</p> <p>5 (No response.)</p> <p>6 MS. BOTCHLET-SMITH: Hearing none, Laura, one 7 last chance for the council to discuss?</p> <p>8 CHAIR LODES: Hearing no further comments, 9 staff has recommended that -- recommended for approval, 10 Chapter 100, Subchapter 2, and Appendix Q.</p> <p>11 Do I have a motion?</p> <p>12 MR. LANDERS: It includes revoking and 13 inserting?</p> <p>14 CHAIR LODES: Yes.</p> <p>15 MR. LANDERS: I'll make a motion to approve.</p> <p>16 MR. CAVES: I'll second it.</p> <p>17 CHAIR LODES: I have a motion and second. 18 Quiana, please call roll.</p> <p>19 MS. FIELDS: Mr. Caves.</p> <p>20 MR. CAVES: Yes.</p> <p>21 MS. FIELDS: Mr. Collins.</p> <p>22 MR. COLLINS: Yes.</p> <p>23 MS. FIELDS: Dr. Delano.</p> <p>24 DR. DELANO: Yes.</p> <p>25 MS. FIELDS: Mr. Elliot.</p>
<p style="text-align: right;">Page 12</p> <p>1 MR. ELLIOTT: Yes.</p> <p>2 MS. FIELDS: Mr. Keele.</p> <p>3 MR. KEELE: Yes.</p> <p>4 MS. FIELDS: Mr. Landers.</p> <p>5 MR. LANDERS: Yes.</p> <p>6 MS. FIELDS: Mr. Privrat.</p> <p>7 MR. PRIVRAT: Yes.</p> <p>8 MS. FIELDS: Mr. Taylor.</p> <p>9 MR. TAYLOR: Yes.</p> <p>10 MS. FIELDS: Ms. Lodes.</p> <p>11 CHAIR LODES: Yes.</p> <p>12 MS. FIELDS: Motion passed.</p> <p>13 MS. BOTCHLET-SMITH: The next item on today's 14 Agenda is 5B, Chapter 100, Air Pollution Control; 15 Subchapter 1, General Provisions; Subchapter 7, Permits 16 for Minor Facilities; and Subchapter 8, Permits for 17 Part 70 Sources and Major New Source Review, or NSR, 18 Sources.</p> <p>19 The presentation will be given by Madison Miller. 20 Madison is a supervising attorney for Air in our legal 21 division.</p> <p>22 Madison.</p> <p>23 MS. MILLER: Good morning, Madame Chair, 24 Members of the Council. I am Madison Miller, 25 Supervising Attorney of the Air Quality Division,</p>	<p style="text-align: right;">Page 13</p> <p>1 presenting the Department's proposed changes to OAC 2 252:100 Subchapters 1, 7, and 8.</p> <p>3 Historically, DEQ has allowed, on a case-by-case 4 basis, facilities to commence and conduct certain minor 5 NSR construction activities prior to the issuance of a 6 permit (but after the administratively complete 7 Application has been submitted). The purpose of today's 8 rulemaking is to clarify this policy in the Air Quality 9 rules.</p> <p>10 On January 13, 2021, DEQ received a letter of 11 comment from Mid America Industrial Park regarding the 12 most recent permit SIP rule changes approved by the Air 13 Quality Advisory Council and Environmental Quality 14 Board, which were promulgated into the OAC on September 15 15 of this year.</p> <p>16 That permit SIP package required Tier I air quality 17 permits undergo public notice and comment where they 18 were not previously required to do so by the OAC rules.</p> <p>19 In its comments, the industrial park requested that 20 DEQ formalize or provide guidance on the construction 21 permit activities policy previously described, 22 specifically regarding the commencement of minor NSR 23 construction activities prior to the issuance of a minor 24 NSR construction permit.</p> <p>25 Upon review of the Air Quality rules, DEQ</p>

<p style="text-align: right;">Page 14</p> <p>1 determined it is warranted to update the rules to 2 reflect this permitting policy more clearly. 3 Before the most recent changes to DEQ rules 4 regarding public notice and comment on air quality, 5 permits were in effect prior to Sept. 15, 2021, Tier I 6 minor NSR construction activities under Subchapter 7 and 7 Tier II minor NSR construction activities under 8 Subchapter 8 could commence upon submittal of the 9 administratively complete minor NSR construction permit 10 pursuant to DEQ policy. This historic practice is 11 consistent with the rule changes recommended today. 12 However, this policy did not apply to construction 13 activities that were considered minor mods to Title V 14 permits under Subchapter 8 because the rules prior to 15 September 15, 2021, did not require a minor NSR 16 construction permit and specifically allowed 17 construction activities to begin upon submittal of an 18 administratively complete permit application. 19 After September 15, 2021, such activities are 20 considered Tier I minor NSR construction activities 21 under Subchapter 8 and must undergo 30-day public review 22 before construction activities may begin. 23 Recognizing this, the proposed rule would allow 24 construction activities for these permit actions to 25 begin upon submittal of the administratively complete</p>	<p style="text-align: right;">Page 15</p> <p>1 minor NSR construction permit. 2 Specifically, DEQ has recommended changes to 3 Subchapters 1, 7, and 8. 4 So on the screen here is a complete list of the 5 sections we have opened up and are proposing changes to. 6 In Subchapter 1, we have recommended adding a 7 definition of "minor NSR," which you see on the screen, 8 since that term is not defined in the rules and it is 9 used in the changes that we've made to both Subchapters 10 7 and 8. 11 In Subchapter 7, we have recommended adding a 12 definition providing what is an administratively 13 complete permit, as that term is not defined in 14 Subchapter 7 and comes into play in the next change I am 15 about to discuss. 16 This definition, for the most part, mirrors the 17 existing Subchapter 8 definition with the exception of 18 subparagraph D, which requires "valid certification" of 19 the permit application. 20 Valid Certification here would refer to the 21 requirements set forth in the applicable permit forms, 22 rather than proscribing a specific standard for what is 23 valid. This approach is intended to provide flexibility 24 for industry. 25 Next, we have added a category of exceptions to</p>
<p style="text-align: right;">Page 16</p> <p>1 when a construction permit is required under Subchapter 2 7. This exception states that an applicant may, after 3 submission of an administratively complete Minor NSR 4 permit, begin construction on any new, modified, or 5 reconstructed source, but it may not make the unit 6 operational such that it has the ability to emit any 7 regulated air pollutant. 8 The exception further clarifies that the applicant 9 conducts any such construction activities at its own 10 risk prior to the issuance of the construction permit by 11 DEQ. 12 Essentially, this provision in the rules in no way 13 provides a permit shield and is not de facto approval by 14 DEQ of any construction activities for which the 15 facility has applied. We have specifically stated that 16 DEQ retains the authority to deny a construction permit 17 regardless of how much money has been invested in a 18 project. 19 And the language that you see in red was added to 20 the rule proposal after the initial publication of the 21 rule change language, so I went ahead and added that in 22 there just for reference and for clarity. 23 In 100-7-15(a), we have provided a caveat to when a 24 construction permit is required by referencing the 25 exception in 100-7-2(b)(5), so just to tie everything</p>	<p style="text-align: right;">Page 17</p> <p>1 together. 2 And then, finally, in Subchapter 8, we have 3 mirrored those changes in Subchapter 7 by adding the 4 same exception and caveats to 100-8-4, as seen on the 5 slide here. 6 And the same here with the red language; it was 7 added after we published the rules on the website. 8 So, importantly, this preconstruction activity 9 policy and proposed rules do not apply to PSD at all nor 10 do they apply to nonattainment NSR, which, fortunately, 11 is not relevant today in Oklahoma since we are currently 12 in attainment for all the NAAQS. 13 So, switching gears, going back to 100-7-15, you'll 14 see a change in Section 100-7-15(a)(2)(B)(i), and that 15 is unrelated to the construction permit policy. This 16 rule change proposal is rule cleanup intended to align 17 the OAC rule language with terminology set forth in the 18 federal rules. 19 This proposed change was presented at the June 2021 20 council meeting by Melanie Foster, but staff did not 21 recommend it for approval, and that is because 22 Section 7-15 was modified in last year's permit SIP rule 23 revisions and said modifications had not yet been 24 promulgated and incorporated into the OAC. 25 We were also considering additional changes to</p>

<p style="text-align: right;">Page 18</p> <p>1 7-15, i.e., those changes presented today regarding the 2 preconstruction rule.</p> <p>3 Thus, we waited to recommend adoption of this rule 4 change for two reasons: to allow the previous changes to 5 7-15 be incorporated into the OAC before again modifying 6 it; and to bring all proposed changes to this section 7 all at once.</p> <p>8 So, on the screen is DEQ staff recommendation that 9 council recommend the proposed changes to OAC 252:100, 10 Subchapters 1, 7, and 8, to the Environmental Quality 11 Board for permanent adoption.</p> <p>12 That concludes my presentation.</p> <p>13 MS. BOTCHLET-SMITH: Do we have any questions 14 from the Council?</p> <p>15 CHAIR LODES: I do have a question. On the 16 red highlighted stuff added in 100-8-4 -- there we go.</p> <p>17 So it talks about, in addition, when performing 18 cost calculations to determine BACT for Minor NSR 19 projects determination shall be made without regard to 20 investments made for project-related installation or 21 modification of equipment prior to permit issuance.</p> <p>22 I'm not -- one, if it's a minor mod, usually you're 23 not doing a BACT analysis to begin with. So it's a 24 little unclear.</p> <p>25 I guess this is part of the EPA-added language?</p>	<p style="text-align: right;">Page 19</p> <p>1 MS. MILLER: Melanie is saying yes.</p> <p>2 MS. FOSTER: Melanie Foster.</p> <p>3 Yes, so EPA did give us some informal discussion 4 over this rule. One of the things that they did want to 5 make it very clear is that no matter how much money had 6 been invested, that we could still say no to a permit 7 application or, you know, the activities therein.</p> <p>8 And the other part of that is that they wanted to 9 make sure that if somebody had gone forward with a 10 project -- and, theoretically, you're right -- generally 11 not for a Minor NSR, but if there was a state BACT 12 requirement or something.</p> <p>13 CHAIR LODES: Yeah, I mean, a Tier II -- most 14 of ours are now going to be a Tier II, but a Tier II 15 construction permit may be not triggering PSD, but we 16 might be doing a state BACT analysis.</p> <p>17 They're saying, okay, I've already said I'm going 18 to install these controls, but I can't include the cost 19 of that in the BACT analysis?</p> <p>20 MS. FOSTER: What we're saying is, 21 essentially, if you have moved forward prior to getting 22 the actual permit issuance with what you selected -- or 23 the facility selected for their state BACT and we said, 24 yeah, that wasn't proper BACT, you couldn't then go say, 25 oh, well, now I have to retrofit it and I'm going to</p>
<p style="text-align: right;">Page 20</p> <p>1 deduct those costs, essentially, or add those costs that 2 I have lost from selecting the wrong BACT.</p> <p>3 Does that make sense?</p> <p>4 CHAIR LODES: It does. I'm not sure it reads 5 like that, because, to me, it reads as though I submit a 6 permit, a Tier II mod now, and I'm going to install an 7 IFR tank, and I'm going to do the cost analysis saying, 8 you know, based off those controls, it's almost as 9 though I can't include the cost of that roof or do those 10 costs of that versus, you know, an IFR plus additional 11 controls, is the way it's kind of reading to me.</p> <p>12 MS. MILLER: Laura, are you saying -- is it 13 coming to play with "the determination shall"?</p> <p>14 CHAIR LODES: Yes. Because it says cost 15 calculation to determine BACT technology for Minor NSR 16 projects, the determination shall be made without regard 17 to investments made for project-related installation or 18 modification of equipment prior to permit issuance.</p> <p>19 So if I waited to start construction, you would 20 have agreed that the control technology was the proper 21 one, but it almost reads, if it takes you guys 18 months 22 to issue it and we've started construction but haven't 23 made it operational, I can't include the cost of that -- 24 what would be a proper control technology, is how it's 25 reading to me.</p>	<p style="text-align: right;">Page 21</p> <p>1 MS. MILLER: So do we need to include some 2 more clarifying language around the determination?</p> <p>3 CHAIR LODES: I think so.</p> <p>4 MS. MILLER: So, the determination of whether 5 or not the permit shall be issued or?</p> <p>6 CHAIR LODES: Well, it -- so, in addition, 7 when performing the cost calculations to determine BACT 8 for Minor NSR projects, determination shall be made 9 without regard to investment made for project-related 10 installation or modification of equipment prior to 11 permit issuance.</p> <p>12 If it's improper or something to that -- I think 13 that's where -- if I'm doing a regular BACT analysis, we 14 may all agree that the flare on the tanks was right, or 15 whatever it is.</p> <p>16 You know, the catalyst I've got, I don't need to go 17 to SER for an engine, but they're saying, well, I can't 18 include that cost -- it almost reads -- something there. 19 And I don't know.</p> <p>20 Does anybody else have any brilliant ideas?</p> <p>21 MR. ELLIOTT: If the technology proposed was 22 not approved by DEQ? I mean, maybe something as easy as 23 that?</p> <p>24 CHAIR LODES: And maybe -- I don't think it's 25 much. I think it's just a little bit of clarification.</p>

