Robert Singletary
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November 6, 2026

David P. Page
Charles Willing
1921 S Boston Ave
Tulsa, Oklahoma 74119

Sent via U.S. Mail and email to:
dpage@eenradvocates.com
cwilling@eenradvocates.com

RE: Submission styled Petition for Declaratory Ruling; Permit Application No. 2026-0100-C, Facility ID No. 25367

Dear Messrs. Page and Willing:

In response to your submission regarding Permit Application No. 2026-0100-C, Facility ID No. 25367, DEQ responds as follows:

I. Statement of Facts

A. Submission of Stop the Inola Smelter

On October 8, 2026, the Oklahoma Department of Environmental Quality (DEQ) received a Submission from Stop the Inola Smelter Inc. (STIS) styled "Petition for Declaratory Ruling; Permit Application No. 2026-0100-C, Facility ID No. 25367" (STIS' Submission). As stated in STIS' Submission, STIS is an Oklahoma not for profit corporation with its principal place of business in Rogers County, Oklahoma.

STIS' Submission requests that DEQ declare that "begin actual construction" means that Oklahoma Primary Aluminum (OPA) cannot initiate "physical on-site construction activities on an emission unit which are of permanent nature," including but not limited to installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. [STIS' Submission, p. 17] In other words, STIS' Submission merely reiterates the regulatory definition of "begin actual construction" and requests that DEQ declare the term means what the regulatory definition states. As discussed in more detail later in this response, DEQ rules clearly state that "begin actual construction" means, in general, the:

> [I]nitiation of physical on-site construction activities on **an emissions unit** which are of a permanent nature.
>
> (A) Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.
>
> (B) With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

OAC 252:100-8-31(Emphasis added).

STIS' Submission also requests that DEQ "retract/rescind its letter of December 22, 2025, from Kendall Stegman (*sic*), Director Air Quality Division, to Margaret Averill, Environmental Resources Management, Inc." [STIS' Submission, p. 17] The Submission then requests that "DEQ should suspend [the OPA permit application] and all of OPA/ERM's permitting processes until an investigation and audit is completed and published for public review and comment. [STIS' Submission, p. 17] Lastly, the STIS' Submission illegitimately demands that DEQ indefinitely suspend "Kendal Stegman (*sic*) and the DEQ employees who participated in the April 23, 2026 Inola, Oklahoma meeting until they demonstrate proficiency through education in ethics, administrative procedure and clean air act policy and permitting." [STIS' Submission, p. 17]

B. Begin Actual Construction Background

On September 2, 2025, EPA issued a letter to the Maricopa County Air Quality Department regarding the definition of "begin actual construction" contained in 40 C.F.R. § 51.165 and the State of Arizona's iteration of this rule. *EPA Ltr. to Maricopa County Air Quality Department re: TSMZ Arizona Corporation* (Sept. 2, 2025) (EPA Maricopa County Letter). EPA stated therein:

> Consistent with the views expressed in the March 2020 Draft Guidance, the EPA continues to recognize that the definition of the term "begin actual construction" in EPA's regulation prohibits "the initiation of physical on-site construction on an emissions unit" **and that this does not prohibit initiation of physical on-site construction of those parts of a facility that do not qualify as an emission unit.** The EPA also continues to view the 1986 Reich memo to have adopted an overly broad reading of the term "emissions unit" to suggest that it includes installations necessary to accommodate an emissions unit. EPA intends to provide more clarity through rulemaking on how MCAQD and other permitting authorities may distinguish between emissions units and the other parts of a facility that are not an emissions unit or a part of an emissions unit.

EPA Maricopa County Letter, pp. 2-3 (Emphasis added). EPA further stated:

> After reviewing the provided information on TSMC's proposed project and the applicable MCAQD regulations, EPA believes that it is within MCAQD's discretion to interpret its existing regulations to allow TSMC to undertake, prior to obtaining an NSR permit, the activities listed under stage 1, the core and shell of a building, provided that the construction of this core and shell of a building does not involve the physical construction on an emission unit or the laying of underground piping or construction of supports and foundations that are part of any emissions unit.

EPA Maricopa County Letter, p. 3.

