

US EPA ARCHIVE DOCUMENT

**EPA-APPROVED OKLAHOMA
STATUTORY AND REGULATORY
REQUIREMENTS APPLICABLE
TO THE
HAZARDOUS WASTE
MANAGEMENT PROGRAM**



MARCH 2001

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OKLAHOMA STATUTES
ANNOTATED

Titles 27A to 28
Environment and
Natural Resources
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**OKLAHOMA STATUTES
ANNOTATED**

**Title 27A. Environment and Natural
Resources**

Title 28. Fees

Under Arrangement of the
Official Oklahoma Statutes

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Historical and Statutory Notes

Laws 1993, c. 145, § 14, in subsection A, in the first sentence, substituted "There" for "Effective January 1, 1993, there" and inserted "to represent the interests of the State of Oklahoma" and deleted the second sentence, which read: "The Governor shall appoint the first Board by March 1, 1993."; in subsection D, in the introductory clause, substituted "length of initial appointments shall be as follows" for "initial terms of office of", and in paragraphs 1 to 5 substituted "members' terms" for "members"; in subsection E, in paragraph 1, in the first sentence, substituted "a vacancy has occurred" for "the expiration of the term of any member", and added paragraph 3; in subsection F, in paragraph 1, in the second sentence, deleted "following the passage of the Oklahoma Environmental Quality Act" following "meeting" and substituted "chair" and "vice-chair" for "chairman" and "vice-chairman" throughout the paragraph; in subsection G, rewrote paragraphs 2 and 3, which prior thereto read:

"2. Be the rulemaking body for the Department of Environmental Quality. Such rules shall be adopted with the advice of the advisory councils created in Section 10 of this act. By February 1, 1994, the Board shall have promulgated permanent rules to implement the programs and functions within the jurisdiction of the Department of Environmental Quality pursuant to the Oklahoma Environmental Quality Act; and

"3. Sit as a board of appeals for pollution complaints within the jurisdictional areas of the Department of Environmental Quality.

"An appeal to the Board is not necessary for a final determination of a particular issue but such issue may be appealed to the district court by a party;"

, and added paragraphs 4 and 5; and added subsection H.

Laws 1993, c. 324, § 4, in subsection G, added paragraph 6.

§ 2-2-102. Renumbered as Title 27A, § 2-10-308 by Laws 1994, c. 353, § 41, eff. July 1, 1994

§ 2-2-103. Attorney General as legal counsel

The Office of the Attorney General of this state shall serve as legal counsel for the Environmental Quality Board and shall assist the Board in the performance of its duties pursuant to the Environmental Quality Code.¹

Laws 1993, c. 324, § 2, emerg. eff. June 7, 1993.

¹ Title 27A, § 2-1-101 et seq.

§ 2-2-104. Board rules incorporating by reference federal provisions—No effect on rules from subsequent changes in federal provisions

Insofar as permitted by law and upon recommendation from the appropriate Council, rules promulgated by the Environmental Quality Board may incorporate a federal statute or regulation by reference. Any Board rule which incorporates a federal provision by reference incorporates the language of the federal provision as it existed at the time of the incorporation by reference. Any subse-

~~quent modification, repeal or invalidation of the federal provision shall not be deemed to affect the incorporating Board rule.~~

~~Laws 1994, c. 353, § 3, eff. July 1, 1994.~~

~~PART 2. COUNCILS~~

~~§ 2-2-201. Advisory councils~~

~~A. There are hereby created:~~

- ~~1. The Water Quality Management Advisory Council;~~
- ~~2. The Hazardous Waste Management Advisory Council;~~
- ~~3. The Solid Waste Management Advisory Council;~~
- ~~4. The Radiation Management Advisory Council; and~~
- ~~5. The Laboratory Services Advisory Council.~~

~~B. 1. Each Council created pursuant to subsection A of this section shall consist of nine (9) members. Three members shall be appointed by the Governor, three members shall be appointed by the Speaker of the House of Representatives and three members shall be appointed by the President Pro Tempore of the Senate. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through three (3) years so that only one term expires each calendar year; subsequent appointments shall be for three-year terms. Members of the Advisory Councils shall serve at the pleasure of and may be removed from office by the appointing authority. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. Five members shall constitute a quorum.~~

~~2. Each Council shall elect a chair and a vice-chair from among its members. Each Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any three (3) members.~~

~~C. 1. All members of the Water Quality Management Advisory Council shall be knowledgeable of water quality and of the environment. The Council shall be composed as follows:~~

~~a. the Governor shall appoint three members as follows:~~

- ~~(1) one member representing the field of engineering,~~
- ~~(2) one member representing a statewide nonprofit environmental organization, and~~

~~(3) one member representing the general public,~~

~~ing such violation. In addition to other penalties or liabilities as may be imposed by law, violations may be punishable in civil proceedings by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation or, in criminal proceedings, by a fine of not less than Two Hundred Dollars (\$200.00) and not more than Ten Thousand Dollars (\$10,000.00) for each violation or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment. Each day upon which such violation occurs shall constitute a separate violation.~~

B. Part 5 of Article III of Chapter 2 of this act² shall apply to violations under this article except when inconsistent with the provisions of the Oklahoma Pollutant Discharge Elimination System Act.³

C. The provisions of subsection A of this section shall not apply to the Oklahoma Pollutant Discharge Elimination System Act or hazardous waste injection wells.

Laws 1993, c. 145, § 83, eff. July 1, 1993.

¹ Title 27A, § 2-6-101 et seq.

² Title 27A, § 2-3-501 et seq.

³ Title 27A, § 2-6-201 et seq.

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

Cross References

Hazardous Waste Management Advisory Council, jurisdiction to include this article, see Title 27A, § 2-2-201.

PART 1. OKLAHOMA HAZARDOUS WASTE MANAGEMENT ACT

~~§ 2-7-101. Short title~~

This article¹ shall be known and may be cited as the "Oklahoma Hazardous Waste Management Act".

Laws 1976, c. 251, § 1. Renumbered from Title 63, § 2751 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Laws 1992, c. 403, § 4, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2001 and amended by Laws 1993, c. 145, §§ 84, 359, eff. July 1, 1993.

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

Sections 18 and 19 of Laws 1976, c. 251, provided for a general repealer and codification.

The 1992 amendment substituted "Hazardous" for "Controlled Industrial".

The 1993 amendment substituted "article" for "act" and "Management" for "Disposal".

Cross References

~~Environmental crimes, unlawful hazardous waste transportation without proper manifest, see Title 21, § 1230.3 et seq.~~

~~Oklahoma underground storage tank regulation, hazardous substance, defined, see Title 17, § 303.~~

Law Review and Journal Commentaries

~~Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976. William W. Gorden, Jr. 8 Okla.City U.L.Rev. 397 (1983). Hazardous waste injection wells: Need for state controls. 19 Tulsa L.J. 250 (1983).~~

~~§ 2-7-102. Hazardous waste Regulation and control~~

~~Hazardous waste shall be subject to the provisions of the "Oklahoma Hazardous Waste Management Act" ¹ and shall not be subject to the provisions of the "Oklahoma Solid Waste Management Act".² Laws 1990, c. 196, § 8, emerg. eff. May 10, 1990; Laws 1992, c. 403, § 5, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2001.1 and amended by Laws 1993, c. 145, §§ 85, 359, eff. July 1, 1993.~~

¹ Title 27A, § 2-7-101 et seq.

² Title 27A, § 2-10-101 et seq.

Historical and Statutory Notes

~~The 1992 amendment substituted "Hazardous" for "Controlled industrial" and "Hazardous" for "Controlled Industrial". The 1993 amendment substituted "subject" for "treated and regulated pursuant" and "Management" for "Disposal".~~

§ 2-7-103. Definitions

As used in the Oklahoma Hazardous Waste Management Act:¹

1. "Affected property owners" means all real property owners within one (1) mile of the outer perimeter of a proposed hazardous waste site;
2. "Affiliated person" means:
 - a. any officer, director or partner of the applicant,
 - b. any person employed by the applicant as a general or key manager who directs the operations of the site or facility which is the subject of the application, and
 - c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity;
3. "Council" means the Hazardous Waste Management Advisory Council;
4. "Demonstrated pattern of prohibited conduct" means a series of conduct of the same or like character in violation of state or federal environmental laws which, as a result of the applicant's or affiliated person's reckless disregard thereof, actually endangers, or reasonably has the potential to endanger, human health or the environment;

5. "Disclosure statement" means a written statement by the applicant which contains:

- a. the full name, business address, and social security number of the applicant, and all affiliated persons,
- b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant, and a description of the on-going organizational relationships as they may impact operations within the state,
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental facility regulation,
- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any affiliated person which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal in the ten (10) years immediately preceding the filing of the application relating to the generation, transportation, storage, treatment, recycling or disposal of "hazardous waste" as defined by the Oklahoma Hazardous Waste Management Act or by the United States Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act.² Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the United States Environmental Protection Agency, and
- e. a listing of any federal environmental agency and any state environmental agency outside this state that has or has had regulatory responsibility over the applicant;

6. "Disposal" means the final disposition of hazardous waste;

7. "Disposal site" means the location where any final disposition of hazardous waste occurs. Disposal sites include but are not limited to injection wells and surface disposal sites;

8. "Guarantor" means any person other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to the Oklahoma Hazardous Waste Management Act;

9. "Hazardous waste" means waste materials and byproducts, either solid or liquid or containerized gas, which are:

- a. to be discarded by the generator or recycled,

- b. toxic to human, animal, aquatic or plant life, and
- c. generated in such quantity that they cannot be safely disposed of in properly operated, state-approved solid waste landfills or waste, sewage or wastewater treatment facilities.

The term "hazardous waste" may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludges, tank bottoms containing heavy metallic ions, toxic organic chemicals, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste. The term "hazardous waste" shall not include domestic sewage;

10. "Hazardous waste facility" means and includes storage and treatment facilities and disposal sites;

11. "History of noncompliance" means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation or demonstrate a pattern of prohibited conduct which could reasonably be expected to result in endangerment to human health or the environment if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record;

12. "Multi-user on-site treatment facility" means a treatment facility for hazardous waste generated by the co-owners of the facility and which meets the criteria specified by the Oklahoma Hazardous Waste Management Act;

13. "Off-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste not generated by the owner of the facility;

14. "On-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste generated by the owner of the facility;

15. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized;

16. "Qualified interest group" means any organization with twenty-five or more members who must be legal residents of the State of Oklahoma, that expresses an interest in the outcome of a construction permit application;

17. "Recycling" means the reuse, processing, treating, neutralizing or rerefining of hazardous waste into a product which is being reused or which has been sold for beneficial use. Hazardous waste which is intended for fuel is not deemed to be recycled until it is actually burned;

18. "Regeneration" or "regenerated" means the regeneration of spent activated carbon to render it reusable, and any treatment, storage or disposal associated therewith;

19. "Site" or "proposed site" means the surface area of a disposal site, or other hazardous waste facility, as applied for in the application for a permit for the facility;

20. "Storage facility" means any location where the temporary holding of hazardous waste occurs, including any tank, pit, lagoon, pond, or other specific place or area;

21. "Treatment" means the detoxification, neutralization, incineration or biodegradation of hazardous waste in order to remove or reduce its harmful properties or characteristics; and

22. "Treatment facility" means any location where treating or recycling of hazardous waste occurs.

Laws 1976, c. 251, § 2; Laws 1978, c. 260, § 1, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2752 and amended by Laws 1981, c. 322, §§ 1, 18, eff. July 1, 1981. Laws 1987, c. 51, § 1, emerg. eff. April 29, 1987; Laws 1988, c. 54, § 1, eff. Nov. 1, 1988; Laws 1990, c. 296, § 1, operative July 1, 1990; Laws 1991, c. 173, § 1; Laws 1992, c. 201, § 1, eff. July 1, 1992; Laws 1992, c. 403, § 6, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2002 and amended by Laws 1993, c. 145, §§ 86, 359, eff. July 1, 1993.

¹ Title 27A, § 2-7-101 et seq.

² 42 U.S.C.A. § 6901 et seq.

Historical and Statutory Notes

The 1978 amendment, in paragraph 1, substituted "discarded by the producer" for "disposed of"; and rewrote paragraph 2, which prior thereto read:

" 'Disposal' means the final disposition of controlled industrial waste;"

; in paragraph 4, substituted "injection wells" for "deep well injection"; added paragraph 5; redesignated former paragraphs 5, 6 and 7 as paragraphs 6, 7 and 8; in paragraph 7, first sentence, inserted "or reduce"; in paragraph 8, deleted "site or" preceding "location"; and deleted former paragraph 8 which read:

" 'Section' means the Controlled Industrial Waste Management Section created herein."

; and added paragraph 10.

The 1981 amendment in paragraph 1, first sentence, substituted "waste materials and byproducts" for "refuse products", "generator" for "producer" and "generated" for "produced", and in the second sentence, inserted "containerized

gases," and ", and excludes domestic sewage"; in paragraph 7, substituted " 'treatment' " for " 'processing' " and deleted the second sentence which read: "The processing shall be done in accordance with any rules and regulations adopted by the Department in conjunction with any other agency authorized by law to regulate controlled industrial waste."; in paragraph 8, substituted " 'Treatment facility' " for " 'Processing facility' ", substituted "treating" for "processing", and substituted "a facility engaged only in recycling" for "in-plant treatment by the producer"; in paragraph 9, first sentence, inserted "treating, neutralizing", substituted "materials and byproducts which, if discarded, would be controlled industrial waste into a product of beneficial use" for "a controlled industrial waste into a usable product", and deleted the former second sentence which read: "Such recycling shall be done in an environmentally acceptable manner"; deleted former paragraph 10 which read:

“Storage’ means the temporary placement of waste in a designated tank, pit, lagoon, pond, or other specific place or area, for a specific period of time. Such storage shall be done in an environmentally safe manner, in accordance with any rules and regulations developed by the Department.”

; and added paragraphs 10 to 14.

The 1987 amendment added paragraphs 15 to 17 (now paragraphs 19, 14 and 17, respectively).

The 1988 amendment added paragraph 18 (now paragraph 12).

The 1990 amendment, in paragraph 1 (now paragraph 9), in the first sentence, substituted “or recycled” for a comma, in paragraph 8 (now paragraph 22), inserted “or recycling” and deleted “, but does not include a facility engaged only in recycling” from the end, in paragraph 9 (now paragraph 17), in the first sentence deleted “materials and by products which, if discarded, would be” preceding “controlled” and substituted “which is being reused or which has been sold for beneficial use” for “of beneficial use” and added the second sentence, deleted former paragraph 10, which read:

“‘Recyclable materials’ means those materials and by products which if discarded would be controlled industrial waste;”

; redesignated former paragraphs 11 to 18 as paragraphs 10 to 17 (now paragraphs 20, 10, former paragraph 11 deleted by the 1993 amendment, 3, 19, 14, 13 and 12, respectively), in paragraph 10 (now paragraph 20) deleted “or recyclable material” following “waste”, and in paragraph 17 (now paragraph 12) substituted “1-2008.1 of this title” for “2 of this act”.

The 1991 amendment, in paragraph 1 (now paragraph 9), in the second sentence, substituted “sludges” for “sludge” and deleted “infectious materials,” following “chemicals,”, deleted former paragraph 5, which read:

“‘Division’ ” means the “Controlled Industrial Waste Management Division;”

; redesignated former paragraphs 6 to 17 as paragraphs 5 to 16 (now paragraphs 15, 21, 22, 17, 20, 10, former paragraph 11 deleted by the 1993 amendment, 3, 19, 14, 13 and 12), and in paragraphs 14 and

15 (now paragraphs 14 and 13, respectively), inserted “, recycling” wherever appearing.

Laws 1992, c. 201, § 1, added paragraph 17 (now paragraph 18).

Laws 1992, c. 403, § 6, substituted “hazardous waste” for “controlled industrial waste” throughout the section.

The 1993 amendment rewrote the section, which prior thereto read:

“As used in this act, unless the context otherwise requires:

“1. ‘Hazardous waste’ is defined as waste materials and byproducts, either solid or liquid, which are to be discarded by the generator or recycled and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary land fills, waste or sewage treatment facilities.