<p style="text-align: right;">Page 22</p> <p>1 I don't want end up in a Do Loop with certain permit 2 writers on this.</p> <p>3 MR. LANDERS: The only question I would bring 4 up -- and something you might want to check -- is when 5 you're doing BACT costs, they're published factors, 6 right?</p> <p>7 CHAIR LODES: Right.</p> <p>8 MR. LANDERS: Hours per ton of pollutant 9 removed.</p> <p>10 CHAIR LODES: Well, it's not really published. 11 It's really kind of assumption on what -- their view, 12 so.</p> <p>13 MR. LANDERS: It's in the BACT clearinghouse, 14 right?</p> <p>15 CHAIR LODES: Well, yeah, you can -- the BACT 16 clearinghouse would determine what's typically BACT 17 analysis. You're doing BACT analysis. Yes, you're 18 going through the BACT, the RBLC database and comparing 19 the different technologies.</p> <p>20 MR. LANDERS: I guess the question is, do you 21 have to use those BACT cost figures to determine BACT or 22 can you -- you know, or can you use, you know, truly 23 installed costs.</p> <p>24 CHAIR LODES: Well, usually we would do -- and 25 you would go off with those and you would get there and</p>	<p style="text-align: right;">Page 23</p> <p>1 say, okay, it's -- you know, I'm doing my analysis, it's 2 Low NOx burners for this and not having to do another 3 add-on control beyond it.</p> <p>4 You know, you just think a standard BACT analysis, 5 and so that's why I'm thinking it just needs a tweak 6 there.</p> <p>7 MR. LANDERS: I just thought, to determine 8 BACT, you use those cost factors, so that's where you 9 pick your BACT.</p> <p>10 CHAIR LODES: Right. That's where you're 11 picking what your BACT is, but the way this reads, if I 12 start constructing my heater with Low NOx burners on it 13 and that's what the RBLC database says is BACT, I can't 14 use the cost of the burners I installed is the way this 15 is reading here at first glance.</p> <p>16 I would have to look at -- I would have to have 17 gone to Ultra or something like that. I don't think 18 that's the intent, but I'm afraid there could be a 19 question here down the road.</p> <p>20 And so I think it needs a slight clarification on 21 it. I get what EPA is saying, I just think we just need 22 to insert a phrase somewhere in here. And I'm not sure 23 exactly what that phrase is, but reading what we -- what 24 we added based on EPA, I think, isn't exactly what we 25 intended.</p>
<p style="text-align: right;">Page 24</p> <p>1 MS. MILLER: Okay. So this is what I was 2 trying to suggest earlier. I'm not sure that I was 3 clear enough though. Tell me -- if you've already 4 answered this, sorry, but tell me again.</p> <p>5 If we say the determination to approve or deny the 6 permit shall be made without regard to the 7 investments --</p> <p>8 CHAIR LODES: Yes.</p> <p>9 MS. MILLER: -- does that work?</p> <p>10 CHAIR LODES: Yes.</p> <p>11 MS. MILLER: Okay. So then --</p> <p>12 CHAIR LODES: Which I think is really what the 13 first sentence says. I just don't know that we need the 14 second sentence, basically. It's the BACT determination 15 question I've got there.</p> <p>16 MS. MILLER: Oh, okay.</p> <p>17 MR. LANDERS: The risk is that the DEQ would 18 disagree.</p> <p>19 CHAIR LODES: On your BACT choice, yes.</p> <p>20 MR. LANDERS: Not the cost really of --</p> <p>21 CHAIR LODES: Right. They're going to come 22 back and say you should have picked a different BACT, 23 and when you do your next BACT analysis, you can't take 24 into account what you've already spent, is what the 25 intent is here. But that's not how this reads to me at</p>	<p style="text-align: right;">Page 25</p> <p>1 first glance.</p> <p>2 MR. ELLIOTT: I agree with you, that it 3 doesn't read that way at all.</p> <p>4 CHAIR LODES: It doesn't. And I just don't 5 want to end up in that -- I think we've got the right 6 intent here. I just don't want to spend -- you know, 7 two years from now arguing it out with permit writers. 8 That wasn't the intent, no.</p> <p>9 MS. BOTCHLET-SMITH: Other discussions in the 10 Council?</p> <p>11 CHAIR LODES: Any other questions, comments, 12 while they discuss it?</p> <p>13 MR. CAVES: I did have a question regarding 14 potential enforcement with 100-8-4(D). Start after the 15 submission of an administratively complete application, 16 and I know we're defining "administratively complete," 17 however, even with the certification, what if 18 something's deemed inaccurate or unfactual?</p> <p>19 This says once you've submitted it, you can start. 20 Should there be any acknowledgement from the DEQ that 21 it's administratively complete, because this just says 22 upon submission.</p> <p>23 CHAIR LODES: Which is what has -- in 24 practice, most people have used. Sometimes it takes a 25 while to get those administratively complete letters</p>

<p style="text-align: right;">Page 26</p> <p>1 back.</p> <p>2 So, yeah, clarification -- additional clarification</p> <p>3 might be great there. I mean, it is at your own risk.</p> <p>4 MR. CAVES: And I appreciate putting the rules</p> <p>5 in place that shore up the policy or process, but don't</p> <p>6 necessarily want to get hung up on that issue either.</p> <p>7 MR. LANDERS: In your mind, you may have</p> <p>8 submitted an administratively complete application, but</p> <p>9 the DEQ, I guess, could come back and say, no, it was --</p> <p>10 you know, by our estimation it was never</p> <p>11 administratively complete. You shouldn't have started</p> <p>12 construction.</p> <p>13 MR. COLLINS: I agree with that.</p> <p>14 And, Laura, too, we've always waited for the</p> <p>15 administratively complete letter. We haven't proceeded</p> <p>16 without that letter.</p> <p>17 CHAIR LODES: And that's what a lot have done,</p> <p>18 but not everybody does that.</p> <p>19 MR. ELLIOTT: To speak on that -- and I know</p> <p>20 it's a little bit different, but we have submitted what</p> <p>21 we believe was administratively complete applications,</p> <p>22 and so if there's anything wrong in that application,</p> <p>23 then theoretically it wasn't an administratively</p> <p>24 complete application.</p> <p>25 We have done that in the past, and the DEQ used</p>	<p style="text-align: right;">Page 27</p> <p>1 enforcement discretion and didn't say, hey, you</p> <p>2 commenced construction without an administratively</p> <p>3 complete application.</p> <p>4 It wasn't something significant, you know. It</p> <p>5 was -- you know, it was minor, right? It's a Minor NSR,</p> <p>6 a minor permit. So I do know that they have used that.</p> <p>7 But if there is an error in the application, then,</p> <p>8 theoretically, it wasn't administratively complete</p> <p>9 because it was inaccurate for whatever reason.</p> <p>10 MR. LANDERS: And on bigger permitting</p> <p>11 exercises, there's always something to follow up on,</p> <p>12 seems like, you know.</p> <p>13 CHAIR LODES: Absolutely.</p> <p>14 MR. LANDERS: If you're going to clean it up,</p> <p>15 this probably would be a good time to say the DEQ should</p> <p>16 have some type of completeness.</p> <p>17 MR. COLLINS: Madison, so the language that's</p> <p>18 in 8-4(B), that talks about the administratively</p> <p>19 complete submission, is that the -- is that within the</p> <p>20 spirit of what the DEQ has communicated in the past and</p> <p>21 that language is a direct pull from that?</p> <p>22 MS. MILLER: Yes. Yes, it's completely in</p> <p>23 line with the policy that we've practiced.</p> <p>24 MR. COLLINS: And that policy that you</p> <p>25 practiced, was that in writing?</p>
<p style="text-align: right;">Page 28</p> <p>1 MS. MILLER: No.</p> <p>2 MR. COLLINS: You guys have a internal memo or</p> <p>3 -- okay.</p> <p>4 CHAIR LODES: So it says on the</p> <p>5 administratively complete definition, that's all the</p> <p>6 information required. The landowner affidavit, the</p> <p>7 appropriate application fees, and a valid certification</p> <p>8 is what it says administratively complete means.</p> <p>9 So there may be technical inconsistencies with it</p> <p>10 that they're going to come back and ask questions on,</p> <p>11 but what is administratively complete is just basically</p> <p>12 the basic did you submit the application with the right</p> <p>13 fees, did you check all the boxes.</p> <p>14 MS. STEGMANN: Yes. Because we're just</p> <p>15 saying -- because there's a difference between</p> <p>16 administratively complete and technically complete. So</p> <p>17 once you're administratively complete, it goes into</p> <p>18 technical review.</p> <p>19 So we're not saying that you can't -- you have to</p> <p>20 have the technical review complete to begin</p> <p>21 construction, it's just the administrative part.</p> <p>22 CHAIR LODES: And I see that in Subchapter 7.</p> <p>23 Do we have that same definition in Subchapter 8?</p> <p>24 MS. MILLER: So I wanted to clarify that</p> <p>25 Subchapter 8 does have a definition of administratively</p>	<p style="text-align: right;">Page 29</p> <p>1 complete, and it's Subparagraph D that differs between</p> <p>2 the Subchapter 7 proposed definition here and</p> <p>3 Subchapter 8.</p> <p>4 CHAIR LODES: I don't see it in our packet.</p> <p>5 MS. MILLER: Yeah, we weren't proposing to</p> <p>6 modify the Subchapter 8 definition of administratively</p> <p>7 complete.</p> <p>8 CHAIR LODES: Yeah. I think that covers the</p> <p>9 questions you've got there, Matt.</p> <p>10 Let me pull it up.</p> <p>11 Do you know where it is in Subchapter 8? Anyone?</p> <p>12 Oh, here we go. Here we go. See if that covers</p> <p>13 what y'all are thinking. That part of it --</p> <p>14 MS. MILLER: Do you want me to read it into</p> <p>15 the record?</p> <p>16 CHAIR LODES: Yes. If you want to read it</p> <p>17 into the record.</p> <p>18 MS. MILLER: Okay. So Subchapter 8</p> <p>19 252:100-8-2, Definitions, "Administratively Complete"</p> <p>20 means an application that provides:</p> <p>21 A, all information required under OAC</p> <p>22 252:100-8-5(c), (d), or (e);</p> <p>23 B, a landowner affidavit as required by OAC</p> <p>24 252:4-7-13(b);</p> <p>25 C, the appropriate application fees as required by</p>