On December 2, 2025, ERM sent a letter to DEQ stating ERM "prepared this letter to inform the [DEQ] that EGA **may** wish to commence an initial construction phase the Project [*sic*] prior to obtaining a PSD permit, that would include the supporting structures to house emission units but not the emission units themselves." ERM Letter to DEQ, p. 2 (Dec. 2, 2025) (Emphasis added) (2025 ERM Letter). On December 22, 2025, DEQ responded to the 2025 ERM Letter stating:

> Given EPA's conclusion in the [EPA Maricopa County Letter] and EPA's stated intention to amend the regulations, DEQ will recognize this interpretation of the definition for the purposes of the Project, with the understanding that the construction activities at issue would specifically be limited to the supporting structures to house emissions units and not the emission units themselves.

DEQ Letter to ERM, pp.1-2 (Dec. 22, 2025) (2025 DEQ Letter). DEQ further advised that ERM and EGA seek a specific, case-by-case determination from EPA because EPA stated in the EPA Maricopa County Letter that EPA intended the guidance to be on a case-by-case basis. Finally, DEQ restated EPA's advice that the letter did not create or alter any binding requirements to any persons; undertaking any construction activity prior to obtaining a permit would be solely at the applicant's own risk because the permitting authority retains the discretion to deny any subsequent application to construct a stationary source of pollution; any time or resources expended on construction prior to obtaining a permit would not justify a decision on Best Available Control Technology (BACT); and if it is determined that changes to the proposed emissions units are required as part of the permitting process, the regulatory agency will require the applicant to meet the conditions in the final air permit, even if the applicant must modify or rebuild structures that were begun prior to obtaining the permit. 2025 DEQ Letter, p. 2.

On February 9, 2026, DEQ received an Air Quality Construction Permit application from Oklahoma Aluminum (which is now referred to as Oklahoma Primary Aluminum, or OPA). On April 3, 2026, DEQ issued a letter to OPA stating that the permit was considered administratively complete and was in the status of technical review. DEQ also stated, "Per OAC 252: 100-8-5(d), this facility is required to submit air quality modeling and an ambient impact evaluation."

On April 23, DEQ held a public process meeting in Inola, Oklahoma, pursuant to 27A O.S. § 2-14-301.

On October 14, 2026, DEQ received a subsequent letter from ERM that contained a list of construction activities it proposes to carry out before and after permit issuance, and requested that DEQ "confirm in writing that the pre-permit activities identified in [the list] do not constitute 'begin actual construction' of a major stationary source[.]" ERM Letter to DEQ, p. 2 (Oct. 13, 2026) (2026 ERM Letter). On October 19, 2026, DEQ sent a letter to EPA Headquarters and Region VI requesting that EPA indicate whether it concurs that carrying out the proposed activities listed in the 2026 ERM Letter is consistent with the EPA Maricopa County Letter. DEQ Letter to EPA (Oct. 19, 2026) (2026 DEQ Letter). As of the date of this response, EPA has not issued a response to the DEQ letter dated October 19, 2026, and none of the listed activities have occurred at the site of the proposed aluminum smelter in Inola, Oklahoma.

II. STIS' Submission is Substantively Defective

Although STIS' Submission is procedurally defective and does not meet the requirements for a Petition for Declaratory Ruling as discussed in Section III below, DEQ has considered and hereby responds to the substantive concerns presented in the STIS' Submission as follows:

A. DEQ is Authorized to Determine Whether an Application is Sufficiently Administratively Complete without Submittal of Final Dispersion Modeling.

STIS alleges that DEQ erred in determining the OPA application was administratively complete prior to the submittal of air dispersion modeling. STIS cites OAC 252:100-8-2 and 252:100-8-5(d) to support this claim. OAC 252:4-1-2 defines "administratively complete" as "an application that contains the information specified in the application form and rules in **sufficient detail to allow the DEQ to begin technical review**." (Emphasis added.) OAC 252:100-8-2 defines "administratively complete" as "an application that provides: (A) All information required under OAC 252:100-8-5(c), (d), or (e) . . ." OAC 252:100-8-5(d) provides that construction permit applications must provide certain information and data, including "site information, process description, emission data when required, BACT, modeling and sampling point data[.]" DEQ has 60 calendar days from the file-stamped date of Submission to determine if the application is administratively complete. OAC 252:4-7-7.

