

**Rule Hearing
November 12, 2019
Environmental Training Center**

James Semerad: Good evening, everybody. Thank you for coming. Like Dave said, I think this is an important opportunity for everybody to talk about where we're going with our regulations. First, a disclaimer. This past year, of course, we became DEQ. So in case I use the words Department of Health, that's just because I'm an old guy and old habits are hard to break. Anyway, we're DEQ now, and the other thing I'd like to say is when I'm talking about Quad O and Quad Oa oftentimes I may just for simplicity's sake just say "Quad O." Basically there are nuances between Quad O and Quad Oa with what the kind of source types that are applicable and the dates that are required and whether or not the well was reconstructed and all sorts of things. For purposes of this meeting, we can think of them as just the regulation that we're talking about. First of all, I will talk about Quad O a little bit and then we'll talk about our Chapter 7. And by the way, if there's any questions in the meantime, feel free to ask them. Quad O is a federal regulation promulgated in the past several years that requires emission control monitoring, record keeping and extensive reporting. The Department is currently working on adopting Quad O per our legislature into our North Dakota Air Pollution Control Rules. Note we are proposing to adopt Quad O/Oa by incorporating them into our rules verbatim. It's very common for a new source performance standard and I think it's easy from an EPA acceptance perspective. I'm guessing that most of you would agree that's probably the right thing. If not, we'd like to know. Many steps for adoption of the rules, we're hoping to have Quad O fully adopted by this July. However, there's many target dates and many comment periods that we have to go through. If not July, hopefully very shortly thereafter. The adoption of Subparts Quad O/Oa into Chapter 33.1-15-12 will have substantial cost to our Department in terms of time. Lots of review time; there's lots of sources as you can imagine - let's say on the order 15,000 sources potentially. So with each one of those having a report, with us working to better understand the rule and working within industry to ensure compliance will be a lot of time involved in that. And we're looking forward to diving in as soon as we adopt the rule. Chapter 7 has been part of our North Dakota pollution control rules for decades. Been around a long time, restricts emissions of organic compounds from any source throughout the State. As the Bakken has grown, Chapter 7 has become kind of synonymous with the oil industry. One thing we need to remember is it's not synonymous with the oil industry. It's often used in the oil industry, but it's also used at other sources. A couple examples: we had an agricultural production facility that has an anaerobic digester. The housing of the digester had a leak that had tears in the outer membrane that led to citizen complaints. We used Chapter 7. They weren't permitted to emit from that anaerobic digester. We used Chapter 7 to solve that problem. Another example is a commercial propane tank had problems. Initially they were potentially going to just vent the tank so they could fix the tank. Chapter 7 says you can't do that. My point is, no matter what changes we make or don't make to Chapter 7, we have to remember that the scope of Chapter 7 extends well beyond the oil industry, including upstream and downstream and midstream. We'll say it that way. Further, North Dakota has legacy wells; of course, legacy wells often have H₂S associated with them.

And Chapter 7 has provisions to ensure that H₂S is controlled prior to those gases being released.

Quad O is not really a good mechanism for that. So again, Chapter 7 is important. Beyond the direct pollution control, Chapter 7 has allowed us to be very proactive in assessing environmental issues and it's led to some innovative solutions. For example, we've had two global actions where we've found problems in the oil patch and we've been able to use a global enforcement action that I feel was much more proactive and much more productive in controlling emissions. It was a successful enough where it noticed by EPA and other states and these actions directly benefited, in my opinion, the air quality in the state. Also, and I think this is a critical point of a potential unintended consequence if we change Chapter 7, and that is Chapter 7 provides kind of a backstop in calculating potential to emit (PTE) for a variety of sources. If we don't have that chapter to calculate PTE, we could end up with a permitting system that takes longer to issue permits to all industry, but in particular, the oil industry. I'm talking about gas plants, I'm talking about compressor stations, I'm talking about all those things. We need to be careful about how those changes affect our permitting. Issuing permits in an efficient manner can directly help reduce flaring, in my opinion, because we don't want to have a gas plant permit sitting on the shelf for an extra year because of an incorrect PTE or a PTE that's really not very representative of what the potential would be. With Chapter 7 our permitting process can be much more efficient; faster permits and hopefully better environmental conditions.