<p style="text-align: right;">Page 30</p> <p>1 OAC 252:100-8-1.7;</p> <p>2 And D, certification by the responsible official as</p> <p>3 required by OAC 252:100-8-5(f).</p> <p>4 MR. CAVES: And I think (D) closes that.</p> <p>5 CHAIR LODES: Yes. Yeah. So I think that --</p> <p>6 I think that covers your concern there. Do you?</p> <p>7 MR. CAVES: I agree.</p> <p>8 CHAIR LODES: Okay.</p> <p>9 MS. MILLER: We have some language that was</p> <p>10 put together by permitting for the other issue if you</p> <p>11 want me to read that.</p> <p>12 CHAIR LODES: That'd be great. That's what I</p> <p>13 figured, you-all were having that conversation.</p> <p>14 So what do we think here?</p> <p>15 MS. MILLER: So they're proposing -- I'll just</p> <p>16 read the whole sentence. Let me try to read the whole</p> <p>17 sentence. Sorry.</p> <p>18 CHAIR LODES: Okay.</p> <p>19 MS. MILLER: In addition, when performing cost</p> <p>20 calculations -- wait, where does this go?</p> <p>21 Melanie's going to do it.</p> <p>22 MS. FOSTER: Okay. So, starting with the</p> <p>23 second red sentence:</p> <p>24 In addition, when performing cost</p> <p>25 calculations to determine best available</p>	<p style="text-align: right;">Page 31</p> <p>1 control technology for Minor NSR, the project</p> <p>2 BACT determination shall be made without</p> <p>3 regard to investments made for project-related</p> <p>4 installation or modification of equipment</p> <p>5 prior to permit issuance.</p> <p>6 So it would be adding the phrase "project BACT"</p> <p>7 before determination. Again, that determination is</p> <p>8 meant to be BACT determination.</p> <p>9 So, again, we're trying to say that you make your</p> <p>10 BACT determination just based on the merits of what's</p> <p>11 existing, you know, now, what project you're doing, not</p> <p>12 what you have started through the process of the permit</p> <p>13 that you plan to get approved but has not yet been</p> <p>14 approved.</p> <p>15 So, again, after the comma: The project BACT</p> <p>16 determination shall be made.</p> <p>17 Does that resolve your concern, Laura?</p> <p>18 I understand your concern is that you want to make</p> <p>19 sure that you get to essentially create the BACT from</p> <p>20 the beginning.</p> <p>21 CHAIR LODES: Right. And that's what I'm</p> <p>22 still worried that it doesn't say here, because if I</p> <p>23 look at this -- the project BACT determination shall be</p> <p>24 made without regard to investment made for</p> <p>25 project-related installation or modification of</p>
<p style="text-align: right;">Page 32</p> <p>1 equipment prior to permit issuance -- so I think we</p> <p>2 still end up with the same problem.</p> <p>3 If I start construction on my project when it's</p> <p>4 administratively complete, it's almost as though it's</p> <p>5 excluding what I've spent before this permit was issued,</p> <p>6 and I don't think that's the intent here.</p> <p>7 MS. FOSTER: That is not. You are correct.</p> <p>8 That is not the intent. The intent is just to say</p> <p>9 that --</p> <p>10 MR. KEELE: Instead of "shall," you need</p> <p>11 "may."</p> <p>12 MS. FOSTER: So you're saying the project BACT</p> <p>13 determination "may" be made without regard to</p> <p>14 investments?</p> <p>15 MR. ELLIOTT: I still think it's all back to</p> <p>16 what you said, that if you start and you're doing BACT</p> <p>17 based on what your minor permit application said and DEQ</p> <p>18 comes back later and says we don't approve that --</p> <p>19 CHAIR LODES: We want you to pick a different</p> <p>20 BACT --</p> <p>21 MR. ELLIOTT: -- you have to pick a different</p> <p>22 BACT. So when you're picking that new BACT, you can't</p> <p>23 use the cost of this one that you already did to that</p> <p>24 one. And that's still -- even with that wording, I</p> <p>25 don't get to that either still.</p>	<p style="text-align: right;">Page 33</p> <p>1 MS. FOSTER: Okay.</p> <p>2 MR. ELLIOTT: It needs to be something in</p> <p>3 there that if the DEQ does not approve that, you cannot</p> <p>4 use that money spent on unapproved for the one that the</p> <p>5 DEQ does approve. I mean, something like that.</p> <p>6 MS. STEGMANN: So do we need to go back and</p> <p>7 try to figure out language and continue this?</p> <p>8 CHAIR LODES: Or do we want to take a</p> <p>9 ten-minute break and have a conversation?</p> <p>10 MS. STEGMANN: We're going to have to</p> <p>11 re-Notice this, in my opinion.</p> <p>12 CHAIR LODES: I mean, it's just one sentence.</p> <p>13 I don't think so. We're tweaking. We're wordsmithing</p> <p>14 one sentence. I just don't know if we want to take a</p> <p>15 ten-minute break and have a conversation.</p> <p>16 MS. BOTCHLET-SMITH: I think before we agree</p> <p>17 to take a ten-minute break, we need to offer the public</p> <p>18 to make a comment so we can take everything into our</p> <p>19 consideration.</p> <p>20 So at this point is there anyone in the public that</p> <p>21 wants to make a comment on this rule?</p> <p>22 (No response.)</p> <p>23 CHAIR LODES: Jeremy, do you have any</p> <p>24 wordsmith suggestions?</p> <p>25 MR. JEWELL: Yeah.</p>

<p style="text-align: right;">Page 34</p> <p>1 MS. BOTCHLET-SMITH: I saw people moving 2 around, but no one would raise their hand. 3 MR. JEWELL: And I'll fill out a card. I 4 guess I need to do that. 5 So what if we did -- oh, sorry. Jeremy Jewell, 6 Trinity Consultants and Environmental Federation of 7 Oklahoma. 8 What if we did, in addition, "following the denial 9 of a permit application," so that we put some context 10 about what's then coming. 11 So this doesn't happen if it's approved, of course; 12 the original BACT is accepted, et cetera. And I don't 13 think that's exactly right, but I'm wondering if that 14 would help. 15 CHAIR LODES: I think that helps. But you see 16 my concern. 17 MR. JEWELL: Yes -- yeah. Absolutely. I 18 agree with the concern. 19 MR. LANDERS: You're not saying disapproval of 20 the entire application, right? You're just saying 21 there's a disagreement on BACT -- the BACT analysis? 22 CHAIR LODES: Following denial -- 23 MR. JEWELL: I don't know. Is that 24 disapproval of the application? I don't know. Maybe 25 that's a nuance that needs to be vetted out, but ...</p>	<p style="text-align: right;">Page 35</p> <p>1 MR. ELLIOTT: Because the idea is that that 2 one wasn't approved, so you can't double dip, basically. 3 You can't say, Hey -- because then that makes your BACT 4 analysis -- you know what I mean -- 5 CHAIR LODES: Right. 6 MR. ELLIOTT: It makes it -- so I think you 7 need something in there that says about if you don't -- 8 if it's not approved -- the original BACT submission is 9 not approved, the subsequent BACT analysis cannot 10 utilize the money spent for the original unapproved one 11 for the approved BACT, something like that. 12 CHAIR LODES: Right. Yes. 13 MR. ELLIOTT: That would clear me up 14 100 percent. 15 MS. BOTCHLET-SMITH: Okay. Anyone else from 16 the public that wants to ask a question or make a 17 comment? 18 (No response.) 19 MS. BOTCHLET-SMITH: Okay. Hearing none, 20 Laura, if you want to call a recess, we can do that and 21 have some work on additional language. 22 CHAIR LODES: I think that might be easier if 23 we did that. What do you all think? 24 Do you think it would be good if we took a 25 ten-minute break and we had a huddle-up and have a</p>
<p style="text-align: right;">Page 36</p> <p>1 conversation on some language? I think we're tweaking 2 one sentence here and I don't think it's significant. 3 MS. BOTCHLET-SMITH: So with the understanding 4 that we will take the recess, but if we can't -- if we 5 cannot agree on language that we feel comfortable 6 putting forth, we may have to continue. 7 CHAIR LODES: Yes. I think that's fair. All 8 right. 9 MS. FOSTER: Let me interrupt real quick. I 10 think you guys will not able to huddle and discuss it. 11 Only our staff. 12 CHAIR LODES: Yeah. 13 MS. BOTCHLET-SMITH: All the council's 14 comments will need to be on the record. 15 CHAIR LODES: That is correct. Yes. 16 MR. CAVES: I do have a question for clarity. 17 The red language was EPA's recommendation; correct? How 18 imperative is it that it be included? Is it a 19 directive? 20 CHAIR LODES: They didn't give that language 21 directly. 22 MS. FOSTER: Correct. They did not give us 23 that specific language. They told us their concerns and 24 we drafted a response. They've seen this, so they've 25 tacitly approved what we came up with, but, no, it's not</p>	<p style="text-align: right;">Page 37</p> <p>1 a you must include this language. 2 CHAIR LODES: Are we good giving the staff ten 3 minutes to sit there and see what they -- knowing your 4 concerns, you guys, can we -- you want that? 5 Okay. I'm going to -- do I have to actually vote 6 on a ten-minute break? 7 MS. BOTCHLET-SMITH: I think you probably 8 should. 9 CHAIR LODES: Okay. 10 MR. ELLIOTT: I make a motion for a ten-minute 11 break to allow the DEQ staff to adjust the language of 12 that sentence. 13 CHAIR LODES: Okay. Do I have a second? 14 MR. PRIVRAT: Second. 15 CHAIR LODES: I have a motion and a second. 16 Quiana, please call the roll. 17 MS. FIELDS: Mr. Caves. 18 MR. CAVES: Yes. 19 MS. FIELDS: Mr. Collins. 20 MR. COLLINS: Yes. 21 MS. FIELDS: Dr. Delano. 22 DR. DELANO: Yes. 23 MS. FIELDS: Mr. Elliot. 24 MR. ELLIOTT: Yes. 25 MS. FIELDS: Mr. Keele.</p>

<p style="text-align: right;">Page 38</p> <p>1 MR. KEELE: Yes.</p> <p>2 MS. FIELDS: Mr. Landers.</p> <p>3 MR. LANDERS: Yes.</p> <p>4 MS. FIELDS: Mr. Privrat.</p> <p>5 MR. PRIVRAT: Yes.</p> <p>6 MS. FIELDS: Mr. Taylor.</p> <p>7 MR. TAYLOR: Yes.</p> <p>8 MS. FIELDS: Ms. Lodes.</p> <p>9 CHAIR LODES: Yes.</p> <p>10 MS. FIELDS: Motion passed.</p> <p>11 CHAIR LODES: Okay. It is 9:40. Let's say</p> <p>12 ten minutes, back at 9:50.</p> <p>13 (Off record from 9:40 a.m. to 9:50 a.m.)</p> <p>14 CHAIR LODES: We need to vote to go back into</p> <p>15 session. Do I have a motion to return to session?</p> <p>16 MR. TAYLOR: So moved.</p> <p>17 MR. PRIVRAT: Second.</p> <p>18 CHAIR LODES: Motion and second.</p> <p>19 Quiana, please call roll.</p> <p>20 MS. FIELDS: Mr. Caves.</p> <p>21 MR. CAVES: Yes.</p> <p>22 MS. FIELDS: Mr. Collins.</p> <p>23 MR. COLLINS: Yes.</p> <p>24 MS. FIELDS: Dr. Delano.</p> <p>25 DR. DELANO: Yes.</p>	<p style="text-align: right;">Page 39</p> <p>1 MS. FIELDS: Mr. Elliot.</p> <p>2 MR. ELLIOTT: Yes.</p> <p>3 MS. FIELDS: Mr. Keele.</p> <p>4 MR. KEELE: Yes.</p> <p>5 MS. FIELDS: Mr. Landers.</p> <p>6 MR. LANDERS: Yes.</p> <p>7 MS. FIELDS: Mr. Privrat.</p> <p>8 MR. PRIVRAT: Yes.</p> <p>9 MS. FIELDS: Mr. Taylor.</p> <p>10 MR. TAYLOR: Yes.</p> <p>11 MS. FIELDS: Ms. Lodes.</p> <p>12 CHAIR LODES: Yes.</p> <p>13 MS. FIELDS: Motion passed.</p> <p>14 MS. BOTCHLET-SMITH: Madison, do you have any</p> <p>15 presentation to continue with here?</p> <p>16 MS. MILLER: Yes, I do.</p> <p>17 So DEQ staff deliberated and after some discussion</p> <p>18 we decided that we'd like to postpone the vote on this</p> <p>19 so that we can actually go back and put together</p> <p>20 something that's more thoughtful, but we came up with</p> <p>21 some potential language that I can read to you.</p> <p>22 And we would like to get any thoughts on it so that</p> <p>23 we have more information from you going into making any</p> <p>24 modifications to this.</p> <p>25 So striking the sentence that discusses BACT,</p>
<p style="text-align: right;">Page 40</p> <p>1 instead of that, it could state, "The BACT determination</p> <p>2 shall be based on cost calculations as if no pre-permit</p> <p>3 construction activities had taken place."</p> <p>4 CHAIR LODES: Will you read that again?</p> <p>5 MS. MILLER: Yes.</p> <p>6 The BACT determination shall be based on cost</p> <p>7 calculations as if no pre-permit construction activities</p> <p>8 had taken place.</p> <p>9 MS. BOTCHLET-SMITH: Okay. While the council</p> <p>10 thinks about that for a moment, are there any questions</p> <p>11 or do you have any comments you'd like to submit for</p> <p>12 staff consideration?</p> <p>13 MR. KEELE: This is Garry Keele.</p> <p>14 On the sentence she just read, is it possible that</p> <p>15 instead of saying will, can, so it's not mandated that</p> <p>16 you won't consider previous?</p> <p>17 Does that make sense?</p> <p>18 MS. MILLER: Yes. We will take that into</p> <p>19 consideration.</p> <p>20 CHAIR LODES: To make sure I've written this</p> <p>21 down correctly: The BACT determination shall be based</p> <p>22 on cost calculations as though no preconstruction</p> <p>23 activity has taken place.</p> <p>24 Did I read that back right?</p> <p>25 MS. MILLER: Pre-permit construction</p>	<p style="text-align: right;">Page 41</p> <p>1 activities.</p> <p>2 CHAIR LODES: Okay. Pre-permit.</p> <p>3 To me, that seems to clear up my concerns there.</p> <p>4 Do we have any other questions or comments?</p> <p>5 MR. ELLIOTT: Yes. So on that one there -- if</p> <p>6 there was no issue with the preconstruction BACT and it</p> <p>7 was approved, based on that right there, you still can't</p> <p>8 consider those costs in that BACT.</p> <p>9 MR. KEELE: That's why I wanted --</p> <p>10 MR. ELLIOTT: Yeah, if you can get what Garry</p> <p>11 said in there, "can" or just something that's not</p> <p>12 mandated, that gives you flexibility to say this was</p> <p>13 approved so you can use that, but if it wasn't approved,</p> <p>14 then you don't use that.</p> <p>15 MS. MILLER: Okay. So, Garry, is your</p> <p>16 suggestion that it say the BACT determination can be</p> <p>17 based on cost calculations as if no pre-permit</p> <p>18 construction activities had taken place?</p> <p>19 MR. KEELE: Yeah. I mean, it's either</p> <p>20 negative or positive. That's the positive way to say</p> <p>21 it. So, yes.</p> <p>22 MR. ELLIOTT: That would -- that satisfies me</p> <p>23 too. I think that's very good.</p> <p>24 MS. BOTCHLET-SMITH: Any other comment from</p> <p>25 the council?</p>