“Hazardous waste may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludges, tank bottoms containing heavy metallic ions, toxic organic chemicals, and materials such as paper, metal, cloth or wood which are contaminated with controlled industrial waste, and excludes domestic sewage;

“2. ‘Disposal’ means the final disposition of controlled industrial waste;

“3. ‘Department’ means the State Department of Health;

“4. ‘Disposal site’ means the location where any final disposition of controlled industrial waste occurs. Disposal sites include but are not limited to injection wells and surface disposal sites;

“5. ‘Person’ means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized;

“6. ‘Treatment’ means the detoxification, neutralization, incineration or biodegradation of controlled industrial waste in order to remove or reduce its harmful properties or characteristics;

“7. ‘Treatment facility’ means any location where treating or recycling of controlled industrial waste occurs;

"8. 'Recycling' means the reuse, processing, treating, neutralizing or rerefining of hazardous waste into a product which is being reused or which has been sold for beneficial use. Hazardous waste which is intended for fuel is not deemed to be recycled until it is actually burned;

"9. 'Storage facility' means any location where the temporary holding of hazardous waste occurs, including any tank, pit, lagoon, pond, or other specific place or area;

"10. 'Hazardous waste facility' as used herein shall mean and include storage and treatment facilities and disposal sites;

"11. 'Board' means the State Board of Health;

"12. 'Council' means the Hazardous Waste Management Council;

"13. 'Site' or 'proposed site' means the surface area of a disposal site, or other hazardous waste facility, as applied for in

the application for a permit for the facility;

"14. 'On-site treatment, storage, recycling or disposal' means the treatment, storage, recycling or disposal at a hazardous waste facility of controlled industrial waste generated by the owner of the facility;

"15. 'Off-site treatment, storage, recycling or disposal' means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste not generated by the owner of the facility;

"16. 'Multi-user on-site treatment facility' means a treatment facility for hazardous waste generated by the co-owners of the facility and which meets the criteria specified by Section 1-2008.1 of this title; and

"17. 'Regeneration' or 'regenerated' means the regeneration of spent activated carbon to render it reusable, and any treatment, storage or disposal associated therewith."

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okla.City. U.L.Rev. 397 (1983).

Library References

Health and Environment §25.5(5).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 61, 65, 66, 91 et seq., 106 et seq., 113, 115 et seq., 125 to 140, 150 et seq.

Notes of Decisions

Construction and application 1

1. Construction and application

The provisions of Title 52, § 139 and Title 63, § 2756 (now repealed) do not prevent the exercise of jurisdiction by the Controlled Industrial Waste Management Division of the Oklahoma State Department of Health over controlled industrial waste produced by a refinery or oil reclaimers even if such waste has no further economic value and is to be discarded by the refiner or oil reclaimers. Op. Atty.Gen. No. 79-249 (Oct. 16, 1979).

The adoption of the Controlled Industrial Waste Disposal Act (Title 63, § 2751 et seq. recodified as Title 27A, § 2-7-101 et seq.), repealed Title 63, § , inasmuch as the provisions of that section were inconsistent with the latter act. Op.Atty. Gen. No. 77-162 (May 27, 1977).

A farming operation which plows into the soil industrial waste, which is not designated by the Controlled Industrial Waste Management Section as controlled industrial waste, is not subject to the provisions of this Act. Op.Atty.Gen. No. 76-367 (Jan. 26, 1977).

~~§ 2-7-104. Hazardous waste management program Personnel~~

~~A hazardous waste management program responsible for the regulation and management of hazardous waste shall be maintained~~

~~within the Department. The hazardous waste management program shall consist of a director, who shall be hired by the Executive Director, and additional employees as the Executive Director deems are necessary and duly qualified to carry out the provisions of the Oklahoma Hazardous Waste Management Act.¹ As a prerequisite for employment as the director of the hazardous waste management program, the applicant shall have expertise and at least two (2) years' experience in waste management. The director and all employees of the hazardous waste management program shall be subject to the Merit System of Personnel Administration.~~

Laws 1976, c. 251, § 3; Laws 1978, c. 260, § 2, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2753 and amended by Laws 1981, c. 322, §§ 2, 18, eff. July 1, 1981. Laws 1991, c. 173, § 2; Laws 1992, c. 403, § 7, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2003 and amended by Laws 1993, c. 145, §§ 87, 359, eff. July 1, 1993.

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1978 amendment substituted "Division" for "Section" in the first and second sentences.

The 1981 amendment deleted "or environmental" preceding "engineering" in the third sentence.

The 1991 amendment rewrote the section, which prior thereto read:

"There is hereby created a Controlled Industrial Waste Management Division within the State Department of Health. The Division shall consist of a Director, who shall be hired by the Commissioner of Health, and additional employees to be hired by the Commissioner as he deems are necessary and duly qualified to carry out the provisions of this act. As a prerequisite for employment as a Director, the Director shall have expertise and at least two (2) years' experience in waste management, and shall have a degree in chemistry or engineering. The Director shall be subject to the Merit System of Personnel Administration, and all em-

ployees hired by the Commissioner shall be subject to the Merit System."

The 1992 amendment substituted "hazardous" for "controlled industrial" in the first sentence.

The 1993 amendment rewrote the section, which prior thereto read:

"A division responsible for the regulation and management of hazardous waste shall be maintained within the State Department of Health. The division shall consist of a director, who shall be hired by the Commissioner of Health, and additional employees to be hired by the Commissioner as he deems are necessary and duly qualified to carry out the provisions of this act. As a prerequisite for employment as a director, the director shall have expertise and at least two (2) years' experience in waste management. The director and all employees of the division shall be subject to the Merit System of Personnel Administration."

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okla.City. U.L.Rev. 397 (1983).

§ 2-7-105. Powers and duties of Department of Environmental Quality

~~The Department shall have the power and duty to:~~

- ~~1. Issue permits for the construction and operation and for the post-closure, maintenance and monitoring of hazardous waste facilities;~~
2. Provide the owner or operator of a hazardous waste facility a list of all materials which the Department deems acceptable for treatment, recycling, storage, and disposal at the facility;
3. Make periodic inspections of hazardous waste facilities and recycling, transporting, and generating facilities to determine the extent of compliance with the Oklahoma Hazardous Waste Management Act¹ and rules promulgated thereunder, and orders, permits and licenses issued pursuant thereto;
4. Develop, maintain, and monitor public records of the source and amount of hazardous waste generated in Oklahoma and the methods used to dispose of, recycle, or treat said waste or material;
5. Require and prescribe manifest forms to all persons generating and transporting hazardous waste off-site for storage, recycling, treatment, or disposal;
6. Require and approve or disapprove disposal plans from all persons generating hazardous waste or shipping hazardous waste within, from, or into Oklahoma indicating the amount of hazardous waste generated, the handling, storage, treatment, and disposal methods, and the hazardous waste facilities used. The disposal plans shall be kept current by the persons generating or shipping hazardous waste and the Department shall be advised within five (5) working days of any changes in the disposal plans;
7. Require reports from all persons generating hazardous waste, indicating the amount generated, the treatment and disposal methods, and the treatment, disposal, and recycling sites used. Such reports are to be made on at least a quarterly basis;
8. Require periodic reports or manifest certifications regarding such programs and efforts to reduce the volume or quantity and toxicity of such hazardous waste as may be required by or pursuant to authority of the Oklahoma Hazardous Waste Management Act;
9. Require reports from all operators of hazardous waste facilities who receive hazardous waste for treatment or storage or disposal, listing the amount, transporter, and generator of all hazardous waste received. Such reports are to be made on at least a monthly or quarterly basis, as designated by the Department;
10. Approve or disapprove methods of disposal of hazardous waste, and may prohibit certain specific disposal practices including, but not limited to, any type of land disposal of any form of such waste. ~~Land disposal includes, but is not limited to, landfills, surface~~

~~impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves;~~

11. Inform persons generating hazardous waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans;

12. Develop a system to provide information on recyclable wastes to potential users of such materials. Such information shall not include any information which the Department deems confidential or private in nature;

13. Cooperate and share information with the U.S. Environmental Protection Agency;

14. Prepare an emergency response plan for spills of hazardous waste and for spills of hazardous materials;

15. Make information obtained by the Department regarding hazardous waste facilities and sites available to the public in substantially the same manner, and to the same degree, as would be the case if the hazardous waste program in this state were being carried out by the U.S. Environmental Protection Agency;

16. Develop rules with respect to any existing surface impoundment or landfill or class of surface impoundments or landfills from which the Department determines hazardous waste may migrate into groundwater, impose such requirements, including but not limited to double liners and leachate detection and collection systems, as may be necessary to protect human health and the environment;

17. Prohibit or restrict the use of any specific disposal methods or practices for specific hazardous waste material, substances or classes, as may be necessary to protect human health and the environment;

18. Identify areas within the state which are unsuitable for specific hazardous waste disposal methods, and deny permits for such disposal methods in such areas;

19. Issue a one-year research development and demonstration permit for any treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated. Permits may be renewed no more than three times. No renewal may exceed one (1) year;

20. Waive or modify general permit application and issuance requirements for research and development permits, except for financial responsibility and public participation requirements;

21. ~~Terminate experimental activity if necessary to protect human health and the environment;~~

- ~~22. Require oil recycling facilities using hazardous waste to have a hazardous waste facility permit;~~
23. Issue permits containing any conditions necessary to protect human health and the environment;
24. Issue permits for the storage of hazardous waste in underground tanks;
25. Require groundwater monitoring for any landfill, surface impoundment, land treatment site or pile;
26. Determine and enforce penalties for violations of the Oklahoma Hazardous Waste Management Act and rules promulgated thereunder;
27. Evaluate the benefit of rules governing labeling practices for any containers used for the disposal, storage, or transportation of hazardous waste which accurately identify such waste, and govern the use of appropriate containers for such waste not otherwise regulated by the federal government;
28. Monitor research and development regarding methods of the handling, storage, use, processing, and disposal of hazardous waste;
29. Cooperate with existing technical reference centers on hazardous waste disposal, recycling practices, and related information for public and private use;
30. Monitor research in the technical and managerial aspects of management and use of hazardous waste and recycling and recovery of resources from hazardous wastes;
31. Determine existing rates of production of hazardous waste;
32. Promote recycling and recovery of resources from hazardous wastes;
33. Encourage the reduction or exchange, or both, of hazardous waste; and
34. Cooperate with an existing information clearinghouse, to develop records of recyclable waste. Every generator of hazardous waste shall supply the Department with information for the clearinghouse. Each generator shall not be required to supply any more information than is required by the manifests. The Department shall make this information available to persons who desire to recycle the wastes. The information shall be made available in such a way that the trade secrets of the producer are protected.

Laws 1976, c. 251, § 4; Laws 1978, c. 260, § 3, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2754 and amended by Laws 1981, c. 322, §§ 4, 18, eff. July 1, 1981. Laws 1986, c. 180, § 1, emerg. eff. May 15, 1986; ~~Laws 1990, c. 296, § 2, operative July 1, 1990; Laws 1991, c. 173, § 3;~~

~~Laws 1992, c. 403, § 9, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2004 and amended by Laws 1993, c. 145, §§ 88, 359, eff. July 1, 1993. Laws 1994, c. 373, § 17, eff. July 1, 1994.~~

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1978 amendment rewrote the introductory clause, which prior thereto read:

"The Section is hereby authorized and it shall be its duty to:"

, in paragraph 2 added ", and the transportation and storage of controlled industrial waste. Rules and regulations may also be developed for specific disposal practices for specified wastes", in paragraph 3 inserted "sites", in paragraph 4 substituted "Division" for "Section" in two places, in paragraph 5 substituted "Division's" for "Section's", in paragraph 8, in the first sentence inserted "the handling" and in the third sentence deleted "only" following "required", and in paragraph 9 deleted "quarterly" preceding "reports".

The 1981 amendment rewrote the section which prior thereto read:

"The Division shall have the following duties:

"1. Designate materials as controlled industrial waste;

"2. Develop rules and regulations for adoption by the State Board of Health for the construction and operation of controlled industrial waste processing facilities and disposal sites, and the transportation and storage of controlled industrial waste. Rules and regulations may also be developed for specific disposal practices for specified wastes;

"3. Issue permits for the construction and operation of said facilities, sites, and practices;

"4. Provide the operator of a disposal site a list of any material which the Division deems unacceptable for disposal at the site at the time the Division issues a permit to the operator;

"5. Make periodic inspections of controlled industrial waste processing facilities and disposal sites to determine the extent to which the Division's rules and regulations are complied with;

"6. Develop, maintain and monitor records of the source and amount of controlled industrial waste produced in Oklahoma and the methods used to dispose of or process said waste;

"7. Prescribe to all persons producing controlled industrial waste forms to be used as manifests;

"8. Require and approve plans from all persons producing controlled industrial waste or shipping controlled industrial waste within or into Oklahoma indicating the amount of controlled industrial waste produced, the handling and disposal methods, and the disposal sites used. The plans shall be kept current and the Division shall be advised immediately of any changes in the plans of such persons. The plans shall be required for controlled industrial wastes which are to be disposed. Persons storing or shipping controlled industrial wastes in an environmentally acceptable manner for the purpose of reuse, recycling or rerefining shall be required to file plans only for those wastes which are to be disposed;

"9. Require quarterly reports from all persons producing controlled industrial waste indicating the amount of controlled industrial waste produced, the disposal methods, and the disposal sites used;

"10. Require monthly reports from all operators of controlled industrial waste facilities who receive controlled industrial waste for processing or disposal, listing the amount, transporter and producers of all controlled industrial waste received;

"11. Approve or disapprove methods of disposal of controlled industrial waste, and prohibit certain specific disposal practices;

"12. Inform persons producing controlled industrial waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans; and

"13. Develop a system to provide information on recyclable waste to poten-

~~tial users of such waste. Such information shall not include any information which the Division deems confidential or private in nature."~~

The 1986 amendment rewrote the section, which prior thereto read:

"The Department shall have the following duties:

"1. Issue permits for the construction and operation of said facilities, sites and practices;

"2. Provide the owner or operator of a controlled industrial waste facility a list of all materials which the Department deems acceptable at the time the Department issues a permit;

"3. Make periodic inspections of controlled industrial waste facilities and recycling, transporting and generating facilities to determine the extent to which the Department's rules and regulations are complied with;

"4. Develop, maintain and monitor public records of the source and amount of controlled industrial waste and recyclable materials generated in Oklahoma and the methods used to dispose of, recycle or treat said waste or material;

"5. Require and prescribe manifest forms to all persons generating and transporting controlled industrial waste or recyclable materials offsite for storage, recycling, treatment or disposal;

"6. Require and approve disposal plans from all persons generating controlled industrial waste or shipping controlled industrial waste within or into Oklahoma indicating the amount of controlled industrial waste generated, the handling, storage, treatment and disposal methods, and the controlled industrial waste facilities used. The disposal plans shall be kept current and the Department shall be advised within Five (5) working days of any changes in the disposal plans of such persons. The disposal plans shall be required for controlled industrial wastes which are to be treated or disposed. Persons storing or shipping recyclable materials in an environmentally acceptable manner for the purpose of recycling shall be required to file disposal plans only for those wastes which are to be disposed;

"7. Require quarterly reports from all persons generating controlled industrial

waste, or recyclable materials, indicating the amount generated, the treatment and disposal methods, and the treatment, disposal and recycling sites used;

"8. Require monthly reports from all operators of controlled industrial waste facilities who receive controlled industrial waste for treatment, storage or disposal, listing the amount, transporter and generator of all controlled industrial waste received;

"9. Approve or disapprove methods of disposal of controlled industrial waste, and prohibit certain specific disposal practices;

"10. Inform persons generating controlled industrial waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans;

"11. Develop a system to provide information on recyclable materials to potential users of such materials. Such information shall not include any information which the Department deems confidential or private in nature;

"12. Cooperate and share information with the U.S. Environmental Protection Agency; and

"13. Prepare an emergency response plan for spills of controlled industrial waste and for spills of hazardous materials.

The 1990 amendment, in paragraph 4 deleted "and recyclable materials" following "industrial waste", in paragraph 5 deleted "or recyclable materials" following "industrial waste", in paragraph 6 deleted the former third and fourth sentences which read: "The disposal plans shall be required for controlled industrial wastes which are to be treated or disposed. Persons storing or shipping recyclable materials in an environmentally acceptable manner for the purpose of recycling shall be required to file disposal plans only for those wastes which are to be disposed;"; in paragraph 7 deleted "or recyclable materials" following "waste"; and in paragraph 12 substituted "wastes" for "materials".

The 1991 amendment, in paragraph 1 inserted "and post-closure", in paragraph 9, in the second sentence inserted "or quarterly" and added "as designated by the Department", and in paragraph 16 inserted "or landfill", substituted "ma-

for "is likely to", and inserted "and leachate detection and collection systems".