The other thing is please note that that any amendments made to Chapter 7 will require EPA approval ultimately because Chapter 7 is approved in our SIP. With that in mind, then that basically means that we'll first adopt into our rules, but ultimately, we'll have to get it approved by EPA into our SIP. That likely will take years before it gets to the SIP approval process. Whatever we do with our rule, if we make any changes to Chapter 7, it's going to be a long road. First, we have to make the right choice internally and then we have to make the case to EPA that that was the right choice. That will take time. So kind of in summary, what I'm saying from again, from a big picture is that both Chapter 7 and Quad O restrict leaks and emissions. Quad O is directed specifically at the oil industry, oil and natural gas industry - sources like storage tanks and pneumatic pumps and fugitive emissions and such. It's focused on leak detection programs, timely repairs and detailed reporting. Many existing oil and gas sources aren't regulated by Quad O. Chapter 7 on the other hand, kind of focuses on the endpoint. You've got a leak or do you not have a leak? If you don't have a leak, all is good. It's not prescriptive on reporting, record keeping and such. We can do record keeping and reporting in the permit. Again, a gas plant or compressor station might have those permit conditions, but that would be a separate permitting process, not the rule itself. Basically from my experience, what I'm getting at is that the focus and the methodology of Quad O and Chapter 7 are very different, and yet, in my opinion, both can be very effective. Very different angles at the same issue, but both can be very effective and can work into a better environment, and that's what we're trying to achieve. Note that the Quad O and Chapter 7 fully exist right now in North Dakota. EPA has primacy over Quad O. We have primacy over Chapter 7. So really in that regard, nothing's changing except that when we adopt Quad O, we want to make

sure that the dovetailing of the Quad O regulation into our rules is done effectively. Whatever we need to do to provide as clear of a regulation as we can and as straightforward process as we can, that's what we're really after. With that in mind, I guess again, I would I would thank everybody again for coming. I welcome your input and we're going to take any questions first. Anybody have any quick questions?

Question from Audience: Written comments are due in December?

Dave Glatt: December 13th. I'll get into that in my opening monologue.

Question from Audience: Will adoption of OOOO/OOOOa eliminate the global consent decrees?

Dave Glatt: We haven't made that decision yet and I think we want to get input on this potential rulemaking. Then as we move forward with that, we'll be having those discussions.

James Semerad: Yes.

Question from Audience: You mentioned the time frames to change Chapter 7, if that's the direction you go. What's the timeframe to adopt Quad O/Oa by reference?

James Semerad: July, hopefully of 2020. We're in the process now - to be honest to a certain extent, the only reason we might not get it done by July is because we have to wait for a comment period to end or we have to wait for a board to approve it, or something like that. We are well down the road in that process. To a certain extent, we're just starting as the DEQ and kind of the processes have changed to adopt regulations. We're kind of new to this and that's been a little bit slower than our old process when we were part of the health department. Not any worse for the wear. I mean similar but different boards and we had to create boards and things like that. It has provided a little bit of a slowness, I guess, on the front end.

Dave Glatt: We're learning and I would say that part of the legislation was they gave us ten or twelve, ten FTEs to implement the program. The eight of those don't show up until July of next year. And so the year that we have now is infrastructure building and the software that we have to develop to handle 15,000 reports that come in. We're in the process of doing that. Plus, we have to go through the rulemaking process. Once that happens, come July 1st, we get eight FTEs, I don't expect us to be able to hire eight people with full knowledge on how to do inspections and how to implement Quad O. There'll be a time period where we're going to have to do training of individuals and as we move forward. July 1st, technically, that's our point we want to adopt everything, but it's going to take some time to get that infrastructure developed and move forward. But as soon after July 1st, as possible.

James Semerad: Anything else? Thanks for the questions.