<p style="text-align: right;">Page 42</p> <p>1 Okay. We want to give the public a chance to weigh 2 in. 3 Jeremy? I thought you might. 4 MR. JEWELL: Jeremy Jewell again with Trinity 5 Consultants and EFO. 6 I'm still not exactly sure we've resolved it. So I 7 think EFO just supports the continuation of this to the 8 next hearing. So, thanks. 9 MS. BOTCHLET-SMITH: Okay. Hearing no other 10 comments from the public, Laura, if you want to ask for 11 a motion? 12 CHAIR LODES: After further considerations, 13 staff has recommended that we continue this rulemaking 14 to the next -- to a future council meeting. 15 Do I have a motion? 16 MR. ELLIOTT: All of it or just that one 17 section? Can we go forward with the other and not that? 18 What do you want to do? 19 MS. MILLER: We recommend you carry forward 20 all of it, Subchapters 1, 7, and 8. 21 MR. ELLIOTT: I make a motion that we carry 22 the DEQ's recommendations forward to a future Air 23 Quality Advisory Council meeting. 24 CHAIR LODES: Do I have a second? 25 MR. PRIVRAT: I'll second.</p>	<p style="text-align: right;">Page 43</p> <p>1 CHAIR LODES: I have a motion and a second. 2 Will you please call roll. 3 MS. FIELDS: Mr. Caves. 4 MR. CAVES: Yes. 5 MS. FIELDS: Mr. Collins. 6 MR. COLLINS: Yes. 7 MS. FIELDS: Dr. Delano. 8 DR. DELANO: Yes. 9 MS. FIELDS: Mr. Elliot. 10 MR. ELLIOTT: Yes. 11 MS. FIELDS: Mr. Keele. 12 MR. KEELE: Yes. 13 MS. FIELDS: Mr. Landers. 14 MR. LANDERS: Yes. 15 MS. FIELDS: Mr. Privrat. 16 MR. PRIVRAT: Yes. 17 MS. FIELDS: Mr. Taylor. 18 MR. TAYLOR: Yes. 19 MS. FIELDS: Ms. Lodes. 20 CHAIR LODES: Yes. 21 MS. FIELDS: Motion passed. 22 MS. BOTCHLET-SMITH: The next item on today's 23 Agenda is 5C. This is Chapter 100 Air Pollution 24 Control, Subchapter 13 Open Burning. 25 Presentation today will be given by Leon Ashford,</p>
<p style="text-align: right;">Page 44</p> <p>1 who is an Environmental Programs Specialist from the 2 Rules & Planning section. 3 Leon. 4 MR. ASHFORD: Good morning, Madam Chair, 5 members of the council, members of the public. My name 6 is Leon Ashford. 7 DEQ is proposing to amend OAC 252:100-13, Open 8 Burning, to conform to the Department's rules -- to 9 conform the Department's rules to statutory changes 10 enacted in the 2021 legislative session. 11 Senate Bill 246, for calendar year 2021, changed 12 27A of Oklahoma Statute Section 2-5-130 to only require 13 an air curtain incinerator to be used in counties or 14 areas within a county that are or have been designated 15 non-attainment or where an ambient air quality monitor 16 has documented a violation of the National Ambient Air 17 Quality Standards, or those counties with a population 18 of greater than 500,000 for land clearing operations or 19 the burning of clean wood waste or yard brush. 20 Effectively, the Senate Bill restricted the 21 requirements to use an air curtain incinerator for those 22 three waste types to only Oklahoma and Tulsa Counties. 23 Previously, all seven counties in the Oklahoma City MSA 24 and all seven counties in the Tulsa MSA were included. 25 Because of the need to change the rule to conform</p>	<p style="text-align: right;">Page 45</p> <p>1 to the statute, DEQ took this opportunity to do some 2 additional restructuring of the rule to try and make the 3 requirements more clear. 4 Within 100-13-7, we modified the Land Clearing 5 Operations in (4)(B) and the Yard Brush in (7) to 6 reflect that these new statutory requirements for when 7 an ACI are required can be found in 13-8 or, if waste is 8 being transported, in 13-8.1. 9 We also added 13-7(9) to reflect materials -- 10 namely, wood waste and clean lumber -- that are allowed 11 to be open burned, but were previously only found within 12 the ACI provisions of 13-8. 13 Changes to 100-13-8(b)(1) and (2) were made to 14 clearly separate out the provisions related to the 15 statute for the three open burning materials. As I just 16 mentioned, the wood waste and clean lumber were moved 17 above into 100-13-7 allow the open burning. 18 The requirement to follow the incinerator 19 provisions in Subchapter 17 and NSPS were moved down to 20 100-13-8(c). 21 As for the changes in 100-13-8.1, if you recall, 22 this section was added to Subchapter 13 the last time it 23 was revised in order to comply with the new statute. 24 Today's proposed modifications in 13-8.1 are fairly 25 minimal and were made to match the 2021 statute.</p>

<p style="text-align: right;">Page 46</p> <p>1 We hope that once these modifications are passed, 2 that Subchapter 13 will not only be in compliance with 3 the statute that will be effective this November, but 4 that the rule will also be clear that an air curtain 5 incinerator can be used for burning of allowed 6 materials, must be used in certain areas, and that 7 transportation of materials for the purpose of open 8 burning is restricted to certain conditions. 9 Notice of the proposed rule change was published in 10 the "Oklahoma Register" on September 15, 2021. The 11 notice requested written comments from the public and 12 other interested parties. 13 Only one comment was received as of October 15, 14 2021, and it was from Region 6. A copy of their 15 comments are in the folder in front of you. 16 Essentially, EPA is concerned with DEQ providing a 17 110(1) demonstration to ensure that the revisions are 18 still protective of the National Ambient Air Quality 19 Standards, or NAAQS. 20 DEQ does not feel that these changes will 21 jeopardize our attainment status and will be providing a 22 more comprehensive 110(1) demonstration in the State 23 Implementation Plan (SIP) submittal once the revised 24 rule is effective. 25 Staff requests that the Council recommend the</p>	<p style="text-align: right;">Page 47</p> <p>1 proposed rule changes to the Environmental Quality Board 2 for adoption as a permanent rule. 3 MS. BOTCHLET-SMITH: At this time we can take 4 comments from council. 5 Do we have any questions for Leon? 6 MR. KEELE: Yes, I have a question on 7 100-13-8(b)(1). Do we need "are or have been" or can it 8 be "have been"? Looks like we pulled language from 9 below up to that. Looks redundant unless I'm missing 10 something. 11 MS. MILLER: We pulled that from the statute. 12 It's directly from the statute. That's why it looks 13 like that. 14 MR. KEELE: Got it. Thank you. 15 MS. BOTCHLET-SMITH: Any other questions? 16 Any comments from the public? 17 Hearing none, one last chance for the council to 18 ask a question about this rule? 19 Again, hearing none. Laura. 20 CHAIR LODES: Staff has recommended that we 21 approve -- that the council approve the proposed changes 22 to Chapter 100, Subchapter 13, for Open Burning. 23 Do I have a motion? 24 MR. LANDERS: I'll make motion to approve. 25 CHAIR LODES: Do I have a second?</p>
<p style="text-align: right;">Page 48</p> <p>1 DR. DELANO: I'll second. 2 CHAIR LODES: I have a motion and a second. 3 Please call roll. 4 MS. FIELDS: Mr. Caves. 5 MR. CAVES: Yes. 6 MS. FIELDS: Mr. Collins. 7 MR. COLLINS: Yes. 8 MS. FIELDS: Dr. Delano. 9 DR. DELANO: Yes. 10 MS. FIELDS: Mr. Elliot. 11 MR. ELLIOTT: Yes. 12 MS. FIELDS: Mr. Keele. 13 MR. KEELE: Yes. 14 MS. FIELDS: Mr. Landers. 15 MR. LANDERS: Yes. 16 MS. FIELDS: Mr. Privrat. 17 MR. PRIVRAT: Yes. 18 MS. FIELDS: Mr. Taylor. 19 MR. TAYLOR: Yes. 20 MS. FIELDS: Ms. Lodes. 21 CHAIR LODES: Yes. 22 MS. FIELDS: Motion passed. 23 MS. BOTCHLET-SMITH: The next item on today's 24 Agenda is Item 5D. This is Chapter 100, Air Pollution 25 Control, Subchapter 47, Control of Emissions from</p>	<p style="text-align: right;">Page 49</p> <p>1 Existing Municipal Solid Waste Landfills. 2 Mr. Malcolm Zachariah, Environmental Programs 3 Specialist from the Rules & Planning Section, will give 4 the staff presentation. 5 MR. ZACHARIAH: Thank you. 6 Madame Chair, members of the council, and ladies 7 and gentlemen, my name is Malcolm Zachariah, 8 Environmental Program Specialist with the Air Quality 9 Rules & Planning Section. 10 This summer, EPA recently finalized its federal 11 plan for implementing 2016 landfill gas regulations on 12 existing Oklahoma municipal solid waste landfills. DEQ 13 is now resuming our state rulemaking so we can revise 14 our state plan and replace the federal plan. 15 DEQ has prepared revisions to Chapter 100, 16 Subchapter 47, Control of Emissions from Existing 17 Municipal Solid Waste Landfills, to incorporate new 18 federal guidelines into state rules. 19 We have worked closely with our counterparts in the 20 Land Protection Division, and I presented a preview of 21 this work at the Solid Waste Management Advisory Council 22 meeting on September 9th. 23 We also appreciate the comments from council 24 members and stakeholders when we first proposed rule 25 changes in 2017.</p>