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment, in the introductory clause substituted "power and duty" for "following powers and duties", in paragraph 3 deleted "the Department's rules and regulations and" following "compliance with", substituted "Management" for "Disposal", and added "and rules promulgated thereunder, and orders, permits and licenses issued pursuant thereto", in paragraph 8 substituted "Management" for "Disposal", in paragraph 16 substituted "Develop rules" for

"With" and inserted "but not limited to" in paragraph 26 substituted "Management" for "Disposal" and added "and rules promulgated thereunder", and in paragraph 27 deleted "and regulations" following "rules" and deleted the second sentence which read: "A report containing the evaluation of the benefit for rules and regulations governing such labeling practices shall be submitted by April 30, 1987, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate;"

The 1994 amendment, in paragraph 1, substituted "and operation" for a comma and inserted "for the" and "maintenance and monitoring".

Cross References

Transporting waste or materials, driver's manifest, see Title 27A, § 2-7-125.

Law Review and Journal Commentaries

Controlled Industrial Waste Disposal Act. Barbara Rauch. 48 Okla.B.J. 2129 (1977).

William W. Gorden, Jr. 8 Okla.City U.L.Rev. 397 (1983).

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

Hazardous waste injection wells: Need for state controls. 19 Tulsa L.J. 250 (1983).

~~§ 2-7-106. Rules and regulations Hearings Consultation and advice~~

The Council, with at least five members concurring, shall submit recommended rules to the Board concerning the listing and characterization of hazardous waste, the construction and operation of hazardous waste facilities, specific disposal practices for specified wastes, the transportation and storage of hazardous waste, and the recycling, storage and transportation of recyclable materials. The Council shall consult with and advise the Department on matters relating to hazardous waste management.

Laws 1981, c. 322, § 5, eff. July 1, 1981; Laws 1992, c. 403, § 10, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2004.1 and amended by Laws 1993, c. 145, §§ 89, 359, eff. July 1, 1993.

Historical and Statutory Notes

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

"rules" and deleted the former second sentence, which read: "The Council shall, upon the request of the Department or upon their own initiative, conduct rulemaking hearings."

The 1993 amendment, in the first sentence deleted "and regulations" following

~~Law Review and Journal Commentaries~~

~~Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976. William W. Gorden, Jr. 8 Okl. City U.L.Rev. 397 (1983).~~

~~Library References~~

~~Health and Environment § 25.5(5). WESTLAW Topic No. 199. C.J.S. Health and Environment §§ 61, 65, 66, 91 et seq., 106 et seq., 113, 115 et seq., 125 to 140, 150 et seq.~~

~~§ 2-7-107. Rules - Regulation of radioactive waste - Federal preemption~~

~~A. In addition to other powers and duties specified by law, the Board shall promulgate rules to:~~

~~1. Prohibit the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required or which is operating under interim status;~~

~~2. Prohibit or restrict the storage of hazardous waste for which land disposal is prohibited, except to the extent that such storage is solely for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal;~~

~~3. Prohibit or restrict the use of waste or used oil or other material used for dust suppression or road treatment, which is contaminated or mixed with dioxin or any other waste identified or listed by rules of the Board as a hazardous waste except a waste identified solely on the basis of ignitability;~~

~~4. Require such monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment;~~

~~5. Regulate the production, burning, distribution, and marketing of fuel containing hazardous waste, and the commercial collection, storage, transportation, marketing, management, burning and disposal of used oil as may be necessary to protect human health and the environment including, but not limited to, labeling and recordkeeping requirements;~~

~~6. Control the listed or identified hazardous wastes which discharge through a sewer system to a publicly owned treatment works for the protection of human health and the environment;~~

~~7. Provide in accordance with Sections 3005(c) and 3005(e) of the Resource Conservation and Recovery Act¹ for the automatic termination of interim status for hazardous waste units failing to comply with applicable requirements for the submission of part B permit~~

~~applications and certification of groundwater monitoring and financial responsibility compliance;~~

8. Require from applicants for and owners and operators of hazardous waste facilities evidence of financial responsibility for corrective action as may be required or ordered under the authority of the Oklahoma Hazardous Waste Management Act;²

9. Require that generators of hazardous waste establish and implement programs to reduce the volume or quantity and toxicity of such waste to the extent economically practicable; and

10. Specify levels or methods of treatment which substantially diminish the toxicity of the waste or likelihood of its migration so as to minimize threats to human health and the environment.

B. The hazardous waste component of mixed waste and radioactive waste shall be regulated as hazardous waste. The radioactive waste component shall be regulated as radioactive waste. Both the hazardous waste requirements and the radioactive waste requirements shall apply if physical separation of the two components is not accomplished. If a conflict exists between the two requirements, the requirement most protective of human health and the environment shall take precedence.

C. Rules pertaining to standards for the transportation of hazardous waste and recyclable materials shall not be more stringent than those of the U.S. Department of Transportation, unless a waiver of preemption is granted pursuant to federal statutes and rules promulgated thereunder.

Laws 1986, c. 180, § 2, emerg. eff. May 15, 1986; Laws 1988, c. 42, § 1, emerg. eff. March 21, 1988; Laws 1990, c. 196, § 3, emerg. eff. May 10, 1990; Laws 1992, c. 403, § 11, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2004.2 and amended by Laws 1993, c. 145, §§ 90, 359, eff. July 1, 1993. Laws 1994, c. 353, § 19, eff. July 1, 1994.

¹ 42 U.S.C.A. § 6925.

² Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1988 amendment, in paragraph 7, substituted "Sections 3005(c) and 3005(e)" for "Section 3005(c)".

The 1990 amendment, in paragraph 5, inserted "or used oil".

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment designated the existing text as subsection A; in subsection A, in the introductory paragraph, substituted "promulgate rules" for

"adopt rules and regulations", in paragraph 1 deleted "authorized pursuant to Section 1-2009.1 of Title 63 of the Oklahoma Statutes" from the end, in paragraph 3 deleted "and regulations" following "rules", and in paragraph 8 substituted "Management" for "Disposal"; and added subsections B and C.

The 1994 amendment, in subsection A.5, substituted "", and the commercial collection, storage, transportation, marketing, management, burning and disposal of" for "or".

§ 2-7-108. Hazardous waste facilities—Permit for storage, treatment or disposal—Operation of recycling facilities not required to be permitted

A. Except as otherwise provided by subsection B of this section or any rules of the Board with respect to short-term storage, no person shall store, treat or dispose of hazardous waste materials or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of hazardous waste or storing recyclable materials, who does not possess a valid and appropriate hazardous waste facility permit.

B. 1. Any person who owned or operated a hazardous waste facility which was operating or under construction on November 19, 1980, and who has submitted notice and permit application to the U.S. Environmental Protection Agency or to the Department, and whose facility complies with the rules of the Board, may continue operation until such time as the permit application is determined.

~~2. The Board may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Oklahoma Hazardous Waste Management Act.¹~~

3. The provisions for the allowance of continued operation on an interim basis under paragraphs 1 and 2 of this subsection shall not apply in the case of a facility for which a permit, under the Oklahoma Hazardous Waste Management Act, has been previously denied or for which authority to operate has been terminated.

C. Facilities engaged in recycling which are not required to be permitted pursuant to the provisions of the Oklahoma Hazardous Waste Management Act shall operate in an environmentally acceptable manner and in accordance with the rules regarding the manifest, transportation and treatment, storage and disposal standards, and generators in the event a hazardous waste is generated therefrom.

Laws 1981, c. 322, § 10, eff. July 1, 1981; Laws 1990, c. 196, § 6, emerg. eff. May 10, 1990; Laws 1990, c. 296, § 3, operative July 1, 1990; Laws 1991, c. 173, § 8; Laws 1992, c. 403, § 25, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2009.1 and amended by Laws 1993, c. 145, §§ 91, 359, eff. July 1, 1993. Laws 1994, c. 353, § 20, eff. July 1, 1994.

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

Laws 1990, c. 196, § 6 designated the first sentence of the existing text as subsection A and in subsection A substituted

“Except as otherwise provided by subsection B of this section or any rules of the State Board of Health with respect to

short-term storage, no" for "No"; designated the second sentence of the existing text as subsection B.1 and in subsection B.1 substituted "Any" for "Provided that any"; inserted subsection B.2; and designated the third sentence of the existing text as subsection C.

Laws 1990, c. 296, § 3, in subsection A, deleted "or store recyclable" preceding "materials or"; and rewrote subsection C, which prior thereto read:

"Facilities engaged only in recycling shall conduct operation of the facility in an environmentally acceptable manner and in accordance with the rules and regulations regarding the manifest, transportation and storage requirements, and generators in the event a controlled industrial waste is generated therefrom."

The 1991 amendment inserted subsection B.3; and in subsection C, substituted "1-2014.2 of this title" for "6 of this act".

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment substituted "Board" for "State Board of Health" in subsections A and B.1; in subsection B.3, substituted "the Oklahoma Hazardous Waste Management Act" for "this act"; and in subsection C, substituted "the Oklahoma Hazardous Waste Management Act" for "Section 1-2014.2 of this title" and deleted "and regulations" following "rules".

The 1994 amendment substituted "Management" for "Disposal" in subsection B.2.

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okl.City U.L.Rev. 397 (1983).

Library References

Health and Environment §25.5(5).
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 61, 65, 66, 91 et seq., 106 et seq., 113, 115 et seq., 125 to 140, 150 et seq.

~~§ 2-7-109. Limitation on persons eligible for issuance, renewal or transfer of permit—Disclosure of information—Applicability~~

A. In order to protect the public health and safety and the environment of this state, the Department, pursuant to the Oklahoma Hazardous Waste Management Act,¹ shall not issue, renew, or transfer a permit for a hazardous waste facility for treatment, storage, recycling or disposal to any person who:

1. Is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any state or federal agency relating to the generation, storage, transportation, treatment, recycling or disposal of "hazardous waste", as such term is defined by the Oklahoma Hazardous Waste Management Act, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act;²

2. Has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of noncompliance with environmental laws and rules resulting in endangerment of human health or the environment; or

~~3. Has as an affiliated person any person who is described by paragraph 1 or 2 of this subsection.~~

B. 1. Except as provided in paragraph 2 of this subsection, all applicants for the issuance, renewal or transfer of any hazardous waste permit, license, certification or operational authority issued by the Department shall file a disclosure statement with their applications.

2. If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934,³ or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other relevant information as the Department may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

C. The Department is authorized to revoke, or to refuse to issue, to renew, or to transfer a permit for a hazardous waste facility for treatment, storage, recycling or disposal to any person who:

1. Is not, due solely to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court of record secured by the Department issued pursuant to the provisions of the Oklahoma Hazardous Waste Management Act;

2. Is not, due solely to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court of record secured by any state or federal agency, as determined by that agency, relating to the generation, storage, transportation, treatment, recycling or disposal of any "hazardous waste", as such term is defined by the Oklahoma Hazardous Waste Management Act, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act;

3. Has evidenced a history of a reckless disregard for the protection of the public health and safety or the environment through a history of noncompliance with state or federal environmental laws, including without limitation the rules of the Department or the United States Environmental Protection Agency regarding the generation, storage, transportation, treatment, recycling or disposal of any "hazardous waste", as such term is defined by the Oklahoma Hazardous Waste Management Act, or by the United States Environmen-

tal Protection Agency pursuant to the federal Resource Conservation and Recovery Act; or

4. Has as an affiliated person any person who is described by paragraphs 1, 2 or 3 of this subsection.

D. 1. An application for a permit for a hazardous waste facility for treatment, storage, recycling or disposal or a renewal thereof shall be signed under oath by the applicant.

2. The Department may refuse to renew, or may suspend or revoke, a permit issued pursuant to the Oklahoma Hazardous Waste Management Act for a hazardous waste facility for treatment, storage, recycling or disposal to any person who has failed to disclose or states falsely any information required pursuant to the provisions of this section. Any person who willfully fails to disclose or states falsely any such information, upon conviction, shall be guilty of a felony and may be punished by imprisonment for not more than five (5) years or fined not more than One Hundred Thousand Dollars (\$100,000.00) or both such fine and imprisonment.

E. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

F. The Board shall promulgate rules pursuant to the Administrative Procedures Act ⁴ as may be necessary and appropriate to implement the provisions of this section.

G. The provisions of this section shall apply to:

1. Any pending or future application for a permit for land disposal or treatment of hazardous waste, except treatment at a facility accepting hazardous waste exclusively for the purpose of conducting research and design tests; and

2. Any application for a permit for hazardous waste treatment, storage, recycling or disposal which is initially submitted to the Department after July 31, 1992, or which has not been determined by the Department to be technically complete by December 31, 1993, regardless of the initial submittal date.

Laws 1992, c. 201, § 3, eff. July 1, 1992. Renumbered from Title 63, § 1-2004.3 and amended by Laws 1993, c. 145, §§ 92, 359, eff. July 1, 1993. Laws 1994, c. 373, § 18, eff. July 1, 1994.

¹ Title 27A, § 2-7-101 et seq.

² 42 U.S.C.A. § 6901 et seq.

³ 15 U.S.C.A. § 77a et seq.

⁴ Title 75, § 250 et seq.

 Historical and Statutory Notes

The 1993 amendment substituted "hazardous" for "controlled industrial" throughout the section; in subsection A, in the introductory paragraph, substituted "Department" for "State Department of Health" and "Management" for "Disposal", and in paragraph 1 substituted "Management" for "Disposal" and deleted "'hazardous waste', as such term is defined" following "Act, or"; deleted former subsection B, which read:

"B. As used in this section:

"1. 'Affiliated person' means:

"a. any officer, director or partner of the applicant,

"b. any person employed by the applicant as a general or key manager who directs the operations of the site or facility which is the subject of the application, and

"c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity;

"2. 'Disclosure statement' means a written statement by the applicant which contains:

"a. the full name, business address, and social security number of the applicant, and all affiliated persons,

"b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant, and a description of the on-going organizational relationships as they may impact operations within the state,

"c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental facility regulation,

"d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any affiliated person which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal in the ten (10) years immediately preceding the filing of the application relating to the generation, transportation, storage, treatment, recycling or disposal of 'controlled industrial waste' as defined by the Oklahoma Controlled Industrial Waste Disposal Act or 'hazardous

waste' as defined by the United States Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the United States Environmental Protection Agency, and

"e. a listing of any federal environmental agency and any state environmental agency outside this state that has or has had regulatory responsibility over the applicant;

"3. 'History of noncompliance' means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation or demonstrate a pattern of prohibited conduct which could reasonably be expected to result in endangerment to human health or the environment if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record;

"4. 'Department' means the Oklahoma State Department of Health; and

"5. 'Demonstrated pattern of prohibited conduct' means a series of conduct of the same or like character in violation of state or federal environmental laws which as a result of the applicants or affiliated persons reckless disregard thereof actually endangers, or reasonably has the potential to endanger, human health or the environment."

; redesignated subsections C to H as subsections B to G; in subsection B.2, in the second sentence, substituted "Department" for "Commissioner"; in subsection C.1, substituted "Management" for "Disposal"; in subsections C.2 and C.3, substituted "Management" for "Disposal" and deleted "'hazardous waste', as such term is defined" following "Act, or"; in subsection D.2, in the first sentence, substituted "Management" for "Disposal"; and in subsection F, substituted "Board" for "State Board of Health".

The 1994 amendment deleted "the construction or operation of" in subsections A and C, in the introductory paragraphs, following "permit for", and in subsections D.1 and D.2, following "permit for" and "Act for" respectively; in subsection G.1, deleted "construction" preceding "permit"; and in subsection G.2, deleted

~~"construction or operations" preceding
"permit".~~

§ 2-7-110. Liquid hazardous waste—Certain disposal prohibited—Exceptions

~~A. The Department shall not issue a permit for the treatment, disposal or temporary storage of any liquid hazardous waste in a surface impoundment which is not generated by the owners of the surface impoundment.~~

B. Except as otherwise specifically provided by law, the disposal of any liquid hazardous waste in a landfill or in a surface impoundment is prohibited.

C. The provisions of this section shall not prohibit:

1. The practice of soil farming of hazardous waste authorized by the provisions of the Oklahoma Hazardous Waste Management Act;¹

2. The construction and operation of surface impoundments solely for the collection of rainfall runoff; or

3. The construction of impoundments solely for the emergency retention of spills of substances which are or may become hazardous waste;

provided all liquids and associated solids are removed for proper treatment or disposal in accordance with the rules promulgated by the Board pursuant to the Oklahoma Hazardous Waste Management Act.

Laws 1986, c. 180, § 4, emerg. eff. May 15, 1986; Laws 1992, c. 403, § 20, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2006.1 and amended by Laws 1993, c. 145, §§ 93, 359, eff. July 1, 1993. Laws 1994, c. 373, § 19, eff. July 1, 1994.

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment, in subsection C, in paragraph 1, substituted "the Oklahoma Hazardous Waste Management Act" for "Section 1-2014 of Title 63 of

the Oklahoma Statutes", and in the last undesignated clause, deleted "and regulations" following "rules" and substituted "Management" for "Disposal".