DEQ received OPA's air quality application on February 9, 2026, which contained an emission dispersion modeling protocol for Class II areas. By letter dated April 3, 2026, DEQ informed OPA that the air quality permit application was sufficiently administratively complete and it was then considered in technical review. DEQ further informed OPA that, per OAC 252:100-8-5(d), it is required to:

> [S]ubmit air quality modeling and an ambient impact evaluation. A Class II PSD Increment Analysis and NAAQS modeling protocol was received with the application on February 9, 2026. DEQ has reviewed and conditionally approved the Class II PSD Increment Analysis and NAAQS modeling protocol, contingent on the modeling report adequately addressing the comments provided by DEQ to the facility on March 9, 2026. In addition to the Class II PSD Increment Analysis and NAAQS review, the facility is also required to submit Class I PSD Increment Analysis and Class I AQRV analysis based on coordination with EPA Region 6 and the Federal Land Managers, respectively. Oklahoma Aluminum shall submit modeling protocols to DEQ for approval prior to submitting modeling reports for these analyses. As a part of the technical review, Oklahoma Aluminum is required to submit all applicable modeling reports and associated support documents as described in the approved modeling protocols.

Thus, DEQ determined on April 3, 2026, that, considering the information contained in the permit application, including the dispersion modeling protocol for Class II areas, DEQ had received sufficient detail to allow the agency to begin technical review, as provided under OAC 252:4-1-2.

OAC 252:4-7-8 states with respect to technical review that "each program shall have the time period specified in Parts 3 through 5 of this Subchapter to review each application for technical compliance with the relevant rules and to reach a final determination. If the data in the application does not technically comply with the relevant rules or law, the reviewer may notify the applicant by mail, describing with reasonable specificity the deficiencies and requesting supplemental information." The Prevention of Significant Deterioration air quality construction permitting process is an iterative process. For such permit applications, DEQ has 365 days to complete technical review and issue or deny a permit. OAC 252:4-7-31. During technical review, DEQ conducts a thorough analysis of the technical aspects of permit application. If information

required under OAC 252:100-8-5(d) has not been submitted for DEQ evaluation, the applicant will have failed to make the required demonstrations under OAC 252:100-8-5 and, ultimately, DEQ cannot issue a permit.

B. The Plain Language of DEQ's and EPA's Regulations Clearly Indicate that Certain Activities Not Involving an Emissions Unit are Excluded from the Definition of "Begin Actual Construction."

The crux of STIS' Submission, as alleged in its caption, is that "DEQ unlawfully authorized construction of the smelter before a construction permit application process has been completed and the permit lawfully issued." DEQ rejects this argument on its face based on the procedural grounds fully explained below, which include the fact that DEQ has not "authorized" any activity through any final agency determination or action. Nevertheless, even though STIS's Submission does not meet procedural requirements, DEQ addresses the substance of STIS's claims, rejecting them as not supported under the federal and state Clean Air Acts.

The federal Clean Air Act provides that "No major emitting facility . . . may be constructed in any area to which this part applies unless (1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part[.]" 42 U.S.C. § 7475(a)(1). The Prevention of Significant Deterioration (PSD) air regulations found in both the OAC and the Code of Federal Regulations (C.F.R.) prohibit the initiation of physical, on-site construction of an emissions unit prior to obtaining a PSD preconstruction permit. Oklahoma's PSD program, OAC 252:100-8, Part 7, is approved into the Oklahoma SIP. Under OAC 252:100-8-30(a)(3), no new major stationary source or major modification subject to the PSD requirements may begin actual construction without first obtaining a DEQ-issued permit. OAC 252:100-8-31 defines "begin actual construction" in terms identical in substance to 40 C.F.R. §§ 51.166(b)(11) and 52.21(b)(11). OAC 252:100-8- 31 states:

> **"Begin actual construction"** means in general, initiation of physical on-site construction activities **on an emissions unit** which are of a permanent nature.
>
> (A) Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.
>
> (B) With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(Emphasis added). Both 40 C.F.R. §§ 51.166(b)(11) and 52.21(b)(11) state:

> ***Begin actual construction*** means, in general, initiation of physical on-site construction activities **on an emissions unit** which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(Emphasis added).