<p style="text-align: right;">Page 50</p> <p>1 I'll start with a background of the rules before 2 going into the federal plan and what are we doing now. 3 Section 111 of the Clean Air Act provides the 4 framework to set national standards for stationary 5 sources of air pollution, which are NSPS, New Source 6 Performance Standards. 7 Section 111(d) lets EPA also make emission 8 guidelines (EG) for existing unmodified sources, but 9 those guidelines are directed at the states to 10 implement. States have to submit a state plan or EPA 11 will issue a federal plan instead. 12 In 1996, EPA finalized its first EG and NSPS rules, 13 which are 40 CFR Part 60, Subparts CC and WWW. The 14 rules were based on the public health risk of landfill 15 gas, which is mostly methane and CO2 but also includes a 16 small fraction of non-methane organic compounds, NMOCs. 17 NMOCs include hazardous air pollutants (HAPs) and 18 volatile organic compounds (VOCs), which are precursors 19 to other air pollutants such as ozone. The 1996 rules 20 reduced the risk by requiring landfills of a large 21 enough design capacity to install gas collection and 22 control systems, (GCCS), when NMOC emissions reached 50 23 megagrams per year. 24 As part of the federal effort to reduce methane 25 emissions, in 2016 EPA finalized newer rules, EG Cf and</p>	<p style="text-align: right;">Page 51</p> <p>1 NSPS XXX. EPA estimated 18 percent of U.S. 2 human-related methane emissions came from MSW landfills. 3 These new rules lowered the NMOC threshold from 50 to 34 4 megagrams per year for open landfills. 5 I know this is a bit confusing because we have two 6 pairs of federal rules with some overlaps. In general, 7 a landfill must follow the more stringent requirement. 8 EG Cf overlaps the older EG Cc and NSPS WWW, which was, 9 itself, revised to not overlap with NSPS XXX. 10 Because new landfills are rare, most landfills 11 become subject to an NSPS due to a modification. In 12 effect, all landfills must follow the lower 34 megagram 13 threshold to install a GCCS unless they closed before 14 September 27, 2017. 15 At the bottom you can see how the rules get 16 implemented, and our current work will be to replace the 17 federal plan by adding EG Cf requirements into 18 Chapter 100, Subchapter 47. 19 Okay. What has happened since 2016? DEQ has 20 incorporated NSPS XXX into the air quality rules and 21 began rulemaking to incorporate EG Cf into Chapter 100, 22 Subchapter 47. 23 However, due to comments we received, litigation, 24 and a change in EPA administration, we did not finalize 25 that. The slowdown continued as EPA proposed longer</p>
<p style="text-align: right;">Page 52</p> <p>1 deadlines for state plans and held off action on those 2 that were submitted. 3 Eventually, EPA was required to develop a Federal 4 Plan for over 40 states, including Oklahoma. After 5 another administration change in 2021 and a court 6 decision that vacated the extensions, EPA finalized the 7 federal plan. 8 The federal plan became -- incorporates EG Cf and 9 became effective June 21st. Again, it only affects 10 landfills that were operating after 1987, which is the 11 same as the old rules, and includes those that may have 12 modified before 2014. 13 All affected landfills were required to submit at 14 least an initial design capacity report and, if their 15 capacity was above 2.5 million megagrams and cubic 16 meters, an NMOC emissions report. There are some 17 reporting exemptions for landfills that closed or were 18 already controlling their emissions. 19 All landfills should fall into the following 20 categories. They are either new/modified and subject to 21 NSPS XXX or existing and subject to EG Cf. 22 Again, new or modified landfills, DEQ has already 23 incorporated NSPS XXX into our rules. We have seen 24 approximately five landfills that fall into this 25 category.</p>	<p style="text-align: right;">Page 53</p> <p>1 Existing landfills are those which have not 2 modified after 2014 and under EG Cf, which EPA's federal 3 plan is implementing. 4 The federal plan identified 31 Oklahoma landfills 5 that are affected, which are the ones who have received 6 a recent outreach letter from the Land Protection 7 Division to remind them of their federal obligations. 8 They will go back to state jurisdiction after DEQ 9 revises our rule and plan and EPA approves it. 10 The next two are subcategories of existing 11 landfills and also under the Federal Plan. Again, 12 closed landfills can keep using the older NMOC threshold 13 for running a GCCS. 14 The legacy controlled landfill subcategory is a new 15 addition to the federal plan for those which already 16 have a GCCS, have installed GCCS, and it exempts them 17 from many initial reports because they were already 18 controlling emissions. 19 What does this mean for all Oklahoma landfills? 20 There's not much change. Those in the existing category 21 must submit a design capacity report to EPA, which could 22 be the same report submitted to DEQ for the old rules. 23 For those over 2.5 million megagrams and 24 2.5 million cubic meters, the landfill was already 25 required to get a Title V air permit under the old</p>

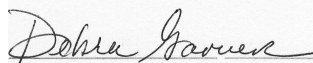
<p style="text-align: right;">Page 54</p> <p>1 rules.</p> <p>2 The landfill was already required to test or</p> <p>3 estimate NMOC emissions, now with an additional option</p> <p>4 of surface monitoring.</p> <p>5 And the landfill was already required to submit a</p> <p>6 GCCS design plan and begin installation once its NMOC</p> <p>7 emissions reached a specific threshold. The biggest</p> <p>8 change is lowering of the threshold.</p> <p>9 Here's an example of the rule text. We are</p> <p>10 proposing revisions to several sections in</p> <p>11 Subchapter 47. Unlike our 2017 proposal, which often</p> <p>12 copied large sections of the EG Cf text into the</p> <p>13 subchapter, we have chosen to incorporate by reference</p> <p>14 the emission guidelines into Subchapter 2 and Appendix Q</p> <p>15 and point to the relevant sections in our rules.</p> <p>16 We believe this addresses comments we've received</p> <p>17 from the council and stakeholders and this mimics the</p> <p>18 original rule text which had references to the old NSPS</p> <p>19 WWW.</p> <p>20 This example also shows how we added wording like</p> <p>21 the legacy controlled landfill definition that was only</p> <p>22 found in the Federal Plan.</p> <p>23 We received formal comments from EPA Region 6 on</p> <p>24 the rule change, which is included in your packet, and</p> <p>25 any changes based on these comments will be presented at</p>	<p style="text-align: right;">Page 55</p> <p>1 a future council meeting.</p> <p>2 And, again, the first federal plan deadline was</p> <p>3 September 20, 2021, and DEQ sent an outreach letter for</p> <p>4 landfills listed in the Federal Plan to remind them of</p> <p>5 their obligations.</p> <p>6 We have been in contact with EPA Region 6 to see</p> <p>7 what responses they are getting, and we will follow a</p> <p>8 similar process for our state plan. Until we have a</p> <p>9 state plan approved by EPA, existing landfills will need</p> <p>10 to comply with the Federal Plan.</p> <p>11 In conclusion, DEQ recommends the council postpone</p> <p>12 its vote on Subchapter 47 to the council's next regular</p> <p>13 business meeting.</p> <p>14 I'm happy to any answer any questions. Thank you.</p> <p>15 MS. BOTCHLET-SMITH: Do we have questions from</p> <p>16 the council?</p> <p>17 MR. LANDERS: Nothing other than have there</p> <p>18 been any questions from the regulated community on this</p> <p>19 at this point? Landfills?</p> <p>20 MR. ZACHARIAH: Mostly just awareness and</p> <p>21 letting them know what the Federal Plan is doing. Most</p> <p>22 of those who have already -- would have been required to</p> <p>23 get a permit have already done so because they had the</p> <p>24 same requirements on the old rules.</p> <p>25 So it's been mostly some of the smaller landfills</p>
<p style="text-align: right;">Page 56</p> <p>1 that we've been letting them know what they need to send</p> <p>2 to EPA.</p> <p>3 MR. LANDERS: But no formal comments.</p> <p>4 MR. ZACHARIAH: No formal comments for this</p> <p>5 rulemaking other than EPA.</p> <p>6 MS. BOTCHLET-SMITH: Any other comments from</p> <p>7 the council?</p> <p>8 Do we have any questions from the public?</p> <p>9 (No response.)</p> <p>10 MS. BOTCHLET-SMITH: Hearing none, Laura.</p> <p>11 CHAIR LODES: Staff has recommended that we</p> <p>12 carry forward this rulemaking for Chapter 100,</p> <p>13 Subchapter 47, to a future Air Quality Advisory Council</p> <p>14 meeting.</p> <p>15 Do I have a motion?</p> <p>16 MR. CAVES: So moved.</p> <p>17 CHAIR LODES: Do I have a second?</p> <p>18 MR. LANDERS: Second.</p> <p>19 CHAIR LODES: Would you please call roll.</p> <p>20 MS. FIELDS: Mr. Caves.</p> <p>21 MR. CAVES: Yes.</p> <p>22 MS. FIELDS: Mr. Collins.</p> <p>23 MR. COLLINS: Yes.</p> <p>24 MS. FIELDS: Dr. Delano.</p> <p>25 DR. DELANO: Yes.</p>	<p style="text-align: right;">Page 57</p> <p>1 MS. FIELDS: Mr. Elliot.</p> <p>2 MR. ELLIOTT: Yes.</p> <p>3 MS. FIELDS: Mr. Keele.</p> <p>4 MR. KEELE: Yes.</p> <p>5 MS. FIELDS: Mr. Landers.</p> <p>6 MR. LANDERS: Yes.</p> <p>7 MS. FIELDS: Mr. Privrat.</p> <p>8 MR. PRIVRAT: Yes.</p> <p>9 MS. FIELDS: Mr. Taylor.</p> <p>10 MR. TAYLOR: Yes.</p> <p>11 MS. FIELDS: Ms. Lodes.</p> <p>12 CHAIR LODES: Yes.</p> <p>13 MS. FIELDS: Motion passed.</p> <p>14 MS. BOTCHLET-SMITH: That concludes the</p> <p>15 hearing portion of today's meeting.</p> <p>16 (Record ends at 10:17 a.m.)</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>

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

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

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

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

21 

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



AIR QUALITY ADVISORY COUNCIL

Attendance Record

October 20, 2021

Oklahoma City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

MELANIE FOSTER	DEQ	
Greg Elliott	AQAC	
Garry Keck	McAfee & Taff	garry.keck@mcafee.com
LEON ASTHARD	DEQ	
Christina Hagens	DEQ	
Tom Richardson	DEQ	
Kendal Stegmann	DEQ	
Beverly Botchelt-Smith	DEQ	
Jeremy Jewell	Trinity Consultants	jjewell@trinityconsultants.com
Quiana Fields		
GARY COLLINS	ODEQ - AQAC	CF INDUSTRIES
Laura Lodes	AQC	Altamira
BRIAN McQuown	OGRE	
Bud Grouncl	EFD	
Jeff Taylor		
Matt Caves	WFEC	matt.caves@wfec.com
John Prioret	Duit Construction	
Rachel Langdon	Tetra Tech	
Philby Fox	DEQ	
Melison Miller	DEQ	
Travis Coch	DEQ	
Jonathan Truong	DEQ	
Brooks Kirfin	DEQ	
Robert Delano	UCL	
Laura Finley	WFEC	laura.finley@wfec.com
Michelle Wynn	DEQ	



AIR QUALITY ADVISORY COUNCIL

Attendance Record

October 20, 2021

Oklahoma City, Oklahoma

NAME and/or AFFILIATION

Address and/or Phone and/or E-Mail

Mark Hildebrand	DEQ
Bruce Vanderveer	DEQ
Steve Landers	Geosin Pacific
Malcolm Zachariah	DEQ
Molly Williams	OGE
Walter Hixson	OGE
ERIC ROLLARD	ACOG



SCOTT A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

KEVIN STITT
Governor

MEMORANDUM

DATE: January 5, 2022

TO: Members of the Air Quality Advisory Council

FROM: Kendal Stegmann, Director *KS*
Air Quality Division

SUBJECT: Proposed Revisions in OAC 252:100-1, -7, -8

The Department of Environmental Quality (DEQ) is proposing to amend OAC 252:100, Subchapters 1, 7, and 8, to allow for certain construction activities to be conducted at the owner/operator's risk after submission of an administratively complete minor New Source Review (NSR) permit application but prior to issuance of the construction permit. This proposed revision will clarify a policy that was in place prior to the recent revisions to the permitting rules that went into effect on September 15, 2021. DEQ is also proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity to when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to NESHAP and NSPS.