The 1994 amendment, in subsection A, deleted "construction" preceding "permit".

§ 2-7-111. Prohibited disposal—Hazardous waste facility for on-site or off-site treatment, recycling, storage or disposal

A. The practice of plowing hazardous waste into the soil surface for the purpose of disposal is hereby prohibited except pursuant to a

plan approved by the Department of Environmental Quality for biodegradable or inert material. In addition, the site used for such disposal shall not be subject to flooding or extensive erosion. The administrative permit hearing provisions of Sections 2-7-113,¹ 2-7-113.1 and 2-14-304 of this title shall not apply to soil farming operations conducted on the generator's plant site or nearby property under the control of the generator.

B. A hazardous waste facility for on-site treatment, ~~recycling~~ or storage shall not be sited in or over a principal groundwater resource or recharge area as determined in writing by the Oklahoma Geological Survey, except pursuant to a plan approved by the Department. The plan shall contain such design criteria and groundwater monitoring provisions as deemed necessary by the Department to protect the quality of said principal groundwater resource or recharge area. ~~The plan shall also provide for the establishment and maintenance of a bond or other financial assurance in a form and amount acceptable to the Department, specifically for the purpose of assuring both immediate response and containment and comprehensive remediation as directed by the Department in the event of a release to soil or water of any hazardous waste or hazardous waste constituent.~~

C. ~~1. Except as provided in paragraph 3 of this subsection, a hazardous waste facility for off-site treatment, recycling or storage or for on-site or off-site disposal shall not be sited in or over a principal groundwater resource or recharge area as determined in writing by the Oklahoma Geological Survey.~~

2. a. ~~Except as provided in subparagraph b of this paragraph, a facility for off-site treatment, storage, recycling or disposal of hazardous waste shall not be sited in any other area of the state without the prior written approval of an emergency and release response plan by the affected property owners as such term is defined in Section 2-7-103 of this title. Such plan shall provide for the minimization of hazards to the health and property of such affected property owners from emergency situations or from sudden or nonsudden releases of hazardous waste or constituents thereof.~~

After the applicant has made a reasonable effort to negotiate said plan with the affected property owners and has acquired the written approval of a majority of the affected property owners, the applicant may certify to the Department that such reasonable effort has been made and that a minority of the affected property owners would not consent. The Department may then issue the permit if it meets all other requirements.

The Department is expressly authorized to review the reasons of the affected property owners for nonapproval of the plan. If nonapproval is not based solely upon minimization of environmental hazards to the health and property of the affected property owners, the Department shall exclude those affected property owners from a calculation of a majority of affected property owners. The Department shall have the final authority to issue or not to issue any permit to any treatment, storage, or disposal facility.

- ~~b. Existing industrial facilities not currently receiving hazardous waste which propose to begin receiving hazardous waste from off-site, including facilities at which the hazardous waste is to be utilized as fuel in a recycling unit and all other existing industrial facilities, shall submit an emergency and release response plan as part of the permit application. The plan shall be subject to public review and comment as part of the permit application pursuant to Section 2-7-113 of this title or the Oklahoma Uniform Environmental Permitting Act² prior to final approval or disapproval by the Department. Upon submittal of the proposed plan to the Department, the applicant shall be required to mail a copy of said plan to the affected property owners and shall promptly thereafter certify to the Department that such mailing has been made. If a permit is issued, the permittee shall send the final plan by first-class mail to the last-known address of all affected property owners.~~
- c. An emergency and release response plan for a new or existing facility, located or to be located within the city limits or within the emergency response area of any incorporated city or town, which proposes to begin receiving hazardous waste from off-site shall not be approved by the Department until at least sixty (60) days after the city or town has been served with a copy of the plan by the applicant. During said sixty-day period the city or town shall have the opportunity to review the plan and comment to the Department upon the ability of the city to comply with any item in the plan requiring the participation of or assistance by the city or town or any departments or ~~agencies thereof.~~

~~3. The Department may grant a variance to an off-site hazardous waste treatment, recycling or storage facility to allow the siting of such facility over a principal groundwater resource or recharge area~~

as determined in paragraph 1 of this subsection, upon the following conditions:

- a. the request for variance, and a detailed rationale, shall be included in the permit application,
- b. the Department shall receive and consider comments on the appropriateness of the proposed variance at any formal public meeting or administrative permit hearing conducted on the draft permit or proposed permit pursuant to the provisions of Section 2-7-113 of this title or the Oklahoma Uniform Environmental Permitting Act,
- c. the applicant shall bear the burden of establishing clearly and convincingly to the Department that the design, construction and operation of the proposed facility will be such that the risk of a release of hazardous waste or hazardous waste constituents directly or indirectly to groundwater is minimal, and
- d. the permit application shall provide for the establishment and maintenance of a bond or other financial assurance as described and for the purposes specified in subsection B of this section.

D. The provisions of this section shall apply to:

1. Applications for future proposed sites;
2. Pending applications for new hazardous waste permits; and
3. Applications for permits to modify existing facilities which have either a permit or interim status when the proposed modification involves the opportunity for an administrative permit hearing.

E. The provisions of paragraphs 1 and 2 of subsection C of this section shall not apply to applications to increase existing storage, treatment, ~~recycling~~ or disposal capacity or to modify existing disposal sites for treatment or disposal. Such modification of existing disposal sites shall include upgrading said facilities to use the best available waste destruction technology such as incineration, detoxification, recycling or neutralization technology.

Laws 1976, c. 251, § 16; Laws 1978, c. 260, § 15, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2765 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Laws 1987, c. 51, § 2, emerg. eff. April 29, 1987; Laws 1988, c. 42, § 2, emerg. eff. March 21, 1988; Laws 1991, c. 336, § 2, eff. July 1, 1991; Laws 1992, c. 403, § 32, eff. Sept. 1, 1992. Renumbered from Title 63 § 1-2014 and amended by Laws 1993, c. 145, §§ 94, 359, eff. July 1, 1993. Laws 1993, c. 324, § 29, eff. July 1, 1993; Laws 1994, c. 373, § 13, eff. July 1, 1994; Laws 1995, c. 285, § 3, eff. July 1, 1995.

¹ Repealed; see Title 27A, § 2-14-101 et seq.

² Title 27A, § 2-14-101 et seq.

Historical and Statutory Notes

The 1978 amendment, in the first sentence [now subsection A, first sentence], substituted "Division" for "Section"; in the second sentence [now subsection A, second sentence], substituted "In addition," for "Provided further that"; and added the third sentence [now subsection A, third sentence].

Section 5 of Laws 1981, c. 277 and § 16 of Laws 1981, c. 322, amending this section, were repealed by Laws 1993, c. 10, § 16.

The 1987 amendment, in subsection A, in the third sentence, substituted "1-2006 of this title" for "7 of this act"; in subsection B, rewrote the first sentence, which prior thereto read: "No underground injection well or surface disposal site shall be allowed or permitted under this act if the site of such well is located over a major fresh groundwater basin, except pursuant to a plan approved by the Department." and in the second sentence substituted "said principal groundwater resource or recharge area" for "the basin water"; and added subsections C to E.

The 1988 amendment added the third paragraph in subsection C.

The 1991 amendment, in subsection B, in the first sentence, substituted "or storage" for ", storage or disposal" and "determined in writing" for "defined", and added the third sentence; in subsection C, designated the first and second paragraphs as paragraphs 1 and 2, rewrote paragraph 1, which prior thereto read:

"A controlled industrial waste facility for off-site treatment, storage or disposal shall not be sited in or over a principal groundwater resource or recharge area as defined by the Oklahoma Geological Survey."

, and added paragraph 3; and in subsection E, in the first sentence, substituted "paragraphs 1 and 2 of subsection C of this section" for "subsections C and D" and inserted ", treatment".

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

Laws 1993, c. 145, § 94, in subsection A, in the third sentence, inserted "administrative permit" and substituted "96 of this act" for "1-2006 of this title"; in

subsection C.2, in the first sentence of the first paragraph, deleted "as such term is defined in Section 1-2006 of this title" from the end, and in the second paragraph, substituted "Department" for "State Department of Health" in two places and in the second sentence substituted "a permit" for "said permit"; and in subsection C.3.b, inserted "formal public" and "administrative permit" and substituted "96 of this act" for "1-2006 of this title".

Laws 1993, c. 324, § 29, in subsection A, in the third sentence, substituted "2-7-113 of this title" for "96 of this act"; in subsection C.2, designated the existing text as paragraph a and in paragraph a, in the first paragraph rewrote the first sentence, which prior thereto read: "A hazardous waste facility for off-site treatment, storage or disposal shall not be sited in any other area of the state without the prior written approval of a plan by the affected property owners.", in the second paragraph in the first sentence substituted "After" for "If, after" and "has been" for "had" and in the second sentence substituted "the" for "a", and added paragraphs b and c; and in subsection C.3.b, substituted "2-7-113 of this title" for "96 of this act".

The 1994 amendment, in subsection A, in the first sentence, inserted "of Environmental Quality"; in subsection C, in paragraph 2.b, in the second sentence, inserted "as part of the permit application", and in paragraph 3.b, inserted "on the draft permit or proposed permit; and in subsection D, in paragraph 2, substituted "new hazardous waste" for "construction", and in paragraph 3, deleted "construction" preceding "permits".

The 1995 amendment inserted "recycling" throughout the section; in subsection A, in the third sentence, substituted "Sections 2-7-113, 2-7-113.1 and 2-14-304" for "Section 2-7-113"; in subsections C.2.b and C.3.b, inserted "or the Oklahoma Uniform Environmental Permitting Act"; and in subsection D.3, deleted "storage or treatment" following "existing" and added "when the proposed modification involves the opportunity for an administrative permit hearing".

Library References

Health and Environment §37.
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 48,
113, 114, 141, 143, 148, 149, 155.

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okl.City U.L.Rev. 397 (1983).

Notes of Decisions

Injunction 1

1. Injunction

In order for city to obtain injunction restraining property owners from continuing certain landfill operations on the

ground that the operations violated a supplemental floodway district zoning ordinance, it was necessary that there be a valid ordinance prohibiting the activities of the property owners. *Morland Development Co., Inc. v. City of Tulsa, Okla.*, 596 P.2d 1255 (1979).

§ 2-7-112. Hazardous waste facility construction to be supervised

The design, testing and construction of a hazardous waste facility shall be conducted under the supervision of a professional engineer, registered in Oklahoma, with training and experience in suitable disciplines.

Laws 1976, c. 251, § 8; Laws 1978, c. 260, § 7, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2758 and amended by Laws 1981, c. 322, §§ 8, 18, eff. July 1, 1981. Laws 1992, c. 403, § 21, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2007 and amended by Laws 1993, c. 145, §§ 95, 359, eff. July 1, 1993.

Historical and Statutory Notes

The 1978 amendment substituted "Division" for "Section" throughout the section.

The 1981 amendment substituted "controlled industrial waste facility" for "processing facility or disposal site" in the first and second sentences, in the first sentence substituted "Department" for "Division", "Board" for "State Board of Health" and in the second sentence substituted "professional engineer, registered in Oklahoma, with training and experience in suitable disciplines" for "registered professional engineer who has

proven to the Division's satisfaction that he is competent to design a disposal site".

The 1992 amendment substituted "hazardous" for "controlled industrial" in two places.

The 1993 amendment deleted the former first sentence, which read: "The Department shall prepare for adoption by the Board definite criteria, including testing methods and minimum or maximum standards, before construction of a hazardous waste facility shall proceed."

~~§ 2-7-113. Repealed by Laws 1994, c. 373, § 31, eff. July 1, 1996~~

Historical and Statutory Notes

~~The repealed section, relating to notice and hearing relating to proposed hazardous waste facility permits, was derived from:~~

~~Laws 1976, c. 251, § 7.~~

~~Laws 1978, c. 260, § 6.~~

~~Laws 1979, c. 137, § 1.~~

~~63 O.S.Supp.1980, § 2757.~~

~~Laws 1981, c. 322, §§ 7, 18.~~

~~Laws 1992, c. 403, § 192.~~

~~63 O.S.Supp.1992, § 1-2006.~~

~~Laws 1993, c. 145, §§ 96, 359.~~

~~Laws 1994, c. 373, § 14.~~

~~See Title 27A, § 2-14-101 et seq.~~

§ 2-7-113.1. Issuance of permits—Suitability of facility—Administrative procedures

A. The Department of Environmental Quality shall issue permits for hazardous waste facilities. A permit shall be issued only upon proper application and determination by the Department that the proposed site and facility are physically and technically suitable.

B. Upon a finding that a proposed hazardous waste facility is not physically or technically suitable, the Department shall deny the permit.

C. In accordance with the provisions of Section 2-14-304 of this title, an administrative permit hearing shall be available on a proposed permit which is based on a Tier III hazardous waste permit application for a new permit or for the modification of an existing permit involving a fifty percent (50%) or more increase in permitted capacity for storage, treatment or disposal including but not limited to incineration.

D. The Department may, upon determining that public health or safety requires emergency action, issue a temporary permit for treatment or storage of hazardous waste or recyclable material for a period not to exceed ninety (90) days without the prior notices and opportunity to request a public meeting or the administrative permit hearing required by this section or the Oklahoma Uniform Environmental Permitting Act.¹ Any person aggrieved by such permit may seek judicial review.

Laws 1994, c. 373, § 27, eff. July 1, 1996; Laws 1995, c. 285, § 4, eff. July 1, 1996.

¹ Title 27A, § 2-14-101 et seq.

Historical and Statutory Notes

The 1995 amendment rewrote subsection C, which prior thereto read:

"In accordance with the provisions of Section 11 of the Oklahoma Uniform Environmental Permitting Act, an administrative permit hearing shall be available on a proposed permit which is based on a hazardous waste permit application for a new major permit and for the major modification of an existing major permit involving a fifty percent (50%) or more increase in permitted capacity for stor-

age, treatment or disposal (including incineration)."

; deleted former subsection D, which read:

"A major modification of a major hazardous waste permit shall mean a Class III modification as defined in Section 270.42(c) of Title 40 of the Code of Federal Regulations."

; and redesignated former subsection E as subsection D.

~~§ 2-7-114. New hazardous waste facilities within eight miles of corporate limits—Exemptions~~

A. Except as provided in subsections B and C of this section, no permit shall be issued for the off-site disposal of hazardous waste or for the off-site treatment of hazardous waste by incinerator at a new hazardous waste facility proposed to be located within eight (8) miles of the corporate limits of an incorporated city or town. For the purposes of this section the corporate limits of an incorporated city or town shall be the corporate limits in effect on January 1 of the year the application is filed, and a new hazardous waste facility means a hazardous waste facility that was not in operation and actively treating hazardous waste by incineration or disposing of hazardous waste during the year preceding August 30, 1991. Addition of new treatment, storage or disposal units to an existing hazardous waste facility does not constitute a new facility.

B. This section shall not apply to any facility accepting hazardous waste exclusively for the purpose of conducting treatment research and design tests.

C. This section shall not apply to a proposed site located on property owned or operated by a person who also owns or operates a hazardous waste facility on contiguous property on which a hazardous waste facility was operating pursuant to a valid permit on August 30, 1991.

Laws 1991, c. 173, § 13; Laws 1992, c. 403, § 35, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2014.3 and amended by Laws 1993, c. 145, §§ 97, 359, eff. July 1, 1993. Laws 1994, c. 373, § 20, eff. July 1, 1994.

Historical and Statutory Notes

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment, in subsection A, in the first sentence, deleted "for a new hazardous waste facility" following "issued", inserted "for" preceding "the off-site" and "at a new hazardous waste facility proposed", and substituted "an" for

"any", and in the second sentence substituted "August 30, 1991" for "the effective date of this act"; and in subsection C, inserted "located" and substituted "August 30, 1991" for "the effective date of this act".

The 1994 amendment, in subsection A, in the first sentence, deleted "construction or operation" preceding "permit".

~~§ 2-7-115. New hazardous waste facility permits—Suitability of roads and bridges, upgrading—Notice, grievance procedure~~

A. Regarding a permit application for a new hazardous waste facility, the board of county commissioners of the county in which the waste facility is located and the board of county commissioners of ~~any county contiguous to the waste facility, whose roads and bridges~~

~~are to be used to provide access to the proposed waste facility, shall~~ review the county road classification plans as described in Section 654 of Title 69 of the Oklahoma Statutes and substantiate whether the county roads and bridges to be used to and from such hazardous waste facility in their respective counties may be used without any substantial detriment to said roads and bridges as provided in Section 14-113 of Title 47 of the Oklahoma Statutes. If any board of county commissioners finds that substantial detriment to the roads and bridges in its county would occur, such board shall determine reasonable measures necessary to upgrade the roads and bridges and allow the applicant for a hazardous waste facility to upgrade or pay for the upgrading of such roads and bridges if the applicant receives a permit.