"Emissions unit" is likewise defined consistent with 40 C.F.R. § 52.21(b)(7) as any part of a stationary source that emits or would have the potential to emit a regulated NSR pollutant.

EPA has stated that a plain reading of an Arizona PSD regulation, that is virtually identical to the EPA and Oklahoma regulations cited above, does not prohibit the initiation of the physical, on-site construction of those parts of a facility that do not qualify as an emission unit. *See* EPA Maricopa County Letter. Furthermore, the EPA Maricopa County Letter recognizes that it is within the air agency's discretion to interpret its existing regulations.

C. STIS' Speculative Allegation of Future Acquiescence to the Operation of Proposed Facility, Even if Construction Requirements are Not Met, is Unfounded.

STIS alleges that the applicant could be allowed "to operate even without the proper and lawful permits because of the time and expense invested in the project." [STIS' Submission, ¶13.] DEQ has notated in its correspondence with both OPA and EPA in the letters referenced above that any construction authorized by the rule is solely at OPA's own risk, since DEQ could potentially deny the construction permit and either DEQ or EPA could deny a future operating permit. Specifically, DEQ stated in its December 22, 2025, letter to OPA and its October 14, 2026, letter to EPA:

> [A]ny construction activities undertaken by OPA prior to issuance of an NSR permit by DEQ would be solely at OPA's risk, as DEQ would retain discretion to deny any subsequent application to construct a stationary source of air pollution (including emission units) if the applicable criteria are not met. Further, DEQ may not use OPA's time and resources expended on construction prior to obtaining a permit to justify DEQ's decision on any applicable Best Available Control Technology determinations and/or to grant the air permit. If changes to OPA's proposed emissions units designs are necessary to meet this or any other requirements of the permitting process, DEQ may require OPA to meet those requirements even if doing so requires modification or reconstruction of structures built or that have begun to be built prior to obtaining a permit.

Additionally, EPA has also emphasized this point, as the language quoted above is explicitly found in the EPA Maricopa County Letter. *See* EPA Maricopa Letter, p. 3. Regardless, it would be unlawful for any entity to begin actual construction of an emission unit or to attempt to operate a PSD facility without a properly issued construction permit.

D. DEQ Remains Committed to Transparency, Despite the Misinformation Contained within STIS' Submission.

STIS challenges DEQ's prioritization of transparency. STIS' Submission states contention with the fact that no official "record" of the April 23, 2026, meeting was made by DEQ and that "*no questions about this Inola smelter permit were answered.*" [STIS' Submission, ¶19.] The April 23, 2026 meeting in Inola was held pursuant to a statutory requirement found in the Oklahoma Uniform Environmental Permitting Act, the purpose of which was to explain the permitting process. Title 27A Okla. Stat. § 2-14-301(B) states:

> For Tier III applications, the publication shall also include notice of a thirty-day opportunity to request, or give the date, time and place for, a **process meeting on the permitting process**. If the Department receives timely request and determines that a significant degree of public interest in the application exists, it shall schedule and hold such meeting.

(Emphasis added). While transparency is the guiding principle of this statute, it is clear under the statute that the purpose of a process meeting is only to discuss the permitting process; not the substance of a permit application or technical aspects thereof. Furthermore, the statute does not require nor contemplate that the permitting authority would hire a court reporter for, or produce a transcript of, a mere process meeting. Written details regarding the permitting process applicable to the proposed smelter application are available on the DEQ website, as are the presentation materials provided at the process meeting.

DEQ provided notice of this process meeting on March 30, 2026, in the Claremore Daily Progress. That notice stated:

> The public is hereby notified that a representative of DEQ will chair a meeting to explain the steps of DEQ's permitting process relating to the project to interested persons. **While this process meeting is intended solely to discuss permitting process, there will be additional, future opportunities to discuss technical aspects of the permit application.**

(Emphasis added). It is clear from the March 30, 2026, public notice, that the purpose of the process meeting was to explain to the public the steps of the permitting process, rather than the substantive aspects of the permit application. Furthermore, during the process meeting, which lasted over two hours in duration, DEQ representatives took questions from the public and provided answers to every question possible based on DEQ knowledge at that time. Given that the permit application had only recently been received and technical review had just begun, it would have been impossible to answer technical questions because there were not yet technical answers. It would not be appropriate to answer technical questions from the public prior to the permit application being thoroughly evaluated and after DEQ's initial technical questions have been answered.