This will be the second time for the Council to hear this proposed rulemaking. Modifications were made to the language in OAC 252:100-8-4(a)(1)(D) to address concerns the Council had at the October 20, 2021 meeting that were echoed by a member of the public during the meeting.

Notice of the proposed rule changes was published in the *Oklahoma Register* on December 15, 2021. The notice requested written comments from the public and other interested parties. No comments have been received as of January 4, 2022. At the January meeting, staff will ask the Council to recommend the proposed rule changes to the Environmental Quality Board for adoption as permanent rules.

Enclosures: Proposed Amendments to OAC 252:100-1 -7, -8
Rule Impact Statement
Summary of Comments and Responses



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

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 "CO₂e" 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 CO₂e.

"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 (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

"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.

"Minor NSR" means any NSR permit action under Subchapter 7 or 8 that is not Prevention of Significant Deterioration or Nonattainment NSR.

"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).

"PM₁₀ 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.

"PM₁₀" means particulate matter with an aerodynamic diameter of 10 micrometers or less.

"PM_{2.5}" 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.

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).

"Administratively complete" means an application that provides:

- (A) All information required under OAC 252:100-7-15(c) and 252:100-7-18(e);
- (B) A landowner affidavit as required by OAC 252:4-7-13(b);
- (C) The appropriate application fees as required by OAC 252:100-7-3; and
- (D) Valid certification by the applicant.

"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 or less of each regulated air pollutant, except that fraction of particulate matter that exhibits an aerodynamic particulate diameter of more than 10 micrometers (μm).
- (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 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.

252:100-7-2. Requirement for permits for minor facilities

(a) **Permit required.** Except as provided in OAC 252:100-7-2 and 252:100-7-18(b), no person may commence construction or modification of any minor facility, may operate any new minor facility, or may relocate any minor portable source without obtaining a permit from the DEQ. For

additional application and permitting procedures, see OAC 252:4, Subchapter 7. Environmental Permit Process.

(b) Exceptions.

(1) **De minimis facilities.** De minimis facilities are exempted from the permitting requirements of OAC 252:100-7. De minimis facilities remain subject only to the following air quality control

(A) De minimis facilities must comply with OAC 252:100-13, Open Burning.

(B) With the exception of those de minimis cotton gin facilities or grain, feed or seed facilities that comply with the requirements of 252:100-23, Control of Emissions from Cotton Gins or 252:100-24, Particulate Matter Emissions from Grain, Feed or Seed Operations, de minimis facilities remain subject to OAC 252:100-25, Visible Emissions and Particulates.

(C) With the exception of those de minimis cotton gin facilities or grain, feed or seed facilities that comply with the requirements of 252:100-23, Control of Emissions from Cotton Gins or 252:100-24, Particulate Matter Emissions from Grain, Feed or Seed Operations, de minimis facilities remain subject to OAC 252:100-29, Control of Fugitive Dust.

(D) De minimis facilities must comply with OAC 252:100-42 Control of Toxic Air Contaminants.

(E) De minimis facilities must comply with 252:100-5, Registration, Emission Inventory and Annual Operating Fees.

(2) **Permit exempt facilities.** Permit exempt facilities are exempted from the permitting requirements of OAC 252:100-7. Permit exempt facilities remain subject to all other applicable State and Federal air quality control rules and standards.

(3) **Emergency engines at residential and school facilities.** Primary and secondary schools and single family residences with an emergency engine are exempted from the permitting requirements of OAC 252:100-7.

(4) **Gasoline dispensing facilities with throughput of less than 100,000 gallons per month.** Gasoline dispensing facilities in compliance with 40 CFR Part 63 Subpart CCCCCC, and whose primary or only obligation to obtain a permit is due to the construction (installation) and/or operation of a gasoline dispensing facility, with throughput of less than 100,000 gallons per month on a rolling annual average are exempt from the permitting requirements of OAC 252:100-7.

(5) Construction Activities Prior to Issuance of a Minor NSR (Construction) Permit. After the submission of an administratively complete minor NSR construction permit application, but prior to the issuance of the corresponding construction permit, an applicant may begin construction up to, but not including, making any new, modified, or reconstructed unit operational such that it has the ability to emit any regulated air pollutant. The applicant assumes the risk of losing any investment it makes toward implementing such construction prior to the issuance of a construction permit authorizing the construction. DEQ retains the authority to deny the permit application without consideration of and regardless of any investment the applicant has made prior to permit issuance. This paragraph does not serve as authorization by DEQ of the requested construction. In addition, this exception does not exempt the owner or operator from any applicable requirements under federal rules (e.g., NSPS or NESHAP) or state-only regulations.

(c) Permit application.

- (1) All applications shall be signed by the applicant.
- (2) The signature on an application for a permit shall constitute an implied agreement that the applicant shall be responsible for assuring construction or operation, as applicable, in accordance with the application and OAC 252:100.
- (3) 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 the draft permit.
- (d) **Applicability determination.** Upon written request along with the required fee and any relevant information needed, the DEQ will make a determination of whether a permit is required.
- (e) **Change in permit status.** The owner or operator of a permitted facility may at any time notify the DEQ that the facility:
 - (1) Is de minimis, requesting termination of the permit, or
 - (2) Qualifies for either a permit by rule or a general permit, submitting the appropriate application for such permit, or
 - (3) Is permit exempt, requesting termination of the permit.
- (f) **Transfer of permit.** The transfer of ownership of a stationary source or a facility is an administrative amendment that shall subject the new owner or operator to existing permit conditions and/or compliance schedules. A new permit is not required. The transferor shall notify the DEQ using a prescribed form no later than 30 days following the change in ownership.
- (g) **Emission calculation methods.** The methods in OAC 252:100-5-2.1(d) shall be used when calculating regulated air pollutant emission rates for purposes of determining if a DEQ-issued air quality permit is required or what type of permit is required.

PART 3. CONSTRUCTION PERMITS

252:100-7-15. Construction permit

- (a) **Construction permit required.** Except as provided in OAC 252:100-7-2(b)(5), A 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 an "affected facility," "affected source," or "new source" as those terms are defined in 40 CFR Section 60.2, 40 CFR Section 63.2, and 40 CFR Section 61.02, respectively, 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 a permitted emissions increase 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 to comply with 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.** The authority to construct or modify granted by a duly issued construction permit will terminate (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.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-4. Requirements for construction and operating permits

(a) Construction permits.

(1) Construction permit required.

(A) **Facilities without Part 70 operating permits.** Except as provided in OAC 252:100-8-4(a)(1)(D), ~~No~~ 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.** Except as provided in OAC 252:100-8-4(a)(1)(D), ~~A~~ 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,

(iii) 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.

(D) Construction Activities Prior to Issuance of a Minor NSR (Construction) Permit.

After the submission of an administratively complete minor NSR construction permit application, but prior to the issuance of the corresponding construction permit, an applicant may begin construction up to, but not including, making any new, modified, or reconstructed unit operational such that it has the ability to emit any regulated air pollutant. The applicant assumes the risk of losing any investment it makes toward implementing such construction prior to the issuance of a construction permit authorizing the construction. If a minor NSR project necessitates determination of BACT, and the BACT recommended in the permit application is not approved in whole or in part by DEQ, the subsequent resolution of the appropriate selection of BACT shall be based upon the facility's pre-application physical configuration. DEQ retains the authority to deny the permit application without consideration of and regardless of any investment the applicant has made prior to permit issuance. This subparagraph does not serve as authorization by DEQ of the requested construction. In addition, this exception does not exempt the owner or operator from any applicable requirements under federal rules (e.g., NSPS or NESHAP) or state-only regulations.

(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.**

(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.

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

Before the Air Quality Advisory Council on October 20, 2021 and January 19, 2022
Before the Environmental Quality Board on February 18, 2022

RULE IMPACT STATEMENT

Subchapter 1. General Provisions

252:100-1-3 [AMENDED]

Subchapter 7. Permits for Minor Facilities

Part 1. General Provisions

252:100-7-1.1 [AMENDED]

252:100-7-2 [AMENDED]

Part 3. Construction Permits

252:100-7-15 [AMENDED]

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

Part 5. Permits for Part 70 Sources

252:100-8-4 [AMENDED]

DESCRIPTION: The Department of Environmental Quality (Department or DEQ) is proposing to amend OAC 252:100, Subchapters 1, 7, and 8, to allow for certain construction activities to be conducted at the owner/operator's risk after submission of an administratively complete minor New Source Review (NSR) permit application but prior to issuance of the construction permit. The Department is also proposing to revise OAC 252:100-7-15(a)(2)(B)(i) to give regulatory clarity regarding when a construction permit is required by inserting the federal terms for pieces of equipment and processes subject to New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The gist of the proposed rule and the underlying reason for these revisions is to provide flexibility and clarity to the regulated community.

CLASSES OF PERSONS AFFECTED: Classes of persons affected are the owners and operators of facilities that are subject to the minor NSR permitting requirements in OAC 252:100-7 (minor facilities) 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 minor NSR 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 owners and operators of the facilities subject to these regulations as the proposed changes will allow for greater flexibility and regulatory clarity.

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 amendments.

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.

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 is proposing the change, in part, to minimize the cost to the regulated community of complying with recent permitting rule changes.

DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE: There are no less costly or nonregulatory or less intrusive methods of achieving the purpose of the proposed rule. The proposed change should allow for greater flexibility to the regulated community.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The proposed revision will have 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 change is not designed to reduce significant risks to public health, safety, or 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 will be no detrimental effect on the public health, safety, or the environment.

PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE): There will be a positive benefit on business entities since the proposed changes will allow for greater regulatory flexibility regarding when certain construction activities may begin.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: September 15, 2021
MODIFIED ON: December 15, 2021

**SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO
CHAPTER 100. AIR POLLUTION CONTROL, SUBCHAPTERS 1, 7, and 8**

**COMMENTS RECEIVED PRIOR TO AND AT THE *October 20, 2021*
AIR QUALITY ADVISORY COUNCIL MEETING**

Oral Comments

Jeremy Jewell – Trinity Consultants and Environmental Federation of Oklahoma (EFO)

1. **COMMENT:** Mr. Jewell stated that adding language such as "following the denial of a permit application" to the sentence regarding Best Available Control Technology (BACT) in OAC 252:100-8-4(a)(1)(D) might address the concerns of the Council that legitimate expenditures made prior to permit issuance could potentially be excluded if the BACT determination is disapproved.

RESPONSE: The Department agrees that the language proposed at the October 20, 2021 meeting may not accurately reflect the Department's intent and therefore could be misinterpreted. DEQ staff have revised OAC 252:100-8-4(a)(1)(D) to address the concerns expressed by the Council and Mr. Jewell. The proposed verbiage now reads:

(D) Construction Activities Prior to Issuance of a Minor NSR (Construction) Permit.
After the submission of an administratively complete minor NSR construction permit application, but prior to the issuance of the corresponding construction permit, an applicant may begin construction up to, but not including, making any new, modified, or reconstructed unit operational such that it has the ability to emit any regulated air pollutant. The applicant assumes the risk of losing any investment it makes toward implementing such construction prior to the issuance of a construction permit authorizing the construction. If a minor NSR project necessitates determination of BACT, and the BACT recommended in the permit application is not approved in whole or in part by DEQ, the subsequent resolution of the appropriate selection of BACT shall be based upon the facility's pre-application physical configuration. DEQ retains the authority to deny the permit application without consideration of and regardless of any investment the applicant has made prior to permit issuance. This subparagraph does not serve as authorization by DEQ of the requested construction. In addition, this exception does not exempt the owner or operator from any applicable requirements under federal rules (e.g., NSPS or NESHAP) or state-only regulations.