B. The Department shall not issue a permit for any new hazardous waste facility unless:

1. Each board of county commissioners, as appropriate pursuant to subsection A of this section, has substantiated by resolution that the county roads and bridges as they exist can be used without any substantial detriment to said roads and bridges as provided by the restrictions imposed by Section 14-113 of Title 47 of the Oklahoma Statutes; or

2. The applicant has agreed to upgrade or pay for the upgrading of the roads and bridges to the reasonable measures determined by the appropriate board of county commissioners or to the design standards established by the Oklahoma Department of Transportation for industrial access roads.

The Department shall not authorize the operation of the facility until the necessary upgrades to the roads and bridges have been made.

C. The Department shall notify the applicable boards of county commissioners by certified mail, return receipt requested, of the proposed waste site. Said boards of county commissioners shall have forty-five (45) days from receipt of such notice to review the county road classification plan and respond to the Department. The finding of each board of county commissioners shall be sent to the Department by certified mail, return receipt requested. Failure to respond within such forty-five-day response period shall constitute a finding that the roads and bridges can be used without substantial detriment and preclude the board of county commissioners failing to respond from raising the suitability of use of roads and bridges of the county as set out in subsections A and B of this section at a later date.

~~D. Any applicant for a permit aggrieved by the action of the board of county commissioners pursuant to this section shall have the right of review by trial de novo in the district court of the county wherein the board of county commissioners took such action.~~

E. This section shall apply to any permit application submitted to the Department on or after May 30, 1985, and to any permit application submitted before May 30, 1985, for which a permit has not been issued.

Laws 1985, c. 113, § 5, emerg. eff. May 30, 1985; Laws 1992, c. 403, § 14, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2005.3 and amended by Laws 1993, c. 145, §§ 98, 359, eff. July 1, 1993. Laws 1994, c. 373, § 21, eff. July 1, 1994.

Historical and Statutory Notes

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout section.

The 1993 amendment, in subsection A, in the second sentence, substituted "board" for "of said board", "its county" for "their respective counties", "such board" for "said board", and "such roads" for "said roads"; in subsection C, in the first sentence deleted "disposal" preceding "site", in the second sentence deleted "of said" preceding "board", and in the third sentence substituted "such forty-five-day response period" for "the required time limitation established pursuant to this subsection"; in subsection D, substituted "in" for "to"; and rewrote subsection E, which prior thereto read:

"In addition to any construction permit application submitted to the Department

subsequent to the effective date of this act, the provisions of this section shall also apply to any construction permit application submitted to the Department prior to the effective date of this act for which a permit has not been issued."

The 1994 amendment substituted "permit" for "construction permit" throughout the section; in subsection A, in the first sentence, inserted "new"; in subsection B.2, rewrote the second paragraph, which prior thereto read:

"An operation permit shall not be granted by the Department to the applicant until the necessary upgrades to the roads and bridges have been made."

; and in subsection D, deleted "construction permit or operation" preceding "permit".

Cross References

Restrictions on highway use, see Title 47, § 14-113.

Library References

Health and Environment ☞31.
Highways ☞182.
WESTLAW Topic Nos. 199, 200.

C.J.S. Health and Environment §§ 37 to 40, 44, 47.
C.J.S. Highways § 244.

Notes of Decisions

Department of Transportation 1

1. Department of Transportation

Department of Transportation lacks authority to determine which roads or

bridges will be used for access to proposed controlled industrial waste facility and is limited strictly to establishing design standards for industrial access roads as provided by 63 O.S.Supp.1985, § 1-2005.3. Op.Atty.Gen. No. 85-134 (Dec. 6, 1985).

§ 2-7-116. Permits—Application—Liability insurance—Bond—
Financial responsibility—Operation of facility—In-
solvency—Liability of guarantors

~~A. Except for emergency permits issued in accordance with Section 2-7-113 or 2-7-113.1 of this title, no permit shall be issued except upon proper application, proof of sufficient liability insurance and financial responsibility, formal public meeting, if requested, and such other requirements as provided by the Oklahoma Hazardous Waste Management Act¹ and the Environmental Quality Code.²~~

B. Liability insurance shall be provided by the applicant and shall apply to sudden and nonsudden bodily injury or property damage on, below or above the surface, as required by the rules of the Board. Additional insurance shall be required as deemed necessary by the Department to protect the property rights of owners or leaseholders of underground resources such as oil, gas, water or other mineral substances. Such insurance shall be maintained for the period of operation of the facility and shall provide coverage for damages resulting from operation of the facility during operation and after closing. In lieu of liability insurance required by this or any other section of the Oklahoma Hazardous Waste Management Act, an equivalent amount of cash, securities or alternate financial assurance of a type and in an amount acceptable to the Department, may be substituted; provided, that such deposit shall be maintained for a period of five (5) years after the date of last operation of the facility.

C. Prior to the issuance of any permit, the applicant shall post a bond or acceptable alternate financial assurance guaranteeing proper closure and guaranteeing the performance of the maintenance and monitoring functions set out in Section 2-7-124 of this title.

D. The Department shall require additional insurance and security by the permittee upon an application for expansion of the facility. Such increase in insurance and security shall be in a sufficient amount to provide adequate coverage for damages resulting from such expansion during operation of the facility and after closing.

E. Prior to the issuance of any permit, the applicant shall, upon request of the Department, produce evidence of the applicant's financial status indicating that the applicant is financially able to operate and maintain a hazardous waste facility as required by the Oklahoma Hazardous Waste Management Act. If the applicant is not financially able to operate and maintain a hazardous waste facility, as required by the Oklahoma Hazardous Waste Management Act, a permit shall be denied.

F. The operation of a hazardous waste facility shall be under the supervision of a person meeting qualifications set by the Board appropriate to the type of facility.

~~G. The Department is authorized and shall require the construction of monitoring wells, pond liners, fencing, signs or other equipment deemed necessary by the Department to ensure the suitable operation of the facility.~~

H. 1. In any case where the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code³ or if jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility is required pursuant to the Oklahoma Hazardous Waste Management Act may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action taken pursuant to this section, such guarantor shall be entitled to claim all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by ~~the owner or operator.~~

2. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility for the owner or operator pursuant to the Oklahoma Hazardous Waste Management Act. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980⁴ or other applicable law.

Laws 1976, c. 251, § 9; Laws 1978, c. 260, § 8, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2759 and amended by Laws 1981, c. 322, §§ 9, 18, eff. July 1, 1981. Laws 1986, c. 140, § 1, emerg. eff. April 21, 1986; Laws 1990, c. 196, § 5, emerg. eff. May 10, 1990; Laws 1992, c. 403, § 22, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2008 and amended by Laws 1993, c. 145, §§ 99, 359, eff. July 1, 1993. Laws 1994, c. 373, § 22, eff. July 1, 1994; Laws 1995, c. 285, § 5, eff. July 1, 1995.

¹ Title 27A, § 2-7-101 et seq.

² Title 27A, § 2-1-101 et seq.

³ 11 U.S.C.A. § 101 et seq.

⁴ 42 U.S.C.A. § 9601.

Historical and Statutory Notes

The 1978 amendment substituted "Division" for "Section" throughout the section; and in subsection C substituted "Section 2760 of this title" for "Section 10 of this act".

The 1981 amendment substituted "Department" for "Division" and "controlled industrial waste facility" for "processing facility or disposal site" throughout the section; in subsection A, second sentence, inserted ", informal public meeting, if requested."; in subsection B, first sentence, substituted "and shall apply to sudden and nonsudden bodily injury or property damage on, below or above the surface, as required by the rules and regulations of the Board" for "in an amount equal to twice the value of all real property situated within one (1) mile of the facility or site" and deleted the former second and third sentences which read: "Provided, that the liability insurance shall be in an amount of not less than One Hundred Thousand Dollars (\$100,000.00) and need not be more than Five Hundred Thousand Dollars (\$500,000.00). This liability insurance shall apply to bodily injury or property damage on or above the surface."; in subsection C, substituted "Section 11 of this act" for "Section 2760 of this title"; and in subsection E, substituted "meeting qualifications set by the Board appropriate to the type of facility" for "with a science or engineering degree appropriate to the type of facility or site he is to supervise and whose qualifications are acceptable to the Division".

The 1986 amendment, in subsection C, substituted "1-2009 of this title" for "11 of this act"; inserted subsection D; redesignated former subsections D to F as subsections E to G; and added subsection H.

The 1990 amendment, in subsection B, in the fourth sentence, inserted "or alternate financial assurance"; and in subsec-

tion C, inserted "or acceptable alternate financial assurance guaranteeing proper closure and".

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment substituted "the Hazardous Waste Management Act" for "this act" throughout the section; in subsection A, in the second sentence, substituted "formal" for "informal" and "provided by the Oklahoma Hazardous Waste Management Act" for "hereinafter provided"; in subsection B, in the first sentence, deleted "and regulations" following "rules"; in subsection C, substituted "107 of this act" for "1-2009 of this title"; in subsection H.1, in the first sentence, substituted "for which" for "of which"; in subsection H.2, in the first sentence, substituted "responsibility for" for "responsibility to"; and deleted subsection H.3, which read:

"As used in this section, the term 'guarantor' means any person other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to the Oklahoma Hazardous Waste Disposal Act."

The 1994 amendment, in subsection A, deleted the first sentence which read: "The Department shall issue permits for the operation of hazardous waste facilities.", and substituted "Except for emergency permits issued in accordance with subsection C of Section 2-7-113 of this title, no" for "No operation" and added "and the Environmental Quality Code"; and in subsection C, substituted "2-7-124 of this title" for "107 of this act".

The 1995 amendment, in subsection A, substituted "Section 2-7-113" for "subsection C of Section 2-7-113"; and in subsection E, inserted "Oklahoma" in two places.

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okl.City U.L.Rev. 397 (1983).

Notes of Decisions

Construction and application 1

be subject to the permit requirements of statute. Op.Atty.Gen. No. 76-367 (Jan. 26, 1977).

1. Construction and application

Soil farming of industrial waste not designated as controlled industrial waste upon the industry's own land would not

An industry which plows its controlled industrial waste into the soil must meet the permit requirements of statute. Op. Atty.Gen. No. 76-367 (Jan. 26, 1977).

~~§ 2-7-117. Multi-user on-site treatment facilities Permits
Suitability factors~~

A. Two or more persons generating hazardous waste may enter into a compact to construct and operate a multi-user on-site treatment facility for the exclusive use of the members of such compact. Such facility shall not be used as a hazardous waste facility for off-site treatment, storage or disposal of hazardous waste.

B. To be eligible for a permit issued pursuant to the provisions of this section and the Oklahoma Hazardous Waste Management Act,¹ a multi-user on-site treatment facility shall meet the following criteria:

1. The facility may be co-owned by the generators of hazardous waste who are members of the compact;
2. Each member of the compact shall be identified in the application and permit. In addition, the individual hazardous waste generated by each member shall be separately and distinctly characterized in the application and in the permit and shall meet the compatibility requirements established by the Department;
3. The facilities generating hazardous waste which is to be treated at the multi-user on-site treatment facility shall be located within the same county as the multi-user on-site treatment facility;
4. The multi-user on-site treatment facility shall be located upon the property of one of the compact members;
5. Financial responsibility requirements shall be the responsibility of the compact members and shall be prorated according to the relative amount of hazardous waste of a generator to be treated at the facility; and
6. The Department may require such other criteria and information in order to determine if the multi-user on-site treatment facility is physically and technically suitable for the hazardous waste to be treated at the facility.

C. A multi-user on-site treatment facility, located within an industrial park which treats, stores or disposes of wastes that are produced only within that industrial park, may be owned or operated by ~~persons other than the generators of the waste.~~

~~D. Upon compliance with the provisions of the Oklahoma Hazardous Waste Management Act, this section and rules promulgated thereunder, the Department shall issue a permit for the construction and operation of a multi-user on-site treatment facility.~~

E. The board of county commissioners of the county in which a multi-user on-site treatment facility is proposed to be located shall review all transportation routes between such proposed location and the facilities generating hazardous waste which are operated by members of the compact. The provisions of Section 2-7-115 of this title relating to county roads and bridges shall apply to permit applications for multi-user on-site treatment facilities.

Laws 1988, c. 54, § 2, eff. Nov. 1, 1988; Laws 1991, c. 173, § 7; Laws 1992, c. 403, § 23, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2008.1 and amended by Laws 1993, c. 145, §§ 100, 359, eff. July 1, 1993. Laws 1994, c. 373, § 23, eff. July 1, 1994; Laws 1995, c. 1, § 7, emerg. eff. March 2, 1995.

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1991 amendment, in subsection A, in the first sentence, deleted "within the same county" following "waste"; in subsection B.1, substituted "may" for "shall"; inserted subsection C; redesignated former subsections C and D as subsections D and E; and in subsection D, deleted "and regulations" following "rules".

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section; and in subsection E, substituted "this title" for "Title 63 of the Oklahoma Statutes".

The 1993 amendment, in subsection B, in the introductory clause, substituted "Management" for "Disposal"; in subsection D substituted "Management" for "Disposal", deleted "any" preceding "rules" and substituted "thereunder" for "thereto"; and in subsection E, rewrote the first sentence, which prior thereto read: "The board of county commission

ers of the county in which such multi-user on-site treatment facility is located shall review all transportation routes from the facilities generating hazardous waste which are operated by members of the compact to the multi-user on-site treatment facility pursuant to the provisions of Section 1-2005.3 of this title." and added the second sentence.

The 1994 amendment, in subsection D, substituted "a permit" for "permits"; and in subsection E, in the second sentence, substituted "2-7-115 of this title" for "98 of this act" and deleted "construction and operation" preceding "permit".

Section 21 of Laws 1994, c. 353, amending this section, was repealed by Laws 1995, c. 1, § 40.

The 1995 amendment, in subsection C, deleted "by the industries located" following "only".

§ 2-7-118. Facilities that recycle hazardous waste—Permit requirements, exemption—Prohibition of burning certain hazardous waste as fuel

A. Facilities that recycle hazardous waste shall be exempt from subsection C of Sections 2-7-113 and 2-7-113.1, and Section 2-7-115 of this title with regard to those units exclusively used in the recycling process. Off-site hazardous waste recycling facilities are

subject to the requirements specified by the Oklahoma Hazardous Waste Management Act,¹ the Oklahoma Environmental Permitting Act,² and rules promulgated thereunder, for a permit, and shall also meet design standards as promulgated by the Board. Such recycling facilities which were in existence on July 1, 1990, may but shall not be required to file a permit application pursuant to the provisions of the Oklahoma Hazardous Waste Management Act. A permit modification is not required for a permitted recycling facility to use new, improved, or better methods of recycling if the Department has approved the plans as being environmentally acceptable. An approved class 1 permit modification shall be required for a permitted recycling facility to increase the capacity of its recycling units or add new or different recycling units.

~~B. No hazardous waste having a heating value less than five thousand (5,000) British Thermal Units per pound shall be burned as fuel in any unit in this state permitted as a hazardous waste recycling unit.~~

~~C. No owner or operator of any unit in this state permitted as a hazardous waste recycling unit shall burn as fuel in such unit any substance which the owner or operator knows, or should know, contains hazardous waste which has a heating value of less than five thousand (5,000) British Thermal Units per pound which has been blended with other materials or wastes and produces a hazardous waste fuel with a heating value equal to or exceeding five thousand (5,000) British Thermal Units per pound.~~

Laws 1990, c. 296, § 6, operative July 1, 1990; Laws 1991, c. 173, § 12; Laws 1992, c. 403, § 34, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2014.2 and amended by Laws 1993, c. 145, §§ 101, 359, eff. July 1, 1993. Laws 1993, c. 324, § 30, eff. July 1, 1993; Laws 1994, c. 373, § 24, eff. July 1, 1994; Laws 1995, c. 1, § 8, emerg. eff. March 2, 1995; Laws 1995, c. 285, § 6, eff. July 1, 1995.

¹ Title 27A, § 2-7-101 et seq.

² Title 27A, § 2-14-101 et seq.

Historical and Statutory Notes

Section was editorially renumbered from § 1-2014.1 of Title 63 to § 1-2014.2 to avoid duplication in numbering.

The 1991 amendment, in the second sentence, substituted "Off-site controlled" for "Controlled", and in the third sentence, substituted "Such recycling" for "Recycling".

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

Laws 1993, c. 145, § 101 substituted "Management" for "Disposal" throughout the section, in the first sentence substituted "waste shall be" for "wastes are" and "with regard to" for "for", in the second sentence substituted "Board" for "State Board of Health", and in the third sentence substituted "were" for "are" and "July 1, 1990," for "the effective date of this act".