It is of utmost importance to DEQ that the public be meaningfully informed and involved in the permitting process for the proposed OPA facility. Thus, as DEQ stated at its public process meeting and many times since, DEQ will be holding two technical meetings that are not required by law. These meetings will take place before the draft permit is published. One meeting will be to discuss Best Available Control Technology (BACT) and the other to discuss dispersion modeling. The intent of these meetings is to explain the technical aspects of the draft permit to the public *before* it is released for public comment, to ensure the public is informed going into the public comment period (rather than seeing the permit for the first time when the public comment period begins and having only 30 days to understand the various considerations going into the draft permit).

DEQ's efforts to shed light on the smelter permit application and the agency's permit processes are extensive. DEQ's website has a page exclusively dedicated to providing news and updates on the proposed smelter project, which can be found at the following web address: https://oklahoma.gov/deq/aluminum-smelter-inola.html. Also found on the agency's website are

links for the public to see the current status of Permit Application No. 2026-0100-C and read all documents that are part of the permit application's administrative record to date. The agency has also provided a way for members of the public to get instant email or text message updates when a new development has occurred in the permit review process; the page to sign up for that service can be found here: https://public.govdelivery.com/ accounts/OKDEQ/subscriber/new. Finally, the web page has contact information for any resident or interested person who would like to request information or documentation. DEQ's permit review process will provide opportunities for formal and informal engagement by the public in the agency's permit review decision.

It is important to note that in December 2025, when DEQ received ERM's letter regarding Begin Actual Construction and shortly thereafter replied, DEQ had not yet received a permit application for the proposed OPA facility. Thus, there was not a permit record in which to include the correspondence. It was not until February 2026 that DEQ received a permit application and a permit record was thus created. Even so, DEQ's December 2025 letter, as stated above, did not constitute a permit decision of any kind. Rather, as clearly outlined in Section III.A. below, it is an acknowledgment of a straightforward reading of the plain language of a state and federal regulatory definition, and the acknowledgment has no binding legal effect on the applicant or any other regulated entity. The 2025 DEQ Letter and the 2026 DEQ Letter are relevant public documents; however, they are not part of the official permitting record for the OPA application. Instead, they relate to a general recognition of EPA's policy associated with activities that are excluded from the definition of begin actual construction.

As illustrated, DEQ has gone well beyond what is required by law to ensure information about the permit application is available to the public and will continue to do so.

E. The Offensive, Disparaging Accusations about DEQ Air Quality Division Director, Kendal Stegmann, are Egregious and Patently Unfounded.

STIS' Submission makes disgraceful allegations that are grossly inaccurate with respect to the exemplary conduct of a dedicated public servant, DEQ Air Quality Division Director Kendal Stegmann. DEQ rejects those allegations as outright falsehoods and misrepresentations in furtherance of a spurious character attack against Ms. Stegmann, which appears to be a shameful, desperate attempt to bolster STIS' other frivolous claims. STIS' Submission states, "Upon information and belief, Ms. Kendall Stegman [*sic*] is a licensed attorney within the state of Oklahoma and previously advised the DEQ as a staff attorney. Clearly, the approval of construction she authorized is not supported by any cogent legal analysis or even fair and fundamental public policy." [STIS' Submission, ¶28] The Submission goes on to demand that Ms. Stegmann "must be suspended indefinitely" until she successfully completes education courses for ethics, administrative procedure, and the Clean Air Act process and permitting regulations. [STIS' Submission, ¶39]

Beyond the disappointing and unnecessary character attack alleged by STIS, there are fundamental flaws with its argument. As explained above, the December 22, 2025, letter referenced by STIS in its accusation did not constitute an "approval of construction" or an "authorization." Rather, as has already been described in detail, it was an acknowledgement of EPA's policy and the plain reading of both state and federal regulatory language. Furthermore, it is not "clear," as STIS insists, that DEQ's December 2025 letter is "not supported by fair and

fundamental public policy." Rather, it is extremely clear that DEQ's approach is overtly supported by fair and fundamental public policy. The Oklahoma state legislature strongly signaled its public policy that regulatory agencies are to interpret statutes and rules under the plain meaning of the language thereof. Through its amendment to 75 O.S. § 318(E), which went into effect on November 1, 2025, the legislature stated with respect to judicial review:

> In the interpretation of a state statute, administrative rule, or other regulation, the reviewing court or officer hearing an administrative action shall not defer to the interpretation of a state agency and shall interpret the meaning and effect de novo. In an action brought by or against a state agency, after applying all customary tools of interpretation, the court or hearing officer **shall exercise any remaining doubt in favor of a reasonable interpretation which limits agency power and maximizes individual liberty.**

75 O.S. § 318(E) (emphasis added). This statutory amendment demonstrates the legislature's overt support for interpretation of administrative rules according to their plain language. DEQ's effort to obtain EPA's concurrence that the listed activities are consistent with its interpretation in its Maricopa County Letter concerning nearly identical regulatory language is directly in line with the Oklahoma legislature's expectations. Especially considering that the definition of Begin Actual Construction and the PSD program itself are federal programs, and EPA has clearly indicated the plain language meaning of the definition of "begin actual construction" has been unlawfully expanded to include construction activities that are not related to the emissions unit itself.

STIS' Submission alleges that DEQ acted contrary to its own rule, which is not factual. [STIS' Submission, ¶29] As EPA stated in the EPA Maricopa County Letter, EPA's opinion is that the definition of "begin actual construction" has been interpreted in the past to be overly broad and should only apply to the emissions unit, rather than the entire major stationary source. DEQ has merely recognized EPA's interpretation set forth in the Maricopa County Letter [2025 DEQ Letter] and inquired as to whether EPA concurs that the listed activities are consistent with that interpretation and state and federal regulations [2026 DEQ Letter].

F. DEQ Employee Conduct During DEQ's Public Process Meeting

STIS' Submission also alleges that DEQ "lied about what it had done" at the public process meeting on April 23, 2026. The Submission essentially argues that DEQ lied because the definition of begin actual construction was not specifically mentioned during the two-hour public meeting that covered a large amount of information related to a very complex permitting process. However, STIS' own quote of DEQ staff from the process meeting acknowledges that reference was made to limited activities that may occur prior to obtaining a permit, as well as the related case-by-case determination. [STIS' Submission, ¶29] STIS implies that DEQ employees present at the public process meeting should have explained the definition of "begin actual construction" and the regulatory background and context of its interpretation to the public. STIS takes this inflammatory and false accusation to the extreme, stating that DEQ employees present at the April 23, 2026, meeting should also be indefinitely suspended "until they demonstrate proficiency through education in ethics, administrative procedure and clean air act policy and permitting." [STIS' Submission, p. 17]

Again, STIS' intent is to lob baseless, false attacks against the characters of public servants in furtherance of its frivolous legal claims. The objective of DEQ staff at the April 23, 2026, public process meeting was to explain the PSD permitting process, *i.e.*, the required steps in DEQ's PSD review and, even more importantly, the opportunities for public participation. That is exactly what DEQ staff did on April 23, 2026, for over two hours.

G. Requirement to Obtain an NPDES or Other Water Quality Permits

STIS' Submission alleges that DEQ's statements regarding construction and operating permits were misleading during the air quality public process meeting. STIS cites DEQ's PowerPoint presentation, which states "Large industrial facilities typically require multiple permits before construction and operation can begin." Without any stated basis, STIS argues that "DEQ has neglected its duty to require [an NPDES permit] application so that the full effects of such a pollutions (*sic*) industry facility may be known to the public." [STIS' Submission, ¶17] While STIS's argument contains typos that make it difficult to fully comprehend, DEQ will attempt to respond to the apparent argument.

While STIS cites no probative evidence for its accusations, and its reasoning is not clear, it appears that STIS assumes that DEQ would not require the applicable water permits to be issued by DEQ at the requisite time. The required OKR10 stormwater construction permit must be obtained by any permittee prior to commencing construction activities, including land clearing. The preconstruction requirements of the CAA do not apply in the context of the Clean Water Act. Any required NPDES or pretreatment permits must be obtained prior to operation. Specifically with respect to NPDES permits, pursuant to 40 C.F.R. § 121.21(c)(1), "Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence."