SCOTT A. THOMPSON
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

KEVIN STITT
Governor

MEMORANDUM

DATE: January 5, 2022

TO: Members of the Air Quality Advisory Council

FROM: Kendal Stegmann, Director
Air Quality Division *KS*

SUBJECT: Proposed Revisions in OAC 252:100-47

DEQ proposes to amend OAC 252:100, Subchapter 47, Control of Emissions from Existing Municipal Solid Waste Landfills. The gist of the proposed rule is to implement the provisions of 40 C.F.R. Part 60, Subpart Cf, "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills." Upon promulgation, the revised Subchapter 47 will be incorporated into Oklahoma's revised State 111(d) Plan. The proposed rule changes affect municipal solid waste (MSW) landfills that commenced construction, modification, or reconstruction before July 17, 2014, and accepted waste after November 8, 1987, including closed landfills. Landfill gas collection and control systems (GCCS) will be required for landfills with design capacities of at least 2.5 million megagrams and 2.5 million cubic meters that have estimated emissions of at least 34 megagrams per year of non-methane organic compounds (NMOC). The previous NMOC threshold to install a control system was 50 megagrams per year. Currently, EPA is implementing the emission guidelines for existing MSW landfills with a Federal Plan under 40 C.F.R. Part 62, Subpart OOO.

This is the second time this proposal will be presented to the Council for consideration. Written comments were received from EPA Region 6 prior to the October 20, 2021 AQAC meeting. DEQ has made changes to the proposal based on EPA's comments and further proofreading.

Notice of the proposed rule change was published in the *Oklahoma Register* on December 15, 2021, and public comments were requested. No additional comments have been received as of January 4, 2022. At the January 4, 2022 meeting, staff will ask the Council to recommend the proposed amendments to the Environmental Quality Board for adoption as a permanent rule.

Enclosures: Proposed Amendments to OAC 252:100-47
Rule Impact Statement
Summary of Comments and Responses



TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL
SUBCHAPTER 47. CONTROL OF EMISSIONS FROM EXISTING MUNICIPAL
SOLID WASTE LANDFILLS

252:100-47-2. Reference to 40 CFR

When a provision of Title 40 of the Code of Federal Regulations (40 CFR) is incorporated by reference in OAC 252:100-2 and Appendix Q of Chapter 100, all citations contained therein are also incorporated by reference.

252:100-47-3. Definitions

(a) ~~The~~This Subchapter uses applicable definitions in 40 CFR 60.751-60.41f, except as provided in (b) of this Section are hereby incorporated by reference as they exist on July 1, 2002.

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

(1) **"Existing municipal solid waste landfill"** or **"existing MSW landfill"** means a municipal solid waste landfill that commenced construction, modification, or reconstruction on or before May 30, 1991~~July 17, 2014~~ and accepted waste ~~after~~since November 8, 1987.

(2) **"Legacy controlled landfill"** means any MSW landfill subject to this Subchapter that submitted a gas collection and control system (GCCS) design plan prior to May 21, 2021 in compliance with 40 CFR Part 60, Subpart WWW, or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc, depending on which regulation was applicable to the landfill. This definition applies to those landfills that completed construction and began operations of the GCCS and those that are within the 30 month timeline for installation and start-up of a GCCS according to 40 CFR Part 60, Subpart WWW or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc.

(23) **"State Plan"** means a program that the State is responsible for developing and implementing to achieve compliance with the emission guidelines in Subpart Cc or Cf of 40 CFR Part 60. Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc, will be superseded by the State Plan implementing 40 CFR Part 60, Subpart Cf, upon EPA approval of said plan.

252:100-47-5. General provisions

(a) **Applicability.** Except as provided in ~~subparagraphs (1) and (2)~~through (3) of this paragraph subsection, the provisions of this Subchapter are applicable to all existing MSW landfills in the State of Oklahoma. This Subchapter is also an applicable requirement for existing MSW landfill sites on the National Priorities List in Appendix B of 40 CFR Part 300.

(1) Physical or operational changes made to an existing MSW landfill solely to comply with this Subchapter are not considered a modification or reconstruction and would not subject an existing MSW landfill to the requirements of 40 CFR Part 60, ~~Subpart~~Subparts WWW (Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification on or After May 30, 1991, but Before July 18, 2014) or XXX (Standards of Performance for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014).

(2) Remedial activities required by or conducted pursuant to state or federal law are not considered construction, reconstruction, or modification for the purposes of this Subchapter.

(3) If the landfill's design capacity increases as the result of a modification that was commenced after July 17, 2014, then the landfill becomes subject to 40 CFR Part 60, Subpart

XXX. If the design capacity increase is the result of a change in operating practices, density, or some other change that is not a modification, then the landfill remains subject to this Subchapter.

(b) **Exemptions.** The DEQ, with EPA approval, may provide for the application of less stringent emissions standards or longer compliance schedules than those otherwise required by this Subchapter, provided that at least one of the circumstances listed below are applicable to the MSW landfill:

- (1) Unreasonable cost of control resulting from facility age, location, or basic design; or
- (2) Physical impossibility of installing necessary control equipment; or
- (3) Other factors specific to the facility that make application of a less stringent standard or final compliance time significantly more reasonable.

252:100-47-6. Permits required and compliance schedules

(a) **Part 70 operating permits.**

- (1) The owner or operator of an existing MSW landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not required to obtain a Part 70 permit for the landfill, unless the landfill is otherwise a Part 70 source.
- (2) The owner or operator of an existing MSW landfill with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters, that is not otherwise a Part 70 source, is subject to OAC 252:100-8 as a Part 70 source ~~ninety (90) days after the effective date of the state plan, even if the initial design capacity report was submitted earlier.~~
- (3) When an existing MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain a Part 70 permit for the landfill if the landfill is not otherwise subject to the requirements of OAC 252:100-8 and if either of the following conditions is met:
 - (A) The landfill was never subject to the requirement for a control system under OAC 252:100-47-7.
 - (B) The owner or operator meets the conditions for control system removal specified in OAC 252:100-47-7.

(b) **Construction permits.** The owner or operator of any existing MSW landfill that installs a MSW landfill gas collection and control system is required to obtain a construction permit as provided by OAC 252:100-7-15 or OAC 252:100-8-4. ~~If the landfill has a design capacity of at least 2.5 million cubic meters and 2.5 million megagrams and an estimated nonmethane organic compounds (NMOC) emission rate of at least 50 megagrams per year, calculated in accordance with Section 9 of this Subchapter, the owner or operator of the MSW landfill shall also comply with the following requirements:~~

- ~~(1) The application for a construction permit and the collection and control system design plan shall be submitted to the DEQ within 12 months after the initial or any annual NMOC emissions rate report indicates that the emission rate equals or exceeds 50 megagrams per year, unless site specific sampling demonstrates that the emission rate is less than 50 megagrams per year.~~
- ~~(2) All contracts for installation of the emission control systems or for process modifications shall be awarded and all orders for the purchase of component parts to accomplish emission control or process modification shall be completed within 3 months of the submittal of the design plan under paragraph (b)(1) of this section.~~
- ~~(3) The installation of the collection and control system shall commence within 3 months of the awarding of contracts under paragraph (b)(2) of this section.~~
- ~~(4) The installation of the collection and control system shall be completed within 18 months of the submittal of the design plan under paragraph (b)(1) of this section.~~

~~(5) Within 30 months of the first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year, the MSW landfill shall be in compliance with paragraphs (b)(1) through (b)(4) of this section.~~

(c) Compliance Schedules and Increments of Progress. To achieve final compliance, the owner or operator must complete the planning, awarding of contracts, and installing and starting up of MSW landfill air emission collection and control equipment capable of meeting the emissions standards under OAC 252:100-47-7 within 30 months after the applicable start date in paragraphs (1) and (2) of this subsection according to the schedule in paragraph (3) of this subsection. MSW Landfills currently subject to 40 CFR Part 60, Subpart WWW, that are subject to these rules must continue to comply with the requirements of Subpart WWW until they become subject to the more stringent requirements of this rule.

(1) The date a nonmethane organic compounds (NMOC) emission rate report shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory).

(2) The date of the most recent NMOC emission rate report that shows NMOC emissions equal or exceed 34 megagrams per year (50 megagrams per year for the closed landfill subcategory), if Tier 4 surface emissions monitoring shows a surface emission concentration of 500 parts per million methane or greater.

(3) Increments of progress to install air pollution control devices to meet emission standards in OAC 252:100-47-7:

(A) Submit to the DEQ an application for a construction permit and a collection and control system design plan in accordance with the requirements of 40 CFR 60.38f(d) within 12 months of the applicable start date.

(B) Award contract(s) to initiate on-site construction or installation of the collection and/or control equipment within 20 months of the applicable start date.

(C) Commence on-site construction or installation of the collection and/or control equipment within 24 months of the applicable start date.

(D) Complete on-site construction according to the approved collection and control system design plan and achieve final compliance within 30 months of the applicable start date. For a legacy controlled landfill, the initial or most recent performance test conducted to comply with 40 CFR Part 60, Subpart WWW, or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc, is sufficient for compliance with this subparagraph. The test report does not have to be resubmitted.

252:100-47-7. Emission standards

~~(a) Each owner or operator of an existing MSW landfill meeting the conditions set forth in 40 CFR 60.33f(a) paragraphs (1) through (4) shall comply with all the collection system and control system provisions specified in 40 CFR 60.75260.33f(b) and 60.33f(c), which is hereby incorporated by reference as it exists on July 1, 2002.~~

(1) Legacy controlled landfills or landfills in the closed landfill subcategory must install and start up a gas collection and control system within 30 months after the first annual report in which the NMOC emission rate equals or exceeds 50 megagrams per year, submitted under previously applicable regulations 40 CFR Part 60, Subpart WWW, or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc.

(2) Legacy controlled landfills or landfills in the closed landfill subcategory that have already installed control systems and completed initial or subsequent performance tests may comply with this Subchapter using the initial or most recent performance test conducted to comply

with 40 CFR Part 60, Subpart WWW, or Oklahoma's State Plan implementing 40 CFR Part 60, Subpart Cc.

(b) Each owner or operator of an existing MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters that does not install a collection or control system must calculate an NMOC emission rate for the landfill on an annual basis as provided in 40 CFR 60.33f(e).

(c) **Removal criteria.** The collection and control system may be capped, removed, or decommissioned if the criteria provided in 40 CFR 60.33f(f) are met.

252:100-47-8. Operational standards for collection and control systems

~~Each~~ owner or operator of an existing MSW landfill ~~with a gas collection and control system shall comply with all provisions specified in 40 CFR 60.75360.34f(a) through (g) or the operational standards in 40 CFR 63.1958. Once the owner or operator begins to comply with the provisions in 40 CFR 63.1958, they must continue to operate the collection and control system according to those provisions and cannot return to the provisions of 40 CFR 60.34f, which is hereby incorporated by reference as it exists on July 1, 2002.~~

252:100-47-9. Test methods and procedures

~~Each~~ owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR ~~60.75460.35f(a) through (e), which is hereby incorporated by reference as it exists on July 1, 2002.~~

252:100-47-10. Compliance provisions

~~Each~~ owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR ~~60.75560.36f(a) through (e) or the compliance provisions in 40 CFR 63.1960. Once the owner or operator begins to comply with the provisions in 40 CFR 63.1960, they must continue to operate the collection and control system according to those provisions and cannot return to the provisions of 40 CFR 60.36f, which is hereby incorporated by reference as it exists on July 1, 2002.~~

252:100-47-11. Monitoring of operations

~~Each~~ owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR ~~60.75660.37f(a) through (h) or the monitoring provisions in 40 CFR 63.1961. Once the owner or operator begins to comply with the provisions in 40 CFR 63.1961, they must continue to operate the collection and control system according to those provisions and cannot return to the provisions of 40 CFR 60.37f, which is hereby incorporated by reference as it exists on July 1, 2002.~~

252:100-47-12. Reporting requirements

~~(a) The owner or operator of an existing MSW landfill shall submit an initial design capacity report to the DEQ within 90 days of the effective date of the State Plan.~~

~~(b) The owner or operator of an existing MSW landfill having a design capacity equal to or greater than 2.5 million cubic meters and 2.5 million megagrams, shall submit an initial NMOC emission rate report to the DEQ within 90 days of the effective date of the State Plan. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in 40 CFR 60.757(b)(1)(ii) and (b)(3).~~

~~(c) The owner or operator of an existing MSW shall comply with the provisions specified in 40 CFR 60.757, except 60.757(a)(1) and (b)(1)(i), which is hereby incorporated by referenced as it appears on July 1, 2002.~~

(a) Each owner or operator of an existing MSW landfill shall comply with all reporting provisions specified in 40 CFR 60.38f(a) through (n), except 60.38f(d)(2).