Laws 1993, c. 324, § 30 designated the existing text as subsection A; and added subsections B and C.

The 1994 amendment, in subsection A, in the first sentence, substituted "subsection C of Section 2-7-113 and Section 2-7-115 of this title" for "construction permit requirements specified by the Oklahoma Hazardous Waste Management Act".

Section 22 of Laws 1994, c. 353, amending this section, was repealed by Laws 1995, c. 1, § 40.

Laws 1995, c. 1, § 8, in subsection A, added the fifth sentence.

Laws 1995, c. 285, § 6, in subsection A, in the first sentence substituted "Sections 2-7-114 and 2-7-113.1," for "Section 2-7-113", in the second sentence inserted ", the Oklahoma Environmental Permitting Act, and rules promulgated thereun-

der," and substituted "a permit" for "an operations permit", in the third sentence substituted "a permit" for "an operations permit", and in the fifth sentence deleted "operations" following "class 1"; and rewrote subsection C, which prior thereto read:

"No hazardous waste which has a heating value of less than five thousand (5,000) British Thermal Units per pound when blended with other materials or wastes to produce a hazardous waste fuel with a heating value equal to or exceeding five thousand (5,000) British Thermal Units per pound shall be burned as fuel in any unit in this state permitted as a hazardous waste recycling unit."

United States Supreme Court

Hazardous waste, incineration of solid waste, regulation, see City of Chicago v.

Environmental Defense Fund, 1994, 114 S.Ct. 1588, 128 L.Ed.2nd 302.

~~§ 2-7-119. Permit fees~~

A. The Board shall establish a schedule of fees, pursuant to Section 2-3-402 of this title and the Administrative Procedures Act,¹ to be charged for applications to issue and renew permits for hazardous waste facilities and for the regulation of hazardous waste. Such fees shall only be used for the implementation of the provisions of the Oklahoma Hazardous Waste Management Act² pursuant to Section 2-3-402 of this title.

- B. The Board shall charge fees only within the following ranges:
 - For generator disposal plan: \$100.00 to \$10,000.00 per year
 - For transporter trailer registration: \$20.00 per trailer per year
 - For permit application: \$5,000.00 to \$50,000.00
 - For application resubmittal: \$100.00 to \$1,000.00
 - For monitoring: \$100.00 to \$10,000.00 per year.

C. The Board shall develop a separate schedule of reduced fees of not less than Twenty-five Dollars (\$25.00) for small quantity generators.

Laws 1985, c. 113, § 1, emerg. eff. May 30, 1985; Laws 1986, c. 229, § 1, emerg. eff. June 10, 1986; Laws 1992, c. 403, § 13, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2005.2 and amended by Laws 1993, c. 145, §§ 102, 359, eff. July 1, 1993. Laws 1994, c. 353, § 23, eff. July 1, 1994.

¹Title 75, § 250 et seq.

²Title 27A, § 2-7-101 et seq.

~~Historical and Statutory Notes~~

The 1986 amendment, in subsection A.1, substituted "Except as provided in subsection C of this section, no" for "No"; in subsection B, added the second sentence; and added subsection C.

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment rewrote the section, which prior thereto read:

"A. The State Board of Health may establish a system of fees to be charged for applications to issue and renew permits for hazardous waste facilities and for such environmental health services as are involved in the regulation of hazardous waste. Such fees shall be subject to the following limitations.

"1. Except as provided in subsection C of this section, no schedule of fees shall be established or amended by the Board except during such times as the Legislature is in session. The Board shall follow the procedures required by Sections 301 through 325 of Title 75 of the Oklahoma Statutes for adoption of rules and regulations in establishing or amending any such schedule of fees; and

"2. The Board shall charge fees only within the following ranges:

"For generator disposal plan: \$100.00 to \$10,000.00 per year

"For transporter trailer registration: \$20.00 per trailer per year

"For permit application: \$5,000.00 to \$50,000.00

"For application resubmittal: \$100.00 to \$1,000.00

"For monitoring: \$100.00 to \$10,000.00 per year

"B. The Board shall base its schedule of permit fees upon the reasonable costs of review and inspection services for each permit, and its schedule of monitoring fees upon the reasonable costs of travel and inspection, based upon the various categories of facilities as the Board shall determine. The Board shall, by rule and regulation, establish a system whereby an applicant for a permit for a facility in place on January 1, 1986, may pay a prorated application fee over the life of the permit, if the Department determines such fees would create financial hardship on the applicant so that continued operation by the applicant would be jeopardized.

"C. The Board shall develop a separate schedule of reduced fees of not less than Twenty-five Dollars (\$25.00) for small quantity generators. The State Board of Health shall prior to January 1, 1987, promulgate a separate schedule of reduced fees for such small quantity generators. Thereafter, such schedule shall be amended pursuant to subsection A of this section.

"D. Fees charged pursuant to this section shall be paid into the Public Health Special Fund, created in Section 1-107 of Title 63 of the Oklahoma Statutes, and shall be used by the Department in administering the Hazardous Waste Disposal Act."

The 1994 amendment, in subsection A, substituted "2-3-402 of this title" for "24 of this act" in two places.

Library References

Licenses §§ 29, 33.
WESTLAW Topic No. 238.
C.J.S. Licenses §§ 66, 71.

§ 2-7-120. Fee for disposal of liquid waste other than hazardous waste in underground injection well

Any person subject to regulation by the Department of Environmental Quality disposing of liquid waste other than hazardous waste in an underground injection well shall pay a fee of two-hundredths of one cent (0.002) per gallon for such disposal, provided that the total fee shall be not less than Ten Thousand Dollars (\$10,000.00) nor

~~more than Fifty Thousand Dollars (\$50,000.00) per year. Said fee shall be paid to the Department on a quarterly basis within one (1) month following the close of each quarter for the waste disposed in that preceding quarter. Said fees shall be deposited into the Department of Environmental Quality Revolving Fund.~~

Laws 1991, c. 173, § 5; Laws 1992, c. 403, § 16, eff. Sept. 1, 1992; Laws 1993, c. 10, § 7, emerg. eff. March 21, 1993. Renumbered from Title 63, § 1-2005.3B and amended by Laws 1993, c. 145, § 103, 359, eff. July 1, 1993. Laws 1993, c. 324, § 32, eff. July 1, 1993.

Historical and Statutory Notes

The 1992 amendment substituted "hazardous" for "controlled industrial" in the first sentence.

Section 1 of Laws 1992, c. 361, amending this section, was repealed by Laws 1993, c. 10, § 16.

Laws 1993, c. 10, § 7 rewrote the first sentence, which prior thereto read: "Any person subject to regulation under this title disposing of liquid waste other than hazardous waste in an underground injection well shall pay a fee of one-tenth of one cent (\$0.001) per gallon for such disposal, not to exceed Fifty Thousand Dollars (\$50,000.00) per year."

Laws 1993, c. 145, § 103, in the first sentence, substituted "chapter" for "title" and deleted the third sentence, which read: "Said fees shall be deposited into the Public Health Special Fund."

Section 1 of Laws 1993, c. 148, amending this section, was repealed by Laws 1993, c. 324, § 58.

Laws 1993, c. 324, § 32, in the first sentence, substituted "by the Department of Environmental Quality" for "under this chapter", "two-hundredths of one cent (0.002)" for "five-hundredths of one cent (\$0.0005)", and "Ten Thousand Dollars (\$10,000.00)" for "Fifteen Thousand Dollars (\$15,000.00)" and added the third sentence.

~~§ 2-7-121. Annual fee Exemptions Expenditure of funds~~

A. Every hazardous waste treatment facility, storage facility, underground injection facility, disposal facility, or off-site facility that recycles hazardous waste subject to the provisions of the Oklahoma Hazardous Waste Management Act¹ shall pay to the Department of Environmental Quality an annual fee on the amount of hazardous waste managed by such facility.

1. Except as otherwise provided by this subsection, such fees shall be, subject to the qualifications provided in paragraph 2 of this subsection:

- a. For hazardous waste generated within the State of Oklahoma, Nine Dollars (\$9.00) per ton for on-site or off-site storage, treatment or land disposal.
- b. For hazardous waste generated within the State of Oklahoma, or elsewhere in the case of regeneration, Four Dollars (\$4.00) per ton for off-site recycling.
- c. For hazardous waste generated within the State of Oklahoma, three cents (\$0.03) per gallon for on-site or off-site underground injection.

- ~~d. (1) Effective May 1, 1993, the fee applicable to waste generated outside the State of Oklahoma except as provided in subparagraph b of this paragraph shall be based on the primary purpose for which the waste is imported into the State of Oklahoma, and shall be a reciprocal fee at the rate of and in accordance with the method of imposition of the tax or fee imposed on the storage, treatment, disposal or recycling of such waste in the state, country or territory where the waste was generated, as determined by the Department. In no case, however, shall the fee levied on hazardous waste generated outside the State of Oklahoma be less than the rate charged at the time of its storage, treatment, disposal or recycling for hazardous waste generated and stored, treated, disposed or recycled in the State of Oklahoma.~~
- (2) Any person storing, treating, disposing, or recycling such hazardous waste in the State of Oklahoma shall file with the Department an affidavit showing the applicable tax or fee for any hazardous waste received from another state, country or territory had it been stored, treated, or disposed of in a like manner in that state, country or territory. In preparing the required affidavit, the recipient of the waste is legally entitled to rely upon all information contained in the manifest document accompanying the shipment of waste.
2. Except as otherwise provided by this subsection, there shall be a minimum fee per facility as follows:
- a. Except as provided in subparagraph d of this paragraph, any person owning or operating an off-site hazardous waste treatment facility or disposal facility shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year.
 - b. Any person owning or operating an on-site hazardous waste treatment facility, storage facility, or disposal facility shall pay a total fee of not less than Twenty Thousand Dollars (\$20,000.00) each state fiscal year; provided, the annual fee for the on-site disposal of hazardous waste by underground injection shall not exceed Fifty Thousand Dollars (\$50,000.00).
 - c. Any person owning or operating an off-site facility for the storage or recycling of hazardous waste shall pay a total fee of not less than Twenty Thousand Dollars (\$20,000.00) each state fiscal year; provided, any such off-site recycling facility which consistently recycles fewer than ten (10) tons of hazardous waste per calendar month shall not be sub-

~~ject to this minimum annual fee. For the purpose of this~~
subparagraph, storage includes physical separation or
combining of wastes solely to facilitate efficient storage at
the facility and/or efficient transportation.

- d. Any person owning or operating an off-site facility which accepts hazardous waste exclusively for the purpose of conducting research and design tests shall pay a total fee of not less than Ten Thousand Dollars (\$10,000.00) each state fiscal year.

3. Off-site facilities may charge persons contracting for the services of the facility their proportional share of the fees required by the provisions of this section.

4. The facility shall become liable for payment of the fee on each ton or gallon of hazardous waste at the time it is received. The fee shall be payable by the facility to the Department only as provided for in subsection C of this section.

5. The fee imposed by the provisions of this section shall be payable only once without regard to any subsequent handling of the hazardous waste. The fee shall be based on the purpose for which the waste was generated by or brought to the facility. In no event shall a facility be required to pay a fee on each step or process involved in the storage, treatment, or disposal of the waste at the facility or a related facility under common control.

6. In computing the amount of the fee specified in subparagraph b of paragraph 1 of subsection A of this section for the off-site recycling or regeneration of hazardous waste, the assessment for regeneration shall be made on a dry weight basis.

7. If a generator of characteristic hazardous waste or listed hazardous waste treats the waste on-site to meet Best Demonstrated Available Technology Standards and disposes of the waste on-site, the waste shall be subject to a reduced treatment or on-site disposal fee of one-half ($\frac{1}{2}$) the rate required by subparagraph a of paragraph 1 of this subsection; provided, such rate reduction shall not exceed Twenty-two Thousand Dollars (\$22,000.00) per calendar year.

B. The following facilities shall not be required to pay the fee required by the provisions of this section:

1. Facilities engaged only in the on-site recycling of hazardous waste; and
2. Facilities which have not generated or received new hazardous waste within the preceding state fiscal year.

C. Payment of the fees required by this section shall be due ~~quarterly for hazardous waste received by the facility during the~~

~~prior quarter. Such quarterly payments shall be due on the first day of the month of the following quarter during the state fiscal year in which the hazardous waste is received. All payments shall be made within thirty (30) days from the date it becomes due.~~

D. The fees required by this section shall be paid in lieu of the monitoring fees imposed in subsection B of Section 2-7-119 of this title. All facilities subject to the provisions of this section shall not be required to pay or collect any additional fees for waste disposal unless specifically required by the Oklahoma Hazardous Waste Management Act.

E. All fees and other monies received by the Department pursuant to the provisions of this section shall be expended solely for the purposes specified in this section.

1. Ten percent (10%) of the fees collected from an off-site hazardous waste facility pursuant to the provisions of this section shall be deposited to the credit of the Special Economic Development Trust Funds. The funds for the Trusts accruing pursuant to the provisions of this section shall be distributed to each Trust established in proportion to the fees generated by the off-site hazardous waste facilities within the Trust area.

2. The Department shall expend monies received pursuant to the provisions of this section for one or more of the following purposes:

- a. the administration of the provisions of the Oklahoma Hazardous Waste Management Act,
- b. the development of an inventory of hazardous wastes currently produced in Oklahoma and management needs for the identified wastes,
- c. the implementation of information exchange, technical assistance, public information, and educational programs,
- d. the development and encouragement of waste reduction plans for Oklahoma waste generators, or
- e. increased inspection of hazardous waste facilities which may include full time inspectors at off-site hazardous waste facilities.

F. To the extent that fees received pursuant to this section shall exceed the purposes specified in subsection E of this section, the Department shall only expend such funds for one or more of the following purposes:

1. Contributions required from the state pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act² for remediation or related action upon a site within the state;

- ~~2. Response, including but not limited to containment and removal, to emergency situations involving spillage, leakage, emissions or other discharge of hazardous waste or hazardous waste constituents to the environment where a responsible party cannot be timely identified or found or compelled to take appropriate emergency action to adequately protect human health and the environment;~~
- 3. State-funded remediation of sites contaminated by hazardous waste or hazardous waste constituents so as to present a threat to human health or the environment, to the extent that a responsible party cannot be timely identified or found or compelled to take such action, or is unable to take such action;
- 4. Costs incurred in pursuing an enforcement action to compel a responsible party to undertake appropriate response or remedial actions, or to recover from a responsible party monies expended by the state, as described in paragraphs 1 through 3 of this subsection; or
- 5. Financial assistance to municipalities or counties for the purposes and under the conditions specified in Section 2-7-305 of this title.

Laws 1990, c. 196, § 9, operative July 2, 1990; Laws 1991, c. 173, § 4; Laws 1992, c. 201, § 2, eff. Jan. 1, 1993; Laws 1992, c. 403, § 15, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2005.3A and amended by Laws 1993, c. 145, §§ 104, 359, eff. July 1, 1993. Laws 1994, c. 353, § 24, eff. July 1, 1994; Laws 1996, c. 356, § 11, emerg. eff. June 14, 1996.

¹ Title 27A, § 2-7-101 et seq.
² 42 U.S.C.A. § 9601 et seq.

Historical and Statutory Notes

The 1991 amendment rewrote the section, which prior thereto read:

"A. Every controlled industrial waste treatment facility, storage facility, disposal facility, or facility which recycles controlled industrial waste subject to the provisions of the Oklahoma Controlled Industrial Waste Disposal Act shall pay

an annual fee on controlled industrial waste to the Department of Health for deposit in the Public Health Special Fund.

"1. Such fees shall be in the amounts stated in the following table:

"LOCATION OF WASTE GENERATION

"DISPOSITION OF WASTE	ON SITE	OFF SITE	OUT OF STATE
"Waste Storage Only		\$2.00 per ton	\$3.00 per ton
"Waste Recycling		\$4.00 per ton	\$6.00 per ton
"Waste Treatment	\$4.00 per ton	\$8.00 per ton	\$12.00 per ton
"Land Disposal	\$6.00 per ton	\$12.00 per ton	\$18.00 per ton
"Underground Injection	\$0.01 per gallon	\$0.02 per gallon	\$0.03 per gallon

~~"2. Any person or group of persons under common control owning an off-site controlled industrial waste treatment facility, storage facility, disposal facility, or facility which recycles controlled industrial waste shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year.~~

"3. The minimum fee requirement provided for in paragraph 2 of this subsection shall not apply to treatment facilities accepting controlled industrial waste exclusively for the purpose of conducting treatment research and design tests.