Dave Glatt: I am Dave Glatt, Director of the Department of Environmental Quality and I will be acting as a hearing officer for this public hearing. Please note that the hearing is being recorded for the purpose of creating a record. Let the record show that it is 6:15 p.m. on the 12th day of November 2019 at the Environmental Training Center. As described in the department's notice, the public hearing has been called for the purpose of allowing all interested individuals an opportunity to submit information concerning the department's rules relating to air emissions from oil and gas production facilities and Continental Resources Inc.'s petition for rulemaking. The department will not be responding to comments at this hearing. It is not a question and answer session. It is important to note that all comments received by the close of the comment period on December 13th, 2019, whether written or recorded during the scheduled public hearing, will be considered. Both written and oral comments will be considered equally. It is not necessary to repeat comments submitted in writing. The following is a procedure we will follow in this hearing today. I will shortly open the hearing for comments at which time anyone interested in presenting comments will be allowed to speak. Anyone presenting comments should state their name, address and the organization they represent, if any. Also, everyone wishing to speak and everyone in attendance is requested to sign the attendance sheet for the record located at this time at the front of the room. Please indicate on the attendance sheet whether you would like to speak. The purpose of soliciting comments and holding a public comment hearing under North Dakota Century Code 28-32-16 is to provide an opportunity for citizens and stakeholders to voice concerns and contribute input on the DEQ consideration of two related issues.

1. The pending rulemaking petition to amend the North Dakota Administrative Code 33.1-15-07-02(1) filed by Continental Resources Inc. 2. The DEQ has anticipated adoption of the Federal New Source Performance Standards for Crude Oil and Natural Gas, 40 CFR Part 60 Subpart OOOO and Subpart OOOOa. In particular, the DEQ is seeking comments on the following questions; How do recent EPA rulemakings involving Quad O and Quad Oa impact DEQ's anticipated adoption of these rules? Second, anticipating that the DEQ adopts Quad O and Quad Oa should it: 1. Amend the North Dakota Administrative Code 33.1-15-07-02(1) as requested in the petition for rulemaking, 2. Amend North Dakota Administrative 33.1-15-07-02(1) in a different way, or 3. not amend the administrative code 33.1-15-07-02(1) at all. If the DEQ decides to undertake rulemaking to both adopt Quad O and Quad Oa and amend the North Dakota Administrative Code 33.1-15-07-02(1) should the DEQ conduct one proceeding or should it first adopt Quad O and Quad Oa and obtain EPA's approval for implementing those rules before proposing any amendments to North Dakota administrative code 33.1-15-07-02(1). Take a breath. At this point, I open the hearing for comments, feel free to step up to the microphone. State your name and feel free. Thank you.

Scott Skokos: My name is Scott Skokos and I'm here representing the Dakota Resource Council. My business address is 1720 Burnt Boat Road, Suite 104, Bismarck, North Dakota. I guess I'm going to just follow the format for the questions that you asked them and will probably also be submitting some supplemental comments due to these, but this is just our first look at this. We as an organization, you guys know us. We've been working in North Dakota for 40 years on various land or environmental issues. One of them being

oil and gas. This is in our wheelhouse as far as things that we work on and things that we've all done historically. The NSPS rules, we actually have worked on those rules on the federal level, going to the hearings, all that kind of stuff, supporting those rules. We do have a history with Quad O just generally throughout the whole process. Specifically, with the question one, how do recent EPA rulemakings involving Quad O impact with the anticipated adoption of rules? At this point there is the 2016 Quad O which you guys probably aware of, which is the one that you're talking about potentially adopting. And then there is a rescission rule or a new rule that's in place that has a comment period ending on November 25th. So kind of my thing is, is you're in a regulatory limbo with all of this in a lot of ways you probably think it's weird that I'm saying this but you don't really know what it's going to be until that kind of period's over with. The other thing that I would say is if a new administration comes in in 2020 and decides to go with a more stringent Quad O, then you have that also. And that's another thing to address, is that if you go straight into Quad O right now, you're going to get the 2016. And then it might switch to another one and then you're going to have to switch how you do things and then it could switch again to 2020. There's just a lot of uncertainty as far as that's going to go. And there could be litigation that holds that all up, too, after the fact, that's always very possible. So that's how I would look at question one, just that it's a big question mark right now with an open comment period going on and potentially administration change in 2020.