(b) When an MSW landfill subject to this Subchapter is in the closed landfill subcategory, the owner or operator is not subject to the following reports of this Subchapter, provided the owner or operator submitted these reports under the provisions of 40 CFR Part 60, Subpart WWW, or under this Subchapter on or before July 17, 2014:

(1) Initial design capacity report specified in 40 CFR 60.38f(a).

(2) Initial or subsequent NMOC emission rate report specified in 40 CFR 60.38f(c), provided that the most recent NMOC emission rate report indicated the NMOC emissions were below 50 megagrams per year.

(3) Collection and control system design plan specified in 40 CFR 60.38f(d).

(4) Closure report specified in 40 CFR 60.38f(f).

(5) Equipment removal report specified in 40 CFR 60.38f(g).

(6) Initial annual report specified in 40 CFR 60.38f(h).

(7) Initial performance test report in 40 CFR 60.38(i).

(c) When an MSW landfill subject to this Subchapter is in the legacy controlled landfill subcategory, the owner or operator is not subject to the following reports of this Subchapter, provided the owner or operator submitted these reports under the provisions of 40 CFR Part 60, Subpart WWW, or under this Subchapter on or before June 21, 2021:

(1) Initial design capacity report specified in 40 CFR 60.38f(a).

(2) Initial or subsequent NMOC emission rate report specified in 40 CFR 60.38f(c).

(3) Collection and control system design plan specified in 40 CFR 60.38f(d).

(4) Initial annual report specified in 40 CFR 60.38f(h).

(5) Initial performance test report in 40 CFR 60.38(i).

252:100-47-13. Recordkeeping requirements

~~Each~~ owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR ~~60.758~~60.39f(a) through (j), which is hereby incorporated by reference as it exists on July 1, 2002.

252:100-47-14. Specifications for active collection systems

~~Each~~ owner or operator of an existing MSW landfill shall comply with all provisions specified in 40 CFR ~~60.759~~60.40f(a) through (c), which is hereby incorporated by reference as it exists on July 1, 2002.

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

Before the Air Quality Advisory Council on October 20, 2021 and January 19, 2022
Before the Environmental Quality Board on February 18, 2022

RULE IMPACT STATEMENT

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

252:100-47-2 [AMENDED]

252:100-47-3 [AMENDED]

252:100-47-5 [AMENDED]

252:100-47-6 [AMENDED]

252:100-47-7 [AMENDED]

252:100-47-8 [AMENDED]

252:100-47-9 [AMENDED]

252:100-47-10 [AMENDED]

252:100-47-11 [AMENDED]

252:100-47-12 [AMENDED]

252:100-47-13 [AMENDED]

252:100-47-14 [AMENDED]

DESCRIPTION: The Department of Environmental Quality (Department or DEQ) proposes to amend OAC 252:100, Subchapter 47, Control of Emissions from Existing Municipal Solid Waste Landfills. The gist of the proposed rule is to implement the provisions of 40 C.F.R. Part 60, Subpart Cf, “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.” Upon promulgation, the revised Subchapter 47 will be incorporated into Oklahoma’s revised State 111(d) Plan. The proposed rule changes affect municipal solid waste (MSW) landfills that commenced construction, modification, or reconstruction before July 17, 2014, and accepted waste after November 8, 1987, including closed landfills. Landfill gas collection and control systems (GCCS) will be required for landfills with design capacities of at least 2.5 million megagrams and 2.5 million cubic meters that have estimated emissions of at least 34 megagrams per year of non-methane organic compounds (NMOC). The previous NMOC threshold to install a control system was 50 megagrams per year. Currently, EPA is implementing the emission guidelines for existing MSW landfills with a Federal Plan under 40 C.F.R. Part 62, Subpart OOO.

CLASSES OF PERSONS AFFECTED: The owners and operators of Oklahoma MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014, will be affected.

CLASSES OF PERSONS WHO WILL BEAR COSTS: The costs will be borne by the owners and operators of existing Oklahoma MSW landfills that commenced construction, modification, or reconstruction on or before July 17, 2014.

INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES: The Department has received no information on cost impacts from private or public entities related to this rulemaking as of this date.

CLASSES OF PERSONS BENEFITTED: The citizens of Oklahoma will benefit from the reduction in emissions whether the requirements are implemented by the state or by EPA. By ensuring that the updated state rule is consistent with federal guidelines, the Department will be able to implement and enforce the requirements rather than EPA, which will benefit owners and operators of MSW landfills.

PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS: The owners and operators of landfills subject to this rulemaking are expected to experience the same costs associated with compliance as they currently are experiencing when complying with the Federal Plan.

PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS: Landfills may be operated by private or public entities. In Oklahoma, out of the 17 landfills covered by the Federal Plan that have design capacities in excess of 2.5 million megagrams, six are operated by public entities. Two of these publicly-owned facilities are already equipped with active landfill GCCS. Two additional publicly-owned facilities have design capacities below 2.5 million cubic megagrams. This rulemaking may require additional Oklahoma MSW landfills to install a GCCS.

POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS: The landfills affected by this proposed rule are not expected to be operated by small businesses as defined by Oklahoma Statutes and therefore there are no potential direct adverse effects on small businesses. The indirect cost impacts to small businesses are expected to be an incremental increase in landfill disposal costs to all landfill customers, including small businesses, due to the landfill's costs of compliance with the federal requirements. However, in the federal rulemaking associated with EPA's emission guidelines publication, EPA concluded that increases in tipping fees are likely to be minimal.

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: Additional costs to the Department to enforce or implement the proposed rule changes are anticipated to be minimal. 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 these regulations.

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 Department does not anticipate any net losses or gains associated with the proposed rule. There may be a slight decrease in inventory fees due to additional landfills installing landfill GCCS with commensurate reductions in emissions. However, those reductions, and the impact on inventory fees are not expected to represent a significant decrease when compared with current operations.

COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE: None. Affected municipalities, counties, and public trusts will be required to comply with this rulemaking. The Department will implement, enforce, and administer these proposed rule changes.

EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS: The proposed rule changes are in conformity with the emission guidelines mandated by EPA, which represent the minimum requirements necessary to protect the environment and the public's health and safety, according to the current federal policy. Therefore, all compliance costs associated with the proposed rule changes also represent the minimum costs necessary to protect the environment and the public's health and safety.

DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE: There are none. EPA, acting under the authority of Section 111(d) of the federal Clean Air Act, promulgated the emission guidelines for MSW landfills, which required states to adopt the requirements into state rules and implement them through State Plans. Therefore, adoption of these proposed rule changes into Oklahoma's State 111(d) Plan is necessary in order to give Oklahoma the authority to enforce these federally mandated requirements. EPA will continue implementing its Federal Plan until Oklahoma updates its state rules and revises its State Plan.

DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT: The proposed rule changes will have a positive effect on public health, safety, and the environment, by requiring more landfills to install a landfill GCCS. The GCCS will reduce methane emissions and NMOC emissions, which contain Hazardous Air Pollutants (HAPs) and Volatile Organic Compounds (VOCs).

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: Landfill gas is a collection of air pollutants, including methane, a greenhouse gas, and NMOCs. Methane is harmful to the environment because its greenhouse gas potential is 28-36 times greater than that of carbon dioxide (CO₂) and it can remain in the atmosphere for up to 12 years. The NMOC portion of landfill gas can contain HAPs and VOCs. HAPs include a number of compounds that can cause cancer. VOC emissions are precursors to both fine particulate matter (PM_{2.5}) and ozone, two pollutants that have significant health effects and are regulated by National Ambient Air Quality Standards. EPA estimated that nationally, 93 additional landfills will be required to install landfill GCCS resulting in reductions of 1,810

megagrams (1,995 tons) of NMOC and 0.29 million megagrams (0.32 million tons) of methane by 2025. Oklahoma should expect proportionate emission reductions in the state.

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

Adoption of these proposed rule changes into Oklahoma's State 111(d) Plan is necessary to give Oklahoma the legal authority to enforce these federally mandated requirements. If the rule is not revised, EPA will continue to implement its Federal Plan for Oklahoma.

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

The Federal Plan lists 31 existing MSW landfills in Oklahoma that are not under tribal/EPA jurisdiction. It is possible additional facilities will be subject to this rule. EPA estimates at least 17 of the 31 landfills exceed a design capacity of 2.5 million megagrams. Seven of these landfills are already equipped with a GCCS, including one landfill that has identified NMOC emissions within the 34-50 megagrams per year range. Another landfill has NMOC emissions just under 34 megagrams per year and may be impacted by the proposed rule in the future. These 17 landfills, whether active or closed, are already required to obtain Part 70 air quality permits under the current version of this rule. For the many facilities that are still below 2.5 million megagrams or 2.5 million cubic meters in design capacity, there is no further requirement besides the design capacity report. Regulatory compliance costs may include: capital costs; operation and maintenance costs; and costs for sampling, monitoring, inspection, recordkeeping, and reporting. EPA estimated the costs to affected landfills in the federal rulemaking. Since the Federal Plan is in place and this proposed rule only implements the federal requirements, no additional state compliance costs are expected. Landfills which install a collection and control system may be required to increase or modify their financial assurance as provided in OAC 252:515-27. Construction permit fees will be required for those facilities that must install a GCCS.

THIS RULE IMPACT STATEMENT WAS PREPARED ON: September 15, 2021

MODIFIED ON: December 1, 2021

**SUMMARY OF COMMENTS AND STAFF RESPONSES
FOR PROPOSED REVISION TO
CHAPTER 100. AIR POLLUTION CONTROL, SUBCHAPTER 47**

**COMMENTS RECEIVED PRIOR TO AND AT THE *October 20, 2021*
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

U.S. Environmental Protection Agency, Region 6 – Submitted as an attachment to an email received on October 15, 2021, from Guy Donaldson, Chief of State Planning and Implementation Branch, Air and Radiation Division, U.S. EPA, Region 6 (hereafter “EPA”).

1. **COMMENT:** We note that ODEQ has proposed to incorporate the most recent municipal solid waste landfill (MSW landfill) emission guidelines (EG) located at 40 CFR part 60, subpart Cf, into the Oklahoma state regulations at OAC 252:100-47 in order to meet federal requirements under CAA section 111(d). We also note that legacy landfill language from the MSW landfills federal plan at 40 CFR part 62, subpart OOO, has also been incorporated into Subchapter 47.

RESPONSE: DEQ appreciates EPA’s review of the proposed revisions to Subchapter 47.

2. **COMMENT:** We recommend that in OAC 252:100-47-3(b)(1), the definition of an existing municipal solid waste landfill should be revised to reads as follows: “...means a municipal solid waste landfill that commenced construction, modification, or reconstruction **on or** before July 17, 2014 and accepted waste **after since** November 8, 1987”. This more accurately reflects the applicability of MSW landfills subject to 40 CFR part 60, subpart Cf. See 40 CFR 60.30f(a) and 40 CFR 60.33f(a)(1).

RESPONSE: DEQ agrees with and has incorporated this recommended change to OAC 252:100-47-3(b)(1) in the revised proposed rule.

3. **COMMENT:** We note that OAC 252:100-47 had previously included language on “Exemptions” at OAC 252:100-47-5(b). We recommend this language not be submitted as part of Oklahoma’s MSW landfills revised state plan unless proper justification is provided for the inclusion of this language in the state plan. Similar language in OAC 252:100-47-5(b) can be found in the implementing regulations at 40 CFR part 60, subpart B, at 40 CFR 60.24(f); we note that this language is a guideline for drafting and reviewing state plan provisions rather than language that should be included as part of submitted state plans.

RESPONSE: The language in OAC 252:100-47-5(b) was copied verbatim from an April 5, 1998, EPA Region 6 comment submitted before the June 1998 Air Quality Advisory Council meeting, in which EPA recommended inclusion of said language in the rule. Additionally, DEQ notes the language requires EPA approval for any alternative emission standards or compliance schedules. Thus, it is DEQ’s position that no revision to OAC 252:100-47-5(b) is necessary, since approval of the exemption is ultimately within EPA’s

discretion. EPA Region 6 staff also indicated in discussion after the October 20, 2021, council meeting that retention is acceptable.

Oral Comments

There were no oral comments from the public at the October 20, 2021, Air Quality Advisory Council meeting.