"4. Any person or group of persons under common control owning a controlled industrial waste treatment facility, storage facility, disposal facility, or facility which recycles controlled industrial waste shall pay a total fee of not more than Five Hundred Thousand Dollars (\$500,000.00) in any one state fiscal year for all such facilities under common control of the ultimate parent of the group. Facilities are hereby authorized to charge the person contracting for the services of the facility their proportional share of the fees required by the provisions of this section.

"5. The amounts of annual fees to be paid as specified in paragraph 1 of this subsection shall be based upon the weight or volume of waste received into a facility during the preceding state fiscal year as reported to the Department of Health. The facility shall become liable for payment of the fee on each ton or gallon of controlled industrial waste at the time it is received. The fee shall be payable by the facility to the Department of Health only as provided for in subsection C of this section.

"6. The fee imposed by the provisions of this section shall be payable only once without regard to any subsequent handling and shall be based on the purpose for which the waste has been generated by or brought to the facility. In no event shall a facility be required to pay a fee on each step or process involved in the storage, treatment, or disposal of the waste at the facility or a related facility under common control.

~~"B. The following facilities shall not be required to pay the fee required by the provisions of this section:~~

~~"1. Those facilities engaged only in the on-site storage of controlled industrial waste; and~~

~~"2. Those facilities which have not generated or received new controlled industrial waste within the preceding state fiscal year.~~

"C. Payment of the fees required by this section shall be due July 1 of each year for controlled industrial waste received by the facility during the prior state fiscal year. At the discretion of the facility, payment of the estimated annual fee owned by the facility may be made by quarterly payments. Such quarterly payments shall be due on the first day of the month of the following quarter during the state fiscal year in which the controlled industrial waste is received. All payments shall be made within thirty (30) days from the date it becomes due. In the event that at the end of the year an estimated fee paid is not the same as owed, the Department shall provide procedures for reconciling the fee paid with the fee owed.

"D. The fees provided for in this section shall be adjusted proportionally on an annual basis to reflect changes in the Producers Price Index as certified to the State Department of Health by the Oklahoma Department of Commerce on July 1 of each year.

"E. The fees provided for in this section shall be paid in lieu of the monitoring fees imposed in paragraph 2 of subsection A of Section 1-2005.2 of Title 63 of the Oklahoma Statutes. All facilities subject to the provisions of this section shall not be required to pay or collect any additional fees for waste disposal unless specifically provided for in the Oklahoma Controlled Industrial Waste Disposal Act.

"F. All fees and other monies received by the Department pursuant to the provisions of this section shall be expended solely for the purposes specified in this section. The State Commissioner of Health shall expend monies received pursuant to the provisions of this section only for one or more of the following purposes:

~~"1. The administration of the provisions of the Controlled Industrial Waste Disposal Act;~~

~~"2. The development of an inventory of controlled industrial wastes currently produced in Oklahoma and management needs for the identified wastes;~~

~~"3. The implementation of information exchange, technical assistance, public information, and educational programs;~~

~~"4. The development and encouragement of waste reduction plans for Oklahoma waste generators; or~~

~~"5. Increased inspection of controlled industrial waste facilities which may include full time inspectors at off-site controlled industrial waste facilities."~~

Section 16 of Laws 1991, c. 173, provides for an effective date of July 2, 1991, but c. 173 does not contain an emergency clause and the proposed effective date falls within 90 days of the adjournment of the Legislature, and pursuant to Const. Art. 5, § 58, is ineffective.

Laws 1992, c. 201, § 2 rewrote subsection A.1, which prior thereto read:

"1. Such fees shall be, subject to the qualifications provided in subparagraph 2 of this subsection:

"a. Six Dollars and fifty cents (\$6.50) per ton for the on-site or off-site storage, treatment or land disposal of controlled industrial waste.

"b. Four Dollars (\$4.00) per ton for the off-site recycling of controlled industrial waste.

"c. Three cents (\$0.03) per gallon for the on-site or off-site underground injection of controlled industrial waste."

; in subsection A.2, in paragraph a substituted "Except as provided in subparagraph d of this paragraph, any" for "Any", in paragraph b added the proviso, and added paragraph d; deleted subsection A.3, which read:

"The minimum fees provided for in paragraph 2 of this subsection shall not apply to treatment facilities accepting controlled industrial waste exclusively for the purpose of conducting treatment research and design tests."

; redesignated former subsections A.4 to A.6 as subsections A.3 to A.5; in subsection A.3, substituted "Off-site facilities may" for "Facilities are hereby authorized to" and "persons" for "the person"; in subsection A.5, in the first sentence substituted "of the controlled industrial

waste. The fee" for "and" thereby creating the second sentence and in the second sentence substituted "was" for "has been"; added subsection A.6; in subsection B, substituted "Facilities" for "Those facilities" in paragraphs 1 and 2; in subsection D, in the first and second sentences, substituted "required by" for "provided for in"; in subsection E.1, in the first sentence inserted "from an off-site controlled industrial waste facility" and substituted "1-2005.3C of this title" for "6 of this act", and in the second sentence inserted "off-site"; and in subsection F, in the introductory clause, substituted "shall" for "may", and in paragraph 2, substituted ", including but not limited to containment and removal," for "(including containment and removal)" and deleted "the" preceding "emergency situations".

Laws 1992, c. 403, § 15 substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment, in subsection A, in the introductory paragraph, substituted "Management" for "Disposal" and "Department" for "State Department of Health for deposit in the Public Health Special Fund", in paragraphs 1.d.(1) and 1.d.(2) substituted "Department" for "State Department of Health", and in paragraph 4 substituted "Department" for "Department of Health"; in subsection D, in the first sentence substituted "subsection B of Section 102 of this act" for "paragraph 2 of subsection A of Section 1-2005.2 of this title" and in the second sentence substituted "Management" for "Disposal"; in subsection E.1, in the first sentence, deleted "established pursuant to Section 1-2005.3C of this title" from the end; in subsection E.2, in the introductory clause substituted "Department" for "State Commissioner of Health" and in paragraph a substituted "Management" for "Disposal"; and in subsection F, in the introductory paragraph substituted "Department" for "Commissioner" and in paragraph 5 substituted "122 of this act" for "1-2019 of this title".

The 1994 amendment, in subsection A, in the introductory paragraph inserted "to the Department of Environmental Quality" and deleted "to the Department" from the end, in paragraph 1 in the introductory clause substituted "Ex-

~~cept as otherwise provided by this subsection, such~~ for "Such", in paragraph 2 in the introductory clause substituted "Except as otherwise provided by this subsection, there" for "There", and added paragraph 7; in subsection D, in the first sentence, substituted "2-7-119 of this title" for "102 of this act"; and in subsection F.5, substituted "2-7-305 of this title" for "122 of this act".

The 1996 amendment rewrote subsection A.2.c, which prior thereto read:

"Any person owning or operating an off-site facility for the recycling of hazardous waste shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year."

Cross References

Hazardous waste reduction program, rules for proportional reduction of waste treatment or disposal fee specified in this section, see Title 27A, § 2-11-204.

§ 2-7-122. Disposal by underground injection—Limitation of annual fee

The Department shall not assess an annual fee for the on-site disposal of hazardous waste by underground injection which exceeds Fifty Thousand Dollars (\$50,000.00).

Laws 1992, c. 201, § 7, emerg. eff. May 12, 1992. Renumbered from Title 63, § 1-2002.a and amended by Laws 1993, c. 145, §§ 105, 359, eff. July 1, 1993.

Historical and Statutory Notes

The 1993 amendment substituted "Department" for "Oklahoma State Department of Health" and "hazardous" for "controlled industrial".

§ 2-7-123. Permit issuance—Notice

Upon issuance of any permit issued pursuant to the requirements of the Hazardous Waste Management Act,¹ the Department shall file a recordable notice of the permit in the land records of the county in which the site is located. The notice shall contain the legal description of the site as well as the terms under which the permit was issued.

Laws 1976, c. 251, § 5; Laws 1978, c. 260, § 4, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2755 by Laws 1982, c. 202, § 9. Renumbered from Title 63, § 1-2005.1 and amended by Laws 1993, c. 145, §§ 106, 359, eff. July 1, 1993.

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1978 amendment substituted "Division" for "Section" in the first sentence.

The 1993 amendment rewrote the first sentence, which prior thereto read:

"Upon issuance of any such permit, the Division shall file a recordable notice of the permit in the land records of the county in which the site is located."

~~Notes of Decisions~~

~~Construction and application 1 upon the industry's own land would not be subject to the permit requirements of statute. Op.Atty.Gen. No. 76-367 (Jan. 26, 1977).~~

~~1. Construction and application
Soil farming of industrial waste not designated as controlled industrial waste~~

§ 2-7-124. Monitoring of closed facility

After a hazardous waste facility has been closed, its owner or operator shall properly maintain and monitor the hazardous waste facility for a period of time required by rules of the Board and shall make such repairs or improvements as deemed necessary by the Department to ensure that no migration of hazardous waste material will occur from the hazardous waste facility. The rules of the Board which specify the period of time for maintenance and monitoring of closed facilities shall be in compliance with the hazardous waste regulations of the U.S. Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act.¹

Laws 1976, c. 251, § 10; Laws 1978, c. 260, § 9, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2760 and amended by Laws 1981, c. 322, §§ 11, 18, eff. July 1, 1981. Laws 1985, c. 113, § 2, emerg. eff. May 30, 1985; Laws 1992, c. 403, § 24, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2009 and amended by Laws 1993, c. 145, §§ 107, 359, eff. July 1, 1993.

¹ 42 U.S.C.A. § 6901 et seq.

Historical and Statutory Notes

The 1978 amendment substituted "Division" for "Section" throughout the section and substituted "of not more than ten (10) years as determined by the Division" for "determinable by the Section".

The 1981 amendment substituted "Department" for "Division" throughout the section, "controlled industrial waste facility" for "processing facility or disposal site" and "thirty (30) years" for "ten (10) years".

The 1985 amendment, in the first sentence, substituted "time required by rules and regulations of the State Board of Health" for "not more than thirty (30)

years as determined by the Department at the time of issuance of the permit" and added the second sentence.

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment, in the first sentence, deleted "and regulations" following "rules" and substituted "Board" for "State Board of Health", and in the second sentence, deleted "and regulations" following "rules" and "rules and" preceding "regulations" and inserted "federal".

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okl.City. U.L.Rev. 397 (1983).

§ 2-7-125. Hazardous waste manifest—Disposal plan number assigned by Department—Transportation, etc. of waste without manifest in possession

A. Persons generating hazardous waste shall provide a manifest to the operator of any mode of any offsite transportation carrying hazardous waste. Such manifest shall be in a form which has been prescribed by the Department and shall indicate a disposal plan number assigned by the Department which shows that the Department has approved the plans of the person generating such waste. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste. Such operator shall have the manifest in his possession while transporting or handling the hazardous waste. Upon delivery of the hazardous waste to a facility duly authorized to accept such waste, the operator shall submit such manifest to the receiving person for processing pursuant to rules promulgated by the Board.

B. No person shall accept the manifest unless such manifest has a properly assigned disposal plan number indicating that the Department has approved the plans of the person generating the hazardous waste.

C. No person shall transport, receive, treat or dispose of hazardous waste without having the manifest in his possession.

Laws 1976, c. 251, § 11; Laws 1978, c. 260, § 10, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2761 and amended by Laws 1981, c. 322, §§ 12, 18, eff. July 1, 1981. Laws 1990, c. 296, § 4, operative July 1, 1990; Laws 1992, c. 403, § 26, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2010 and amended by Laws 1993, c. 145, §§ 108, 359, eff. July 1 1993.

Historical and Statutory Notes

The 1978 amendment, in the first sentence, substituted "operator of any mode of any transportation" for "driver of any truck or the working crew of any train" and "Section 2754 of this title" for "Section 4 of this act" and in the third sentence substituted "operator" for "driver or crew" and "his" for "their".

The 1981 amendment substituted "Department" for "Division" throughout the section, inserted "or recyclable materials" following "controlled industrial waste" and "or material" following "waste" throughout the section, substituted "generating" for "producing" in two places in the first sentence, inserted "offsite" preceding "transportation" and substituted "Section 4 of this act" for "Section 2754 of this title" in the first

sentence and in the fourth sentence inserted "other than a recycler".

The 1990 amendment, in the first sentence, deleted "or recyclable materials" following "waste" in two places and "or material as provided in paragraph 8 of Section 4 of this act" from the end, in the second sentence deleted "or material" from the end, in the third sentence deleted "or recyclable material" following "industrial waste" and "or material" following "said waste", in the fourth sentence deleted "other than a recycler" following "no person", and in the fifth sentence deleted "or recyclable material" following "waste".

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment rewrote the section, which prior thereto read:

"Persons generating hazardous waste shall provide the operator of any mode of any offsite transportation carrying hazardous waste a manifest in a form which has been prescribed by the Department, indicating a disposal plan number assigned by the Department which shows that the Department has approved the plans of the person generating said waste. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste. The operator

shall have the manifest in his possession while carrying or handling the hazardous waste and shall release the manifest to such person as is duly authorized to receive said waste at the time of delivery. Provided that no person shall accept the manifest unless such manifest has a properly assigned disposal plan number indicating that the Department has approved the plans of the person generating hazardous waste. Provided, further, that no person shall transport, receive, treat or dispose of hazardous waste without having the manifest in his possession."

~~§ 2-7-126. Orders~~

In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act,¹ the Department may issue a written order to any person whom the Department has reason to believe has violated or is presently in violation of the Oklahoma Hazardous Waste Management Act, or any rule promulgated thereunder.

1. Such order may require compliance with the Oklahoma Hazardous Waste Management Act or such rule immediately or within a specified time period or both. Such order may also assess an administrative penalty for any past or current violation of the Oklahoma Hazardous Waste Management Act or the rules and for each day or part of a day that such person fails to comply with such order.

- a. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations.
- b. Any penalty assessed in the order shall not exceed Twenty-five Thousand Dollars (\$25,000.00) per day of noncompliance for each violation of the Oklahoma Hazardous Waste Management Act, the rules or the order. In assessing such penalties, the Executive Director shall consider the seriousness of the violation or violations and any good faith efforts to comply with applicable requirements.

2. Any order issued pursuant to this section shall become a final order unless, no later than fifteen (15) days after the order is served, the person or persons named therein request an administrative enforcement hearing. Upon such request the Department shall promptly provide for the hearing. The Department shall dismiss such proceedings where past and current compliance with the Oklahoma Hazardous Waste Management Act, the rules and the order is demonstrated.

- a. Orders and hearings are subject to the Administrative Procedures Act.²

- ~~b. A final order following an enforcement hearing may assess an administrative penalty of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.~~
- c. The Department may adopt procedural rules as necessary and appropriate to implement the provisions of this section.

3. Any order issued pursuant to this section may require that corrective action be taken beyond the hazardous waste facility boundary where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that, despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake such action.

Laws 1985, c. 113, § 3, emerg. eff. May 30, 1985; Laws 1986, c. 180, § 5, emerg. eff. May 15, 1986; Laws 1990, c. 196, § 7, emerg. eff. May 10, 1990; Laws 1991, c. 173, § 11; Laws 1992, c. 403, § 28, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2012.1 and amended by Laws 1993, c. 145, §§ 109, 359, eff. July 1, 1993.

¹ Title 27A, § 2-7-101 et seq.

² Title 75, § 250.1 et seq.

Historical and Statutory Notes

The 1986 amendment added paragraph 3.

The 1990 amendment, in the first paragraph, substituted "promulgated" for "adopted", in paragraph 2, in the first paragraph, substituted "fifteen (15)" for "thirty (30)", and in subparagraph a, deleted "Oklahoma" preceding "Administrative".

The 1991 amendment rewrote the first paragraph and paragraph 1, which prior thereto read:

"In addition to any other remedies provided in the Oklahoma Controlled Industrial Waste Disposal Act, [FN1] the Department, pursuant to rules and regulations, may issue a written order to any person whom the Department has reason to believe is presently in violation of any rule or rules promulgated by the Board pursuant to the Oklahoma Controlled Industrial Waste Disposal Act and to whom the Department has served, no less than fifteen (15) days previously, a written notice of violation of such rule or rules.

"1. Such order may require compliance with such rule or rules immediately or within a specified time period or both.

Such order may also assess an administrative fine for each day or part of a day that such person fails to comply with such order.

"a. Any order issued pursuant to this section shall state with specificity the nature of the violation.

"b. Any penalty assessed in the order shall not exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance with the order. In assessing such a penalty, the Department shall consider the seriousness of the violation and any efforts to comply with applicable requirements."