It is true that OPA has not applied for, and DEQ has not issued, an OKR10 permit or other water permit, but no land clearing has begun at the site of the proposed OPA facility and no discharge is proposed to occur within 180 days; consequently, no water permits are yet required. STIS alleges no facts to support its allegations that DEQ has neglected any duty to require the applicable water permits. DEQ's statements during the April 2026 process meeting regarding construction and operating permits were accurate, and all required construction and operating permits must be obtained prior to the commencement of any activities for which those permits are required.

H. Requirement to Obtain Hazardous Waste Generator Permit

STIS' Submission argues that the proposed aluminum smelter "will also need hazardous waste generator and NPDES permits." [STIS's Submission, ¶12] This assertion is incorrect; neither Oklahoma nor federal law requires a permit for hazardous waste generation. In some instances, a hazardous waste storage permit is required. However, a large quantity generator ("LQG") does not need a storage permit, as long as it meets the conditions for exemption. Under 40 C.F.R. § 262.17, an LQG "may accumulate hazardous waste on site without a permit or interim status" if it meets the enumerated accumulation and storage requirements therein, starting with the rule that it "accumulates hazardous waste on site for no more than 90 days." Small quantity

generators may accumulate hazardous waste for up to 180 days before needing a permit pursuant to 40 C.F.R. § 262.16.

Even assuming LQG status (which is the highest generator category), the proposed aluminum smelter would need a hazardous waste storage permit only if hazardous waste is going to be accumulated on site for more than 90 days. *See* 40 C.F.R. § 262.17(b). In other words, the facility may be constructed and operated, and not need a hazardous waste storage permit unless and until hazardous waste is or will be stored beyond 90 days.

III. STIS' Submission Is Procedurally Defective

A. STIS' Submission Fails to Satisfy the Regulatory Requirements for a Petition for Declaratory Ruling.

STIS' Submission is deficient and does not comply with the regulatory requirements set forth in the Oklahoma Administrative Code for petitions for declaratory ruling. 75 O.S. § 307 Submission and Disposition of Petitions for Declaratory Rulings – Judicial Review provides:

> Each agency shall provide by rule for the submission and prompt disposition of petitions for declaratory rulings as to the applicability of any rule or order of the agency. A declaratory ruling, or refusal to issue such ruling, shall be subject to a judicial review in the manner provided for review of decisions in individual proceedings as provided in Section 317 through 323 of this title.

OAC 252:4-9-32(e)(2) states:

> Declaratory ruling. Any person who alleges that any DEQ rule, order or final permit decision interferes with or impairs, or threatens to interfere with or impair, his/her legal rights may petition the DEQ, formally requesting a declaratory ruling on the applicability of the rule, order or final permit decision. . . . (2) **Form and content of petition. All petitions shall be in writing and filed with the Administrative Law Clerk. The petition shall include the information and follow the format in Appendix B.**

(Emphasis added). STIS' Submission does not provide the listed information nor follow the format provided in Appendix B. Specifically, the Submission fails to indicate whether the request was previously discussed with DEQ, and with whom; and the Submission was not filed within twenty (20) working days of the issuance or receipt of the "actions" alleged on the part of DEQ (*i.e.*, the 2025 DEQ Letter). Consequently, the Submission fails to meet the procedural requirements governing the declaratory ruling process.

B. No Final Agency Action has Been Taken.

The DEQ letter that is the subject of and attached to the STIS' Submission is not a "DEQ rule, order or final permit decision" as contemplated by OAC 252:4-9-32. The letter neither grants nor restricts the legal rights of any person or any entity. It does not interfere with, or impair, or threaten to interfere with or impair, the rights of the individuals and entities identified in STIS'

Submission. Moreover, no final recognition of which specific activities are permitted under the EPA interpretation has been made.

As of the date of this ruling, DEQ is engaged in technical review stage of its permitting process with respect to Permit Application No. 2026-0100-C and has not authorized the construction of the proposed major stationary source within the meaning of the federal and state Clean Air Acts. Public notice, public hearings, and a final agency decision on the permit will occur later in the process. DEQ has neither issued a final rule nor a final permit decision that is ripe for review under the declaratory ruling provisions of OAC 252:4-9-32(e).

Sincerely,



Robert D. Singletary
Executive Director