Question, number two, we look at this is like we call the code 33.1-15-07, Chapter 7 which you are referencing, essentially is a no venting rule for the most part, besides its certain emergencies. And we look at that as something that's a good thing. That is very complementary to Quad O. Quad O applies exclusively to the oil and gas industry and exclusively to new sources. Your rule applies to all sources. I think replacing it with Quad O would be inappropriate because you would be essentially taking out the legacy wells off the books as far as leak detection. I would urge you to keep that in place while you adopt Quad O at the same time. I mean, the thing is, like the rule that you had does address VOC emissions and you do it in permits and it's not necessary a bad thing. That's question for you to answer. Question 3. I guess I would reiterate my answer to question one, which is Quad O and Quad Oa are both in flux right now. We basically think that you should be sit on this at the moment and wait till you kind of see what's going on with these comment periods. Potentially adopt Quad O, the 2016 version, but wait until you see what's going to happen with the new Quad O, because there actually is statute talking to my attorneys, the statute that says that, this is from a Supreme Court case last year, a statute that attempts to incorporate future changes of another statute, code regulations, standard or guideline, is unconstitutional delegation of legislative power. This rule and this was McKay versus North Dakota Worker's Comp Bureau 1997 ND. This is the reference of this, and I can also provide this for you guys in our written comments. This rule applies to regulations because the authority of an administrative agency to adopt administrative rules is the authority delegated by the Legislative Assembly.

So basically, what they're saying is that if rules are going to change, and you adopt this new rule, it could then get changed legislatively or administratively and you just you're just putting yourself in a really strange position. And I don't want to have you guys adopt

Quad O and then have to redo it, because the redo takes a long time. So, I mean, I guess in conclusion, I just think it's just like at this point with all the uncertainty, with Quad O, like where it's at currently, keeping your current rules in place and enforcing those strongly is what we would recommend and then potentially adopting the 2016 Quad O because it has a complementary effect in waiting to see what happens if these new ones. But if you wanted to not adopt Quad O and because it already is being essentially it's already in effect, it might be prudent because you might have a quick change depending on what's going to happen with this new rule that was brought forth by the EPA and then also potentially an administration change in 2020.

Dave Glatt: A clarification question Scott. You mentioned holding on to Chapter 7 while going to adoption or at that point if in the future we ever adopt Quad O. Are you saying at that point, don't worry about Chapter 7 or no?

Scott Skokos: No, I think it has a very good complementary effect, because then I think like what you mentioned earlier is that it doesn't just apply to oil and gas, it's not a do little role, in my opinion, it has a complimentary effect. The NSPS rule only applies to new sources. So it would be wells after 2016, the effective the day of the rule, whatever, I forget what the exact effective date is. But the rule was finalized in 2016. So you'd be looking at wells that would be forward from there versus your current rule, which applies to every all sources.

So appreciate that. Thank you. Thank you.

Dave Glatt: Would anybody else like to provide comments?

Brady Pelton: Members of the panel. Good evening. For the record, my name is Brady Pelton. I serve as the government affairs manager for the North Dakota Petroleum Council. We are located at 100 West Broadway Ste 200 in Bismarck, North Dakota. First off, I want to thank you for the opportunity to provide comments on the administrative rules relating to air emissions from oil and gas producing facilities. The North Dakota Petroleum Council is a trade association that represents more than 650 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, the pipeline, transportation, mineral leasing, consulting, legal work and oilfield service activities in North Dakota, South Dakota and the Rocky Mountain region. To formulate comments on behalf of the industry, NDPC solicited input from our members and our member companies and formal technical committee to develop the comments that I'll be discussing today. The committee has met to study, review and adopt these initial comments that reflect the opinions of our 650 member companies, and they should be viewed as comments from the regulated community and not as from one single entity. Next, we appreciate the time and effort, the consideration of adopting the federal new source performance standards for crude oil and natural gas as we referenced Quad O/Oa and what they have required of the Department of Environmental Quality. The state adoption of these federal new source performance standards is a transition of more regulatory authority from the federal government to the state of North Dakota. The North Dakota Petroleum Council believes the DEQ is well-positioned to assume such primacy

over federal regulatory issues relating to the North Dakota energy sector. During the North Dakota 2019 legislative session, members of the North Dakota state legislature shared this optimism when it approved appropriations for 10 additional FTE positions within the DEQ to provide the expertise and personnel resources required by the department to develop, implement and enforce federal air emission standards. Two of these FTEs were appropriated for the first year of the 2019/2021 biennium in order to properly develop the program and gain primacy approval over federal air emission standards from the EPA. In making the large-scale appropriation for additional personnel dedicated to, OOOO/OOOOa primacy, the legislature and the legislative directive toward primacy over these federal regulations through state adoption of Quad O/Oa became quite clear. Through examination of committee and conference committee testimony and discussion it is also clear to see the importance of air emission regulatory primacy to the oil and gas industry and the state as a whole. Current requirements of the subparts include substantial monitoring, record keeping and reporting to the EPA.

The subparts also applied several source types, including upstream oil and gas wells, midstream compressor stations, gas plants and crude oil storage and transmission systems. Because of the scale currently involved in compliance with the subparts and the size of the EPA organization, we believe a more localized and responsive regulating body for industry members within North Dakota is an advantage to the industry and as well as the state and the federal government as a whole. NDPC and North Dakota's lawmakers agree that the DEQ has the ability, the expertise and soon the enforcement tools necessary to implement Quad O and Quad Oa standards on the local level. The efficiencies of local implementation of federal air emissions standards are also recognized by the EPA itself, of course, which is why it has extended the opportunity to North Dakota to do just that. NDPC believes the DEQ should incorporate subparts OOOO/OOOOa into its regulations by reference. Incorporation by reference will meet the legislative mandate, avoid the potential for inadvertent departure from these subparts that could jeopardize the validity and or the clarity of the state's regulations and provide greater regulatory certainty for industry. Incorporation by reference also qualifies the state to receive automatic full delegation of Quad O and Quad Oa under Section 111 of the Clean Air Act.

NDPC respectfully suggests DEQ incorporate Quad O and Quad Oa by reference through Chapter 12, where other new source performance standards subparts have been incorporated. If DEQ incorporates Quad O and Quad Oa by reference, NDPC believes the EPA's ongoing rulemaking involving those subparts will have no impact on DEQ's adoption of those subparts. As with other federal subparts incorporated by reference in Chapter 12 of DEQ's regulations, subsequent changes to the incorporated federal regulations can be incorporated through a rulemaking by DEQ at a later date. However, NDPC believes it is important that whatever version of the federal rule is in effect after a federal rulemaking, that DEQ's regulations should also be updated efficiently to fully integrate the requirements as they exist at the conclusion of the federal rule making process. If DEQ incorporates Quad O and Quad Oa by reference, NDPC believes DEQ should also simultaneously amend its rules to ensure that Chapter 7 remains consistent with Quad O and Quad Oa requirements to provide needed clarity and regulatory certainty. NDPC will submit its recommended changes to this section either in

supplemental written comments within the current comment period ending in December 13th or in response to a DEQ proposed rulemaking in relation to Chapter 7. We again thank you for the opportunity to provide comments on North Dakota air emissions administrative rules. Having the certainty of federally prescribed standards will enhance efficiencies for both the oil and gas industry in complying with those standards and the DEQ in fulfilling its mission of environmental protection. Adopting the federal Quad O and Quad Oa standards and having the ability to implement those standards on the state level are in the best interests of the oil and gas industry, the state of North Dakota and the nation. With that I'd be happy to answer any questions.

Dave Glatt: Thank you Brady. Anybody else who would like to provide comment?

Sean Flynn: Good evening, my name's Sean Flynn. I'm the senior director for Health, Safety, Environment for Continental Resources. Our corporate headquarters business address is 20 North Broadway Avenue, Oklahoma City, Oklahoma, 73102. Continental appreciates the opportunity to comment on DEQ's consideration of these two important issues related to air quality requirements in North Dakota. It's the largest oil and gas operator in North Dakota and the petitioner to amend North Dakota administrative code section 33.1-15-07-02(1), which I'll call Chapter 7. Continental joins NDPC in supporting DEQ's adoption of Quad O/Oa, as well as an amendment to ensure that DEQ's uncontrolled emissions regulation in Chapter 7 is applied consistently with the newly adopted, more stringent federal subparts. With respect to the specific questions posed by DEQ and the notice of hearing; first Continental joins NDPC in supporting adoption of Quad O and Quad Oa through incorporation by reference. We also believe that the pending EPA rulemaking should not impact the DEQ's decision to adopt these rules. Next, Continental also agrees with NDPC that the DEQ should simultaneously amend Chapter 7 with respect to oil and gas facilities to make it consistent with the more stringent requirements and Quad O/Oa. We believe the language proposed in our petition accomplishes that objective, but we recognize that alternate language could accomplish that same goal. Finally, whether this amendment is done in one proceeding or as a separate proceeding, we believe it should be done simultaneously, we believe that time is of the essence here as the deadlines for the rulemaking with respect to the petition, it's only a month later than the deadlines for the rule making to incorporate Quad O and Quad Oa. Thank you.

Dave Glatt: Thank you, Sean. Just a clarification. The amendments to Chapter 7; you're not going to change what you had in your petition or were you going to provide different language or supplemental language?

Sean Flynn: We're working as part of the task force with NDPC. So we believe the language we proposed does achieve that objective. But I think we're also working to look at alternatives that accomplish that same goal of making them consistent. Thank you.

Dave Glatt: Anybody else who would like to provide comment?

Melanie Monez: Good evening, gentlemen. My name is Melanie Monez. I live here in Bismarck, 3315 University Drive. I am here as a member of the DRC and Fort Berthold Power. I'm just going to be saying a comment. North Dakota is dangerously close to going into ozone nonattainment due to methane and VOC emissions from oil and gas. The no venting law should remain in effect, and the DEQ should not do what Continental is requesting. DEQ should adopt Quad O but not get rid of the no venting law.

Dave Glatt: Thank you, Melanie. Anybody else like to provide comment?

Laura Anhalt: Hi, my name is Laura Anhalt and my address is 3320 North 2nd Street in Bismarck, 58501 and I went to the northdakota.gov web site and the first thing that comes up is North Dakota ranks number one in water quality and air quality. And there's a quote that says, we know how good we have it now so does the rest of the world. How can we help that and lower our air standards in the state? I went to the department, the DEQ and your mission statement is to conserve and protect the quality of North Dakota's air, land and water resources, following science and the law. Our vision is a sustainable, high quality environment for current and future generations. This would not conserve and protect the quality of our air. Giving into Continental Resources does not promote this. Not to mention the ruination of the night sky in the west because of the flaring, you can see it for miles. We can't see space anymore from there, but space can see us now. Because of flaring we went from one of the darkest places to one of the brightest places. Why are we having this public hearing? Please read your mission statement and that will tell you what needs to be done or not done. Thank you

Dave Glatt: Thank you Laura. Anybody else like to provide comment. Any additional comments? Any additional comments? Hearing none. We thank you all of you for coming tonight and listening. I will point out that this recording will be available on our Web site. And we also will be transcribing this recording as well. You can hear it and see it transcribed. We will be doing that very shortly. All of the important information gathered at this hearing will be considered by the department. The record will be held open for written comment until December 13th, 2019. What I plan to do is we'll get this recording up on line as soon as possible. You can listen to it and if that spurs additional comments that you would like to submit, please do that. We will be taking all comments very seriously and be aware of that December 13th date. So at this point, I close the hearing. And thank you all for coming tonight and hope to hear from you in the near future. Thank you.