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment, in the first paragraph, substituted "Management" for "Disposal" in two places, deleted "Section 1-2001 et seq. of this title" preceding "or any" and "or rules" following "rule", and substituted "thereunder" for "by the Board pursuant to this act"; in paragraph 1, in the first paragraph substituted "the Oklahoma Hazardous Waste Management Act" for "this act" in two places,

~~in the first sentence deleted "or rules" following "rule" and in the second sentence substituted "penalty" for "fine", and in subparagraph b substituted, in the first sentence, "Oklahoma Hazardous Waste Management Act" for "act", and in the second sentence "Executive Director" for "Department"; and in paragraph 2, in the first paragraph, in the first sentence inserted "enforcement", in the second sentence substituted "provide" for "conduct" and in the third sentence substituted "Oklahoma Hazardous Waste Management Act" for "act", and in subparagraph b substituted "an enforcement" for "a" and "penalty" for "fine".~~

Library References

Administrative Law and Procedure ☞301.
 Health and Environment ☞9, 25.5(10).
 WESTLAW Topic Nos. 15A, 199.
 C.J.S. Health and Environment §§ 14, 15, 103 et seq., 113, 139, 140 et seq., 150 et seq.

C.J.S. Public Administrative Law and Procedure §§ 49, 51, 54.

§ 2-7-127. Corrective action—Permit review—Permit renewal—Information and reports

A. In accordance with standards established by the Administrator of the Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act,¹ the Department may require corrective action beyond a hazardous waste facility boundary as a condition of the issuance of a permit pursuant to the Oklahoma Hazardous Waste Management Act,² where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that despite the owner's or operator's best efforts such owner or operator is unable to obtain the necessary permission to undertake such action. The Department may also require, as a condition of a permit issued pursuant to the Oklahoma Hazardous Waste Management Act, corrective action for all releases of hazardous waste from any solid waste management unit at a facility seeking a permit, regardless of the time the waste was placed in such unit. If such corrective action cannot be completed prior to issuance of the permit, such permit shall contain schedules of compliance for the corrective action required and assurances of financial responsibility for completing such corrective action.

B. The Department shall review each permit for a hazardous waste land disposal facility five (5) years after the date of such issuance or reissuance and shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable standards and permit requirements for hazardous waste facilities. Nothing in this subsection shall preclude the Department from reviewing and modifying a permit at any time during its term. The Department, in reviewing any application for a permit renewal, shall consider improvements in the state of control and measurement technology and changes in applicable regulations. Each issued or

reissued permit shall contain such terms and conditions as the Department determines necessary to protect human health and the environment.

C. The Department is authorized to require each owner or operator applying for a permit for a hazardous waste landfill or surface impoundment to submit with the permit application information reasonably ascertainable by the owner or operator concerning the potential exposure to the public of hazardous wastes as a result of releases from a hazardous waste unit. The Department shall be authorized to make exposure and health assessment information available to the public and to other state and federal agencies. Laws 1986, c. 180, § 6, emerg. eff. May 15, 1986; Laws 1992, c. 403, § 30, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2012.3 and amended by Laws 1993, c. 145, §§ 110, 359, eff. July 1, 1993.

¹ 42 U.S.C.A. § 6901 et seq.

² Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1992 amendment substituted "hazardous" for "controlled industrial" throughout the section.

The 1993 amendment, in subsection A, in the first sentence, deleted "now or hereafter" preceding "established", inserted "federal", and substituted "Management" for "Disposal" and "such owner or operator" for "he", in the second

sentence inserted "issued" and substituted "Management" for "Disposal", and in the third sentence substituted "permit" for "permits"; and in subsection B, in the third sentence substituted "The Department, in reviewing" for "Review of" and "and changes" for "as well as changes" and in the fourth sentence deleted "permit" following "Each" and inserted "permit".

~~§ 2-7-128. Administrative penalties—Disposition and use~~

Administrative penalties collected by the Department pursuant to the Oklahoma Hazardous Waste Management Act ¹ shall be paid into the Hazardous Waste Fund.

Laws 1985, c. 113, § 4, emerg. eff. May 30, 1985; Laws 1992, c. 403, § 29, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2012.2 and amended by Laws 1993, c. 145, §§ 111, 359, eff. July 1, 1993.

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1992 amendment substituted "Hazardous" for "Controlled Industrial" in two places and "this title" for "Title 63 of the Oklahoma Statutes".

The 1993 amendment rewrote the section, which prior thereto read:

"Administrative fines collected by the Department pursuant to this act shall be paid into the Hazardous Waste Fund, created in Section 1-2018 of this title, and shall be used as specified in the Hazardous Waste Fund Act."

Cross References

~~Standards and rules, violations and remedies, see Title 63, §§ 1-1701.1A, 1-1701.1B.~~

Library References

States ☞ 127.
 WESTLAW Topic No. 360.
 C.J.S. States § 228.

§ 2-7-129. Violations—Civil penalties

In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act,¹ the Department may:

1. Temporarily suspend the permit of any operator of a hazardous waste facility until such facility conforms to the provisions of the Oklahoma Hazardous Waste Management Act and the rules promulgated thereunder;

2. Revoke the operating permit or license of any person who flagrantly and/or consistently violates the provisions of the Oklahoma Hazardous Waste Management Act or the rules promulgated thereunder, or who operates in such a manner as to cause or to continue in existence an environmentally unsafe condition. Such revocation may only take place following proper hearing, and shall conform to provisions of the Administrative Procedures Act.² Such person shall not be eligible for reissuance of a license when finally adjudicated as guilty of flagrant and consistent violations of the Oklahoma Hazardous Waste Management Act or rules promulgated thereunder;

3. Cause proceedings to be instituted in the district court having jurisdiction in the area where the alleged violation occurs seeking an injunction to restrain a violation of the Oklahoma Hazardous Waste Management Act or the rules promulgated thereunder or to restrain the maintenance of a public nuisance; and

4. Cause proceedings to be instituted in the district court having jurisdiction in the area where the alleged violation of the Oklahoma Hazardous Waste Management Act or the rules promulgated thereunder occurs seeking a civil penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) per day or part of a day such violation occurs.

Laws 1976, c. 251, § 13; Laws 1978, c. 260, § 12, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2763 and amended by Laws 1981, c. 322, §§ 14, 18, eff. July 1, 1981. Laws 1991, c. 173, § 10; Laws 1992, c. 403, § 27, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2012 and amended by Laws 1993, c. 145, §§ 112, 359, eff. July 1, 1993.

¹ Title 27A, § 2-7-101 et seq.

² Title 75, § 250 et seq.

Historical and Statutory Notes

The 1978 amendment substituted "Division" for "Section" throughout the section; in the introductory paragraph, substituted "Section 2756 of this title" for "Section 6 hereof"; inserted subsection

2; redesignated former subsection 2 as subsection 3; and in subsection 3, substituted "Cause proceedings to be instituted" for "Institute proceedings".

The 1981 amendment substituted "Department" for "Division" throughout the section; in the introductory paragraph, substituted "Section 6 of this Act" for "Section 2756 of this title"; in subsection 1, deleted "processing" following "industrial waste", "or disposal site" preceding "until such facility" and "or site" preceding "conforms"; in subsection 2, in the first sentence, substituted "the Administrative Procedures Act" for "Section 301 et seq. of Title 75 of the Oklahoma Statutes"; and added subsection 4.

The 1991 amendment, in the introductory paragraph, substituted "1-2005 of this title" for "6 of this act"; and in paragraph 4, substituted "Twenty-five Thousand Dollars (\$25,000.00)" for "Ten Thousand Dollars (\$10,000.00)".

The 1992 amendment, in paragraph 1, substituted "hazardous" for "controlled industrial".

The 1993 amendment substituted "the Oklahoma Hazardous Waste Management Act" for "this act" throughout the section; in the introductory paragraph, deleted "shall, pursuant to rules and regulations adopted under Section 1-2005" following "Department" and added "may"; in paragraph 1, deleted "regulations and standards" following "rules" and substituted "thereunder" for "by the Department"; in paragraph 2, in the first sentence substituted "promulgated thereunder" for "and regulations promulgated thereto" and "who" for "which", in the second sentence substituted "shall" for "will", and in the third sentence deleted "or rules promulgated thereunder" from the end; in paragraph 3, substituted "promulgated thereunder or" for "regulations or standards adopted hereunder and"; and in paragraph 4, substituted "promulgated thereunder" for "and regulations of the State Board of Health".

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okla. City U.L.Rev. 397 (1983).

United States Supreme Court

Toxic waste, private action for recovery of past clean up costs under Resource Conservation and Recovery Act, immi-

nent endangerment requirement, see Meghriq v. KFC Western, Inc. 1996, 116 S.Ct. 1251, 134 L.Ed.2d 121.

§ 2-7-130. Violations—Criminal penalties

Except as otherwise provided by the Oklahoma Hazardous Waste Management Act¹ or other law, any person who violates any of the provisions of the Oklahoma Hazardous Waste Management Act or rules promulgated thereunder shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment in the county jail for not more than six (6) months, or a fine of not less than Two Hundred Dollars (\$200.00) nor more than Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment. Each day or part of a day during which such violation is continued or repeated shall constitute a new and separate offense. Laws 1976, c. 251, § 12; Laws 1978, c. 260, § 11, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2762 and amended by Laws 1981, c. 322, §§ 13, 18, eff. July 1, 1981. Laws 1991, c. 173, § 9. Renumbered from Title 63, § 1-2011 and amended by Laws 1993, c. 145, §§ 113, 359, eff. July 1, 1993.

¹Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1978 amendment substituted "Division" for "Section" and "not less than Two Hundred Dollars (\$200.00) nor more than Two Thousand Five Hundred Dollars (\$2500.00)" for "not more than Two Hundred Dollars (\$200.00)" in the first sentence.

The 1981 amendment substituted "Department" for "Division" and "Ten Thousand Dollars (\$10,000.00)" for "Two Thousand Five Hundred Dollars (\$2500.00)" in the first sentence.

The 1991 amendment substituted "Twenty-five Thousand Dollars

(\$25,000.00)" for "Ten Thousand Dollars (\$10,000.00)".

The 1993 amendment rewrote the first sentence, which prior thereto read: "Any person who violates any of the provisions of this act or the rules, regulations or standards promulgated by the Department shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment in the county jail for not more than six (6) months, or a fine of not less than Two Hundred Dollars (\$200.00) nor more than Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment."

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okla.City U.L.Rev. 397 (1983).

§ 2-7-131. Initiation and prosecution of actions

Upon request of the Department, the district attorney of the county in which any violation of the Oklahoma Hazardous Waste Management Act¹ or rules promulgated thereunder occurs shall initiate and prosecute any civil or criminal proceeding provided by the Oklahoma Hazardous Waste Management Act.

Laws 1978, c. 260, § 13, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2763.1 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Renumbered from Title 63, § 1-2013 and amended by Laws 1993, c. 145, §§ 114, 359, eff. July 1, 1993.

¹ Title 27A, § 2-7-101 et seq.

Historical and Statutory Notes

The 1993 amendment rewrote the section, which prior thereto read:

"Upon request of the Commissioner of Health, the district attorney of the county in which any violation of this act occurs

shall initiate and prosecute any civil or criminal proceeding provided by this act."

Section 16 of Laws 1978, c. 260, provided for codification.

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okla.City U.L.Rev. 397 (1983).

§ 2-7-132. Appeal of issuance of permit—Stay of time restraints

The filing of a proceeding appealing the issuance of a permit authorizing a hazardous waste facility shall stay any time restraints

~~specified in the permit relating to the term or expiration of the permit.~~

Laws 1990, c. 296, § 5, operative July 1, 1990; Laws 1992, c. 403, § 31, eff. Sept. 1, 1992. Renumbered from Title 63, § 1-2012.4 and amended by Laws 1993, c. 145, §§ 115, 359, eff. July 1, 1993. Laws 1994, c. 373, § 25, eff. July 1, 1994.

Historical and Statutory Notes

The 1992 amendment substituted "hazardous" for "controlled industrial".

The 1993 amendment deleted "issued prior to or after the effective date of this act" preceding "authorizing".

The 1994 amendment deleted "the construction or operation" following "authorizing".

§ 2-7-133. Intervention

The Department shall not oppose intervention by any person when permissive intervention may be authorized by statute or rule.

Laws 1981, c. 322, § 15, eff. July 1, 1981. Renumbered from Title 63, § 1-2013.1 and amended by Laws 1993, c. 145, §§ 116, 359, eff. July 1, 1993.

Historical and Statutory Notes

The 1993 amendment substituted "or rule" for ", rule or regulation".

Law Review and Journal Commentaries

Evolution of Oklahoma Controlled Industrial Waste Disposal Act since 1976.

William W. Gorden, Jr. 8 Okla. City U.L.Rev. 397 (1983).

PART 2. SPECIAL ECONOMIC DEVELOPMENT TRUST FUND

§ 2-7-201. Special Economic Development Trust Funds

A. The county commissioners of the counties which are within a ten-mile radius of an off-site hazardous waste facility may establish a Special Economic Development Trust Fund for those counties.

B. The trust fund shall be used to market advantages of industrial development and to promote industrial development in the counties located within the trust area. Such uses shall allow the authority to acquire assets, develop property, and to contract with local municipalities or economic development trusts or authorities to promote economic development in the counties located within the trust area.

C. The trust fund shall consist of:

1. All monies received pursuant to Section 2-7-121 of this title;
2. All income from the investment of monies held in the trust fund;

27A § 2-10-205.1

ENVIRONMENTAL QUALITY CODE

~~als are placed into a container provided by the operator for the collection of such materials. If the operator is operating under a contract with and on behalf of a unit of government, the terms of the contract shall determine the ownership of the recoverable materials.~~

B. No provision of this section shall be construed to prevent units of government from requiring generators of recoverable materials under their jurisdiction to separate recoverable materials for recycling collection.

~~Laws 1996, c. 270, § 1, emerg. eff. May 29, 1996.~~

PART 3. PERMITTING PROCESS

§ 2-10-301. **Permit required—Exemptions—Consent of adjoining dwelling owner—Issuance without consent—Term—Professional engineering assistance—Restrictions on asbestos monofills—Hazardous solid waste prohibited—Remediation projects**

~~A. Except as specified in subsection C of this section:~~

1. No person shall dispose of solid waste at any site or facility other than a site or facility for which a permit for solid or hazardous waste disposal has been issued by the Department;

2. No person shall own or operate a site or facility at which solid waste is disposed other than a site or facility for which a permit for solid or hazardous waste disposal has been issued by the Department; and

3. No person shall knowingly transport solid waste to an unpermitted site or facility.

B. No provision of the Oklahoma Solid Waste Management Act¹ shall be construed so as to prevent a person from disposing of solid waste from his own household upon his own land provided such disposal does not create a nuisance or a hazard to the public health or environment or does not violate a local government ordinance.

C. 1. Except as otherwise provided in subsection F of this section, the Department shall not issue an original permit for a new landfill disposal site having a permitted boundary located within one-half (½) mile of an outside wall of any dwelling occupied at the time a permit application is made unless the owner of the dwelling consents to the location of the landfill disposal site, except under the procedures specified in paragraph 2 of this subsection. Such consent shall not be required for any landfill disposal site designed for the disposal of fly ash or bottom ash generated by coal-fired facilities. Such consent shall not be required as a condition for the issuance of:

~~a. any renewal permit for an existing landfill site, or~~

- ~~b. a permit for any modification or expansion of an existing landfill site, or~~
- c. a permit for the construction of a new landfill site on property if any point of said property is within three (3) miles of any point of an existing permitted landfill site owned by the permittee.
2. After the applicant has made a reasonable effort to negotiate a consent agreement with the owners of such dwellings and has failed to obtain such consent, the applicant may certify to the Department that such reasonable effort had been made and that the owners of said dwellings will not consent. The Department may then issue said permit if the permit application meets all other requirements of the solid waste regulations of the Board.
3. If a permit is issued without the consent of said owners, they shall have a cause of action against the applicant for any loss of value to their land and residence which will be caused by the operation of the landfill disposal site. Further, in an action brought to determine said damage, the court shall have the authority to weigh the public benefit of the proposed disposal site against the negative impact to the dwellings in the affected area and enjoin the operation of said landfill disposal site where the negative impact outweighs the public benefit. Any nonconsenting owner or owners who wish to file with the court must do so no later than sixty (60) days after issuance of the permit. Upon issuance of any such permit the Department shall file a recordable notice of the permit in the land records of the county in which the site is located. The notice shall contain the legal description of the site as well as the terms under which the permit is issued.
- D. The Department shall issue a permit to be effective for the life of a given site.
- E. Information and data submitted in support of a permit application or a permit modification application for any site serving a population equivalent of five thousand (5,000) or more persons shall be prepared and sealed by a professional engineer licensed to practice in this state. Applicants for smaller site permits are encouraged but not required to seek professional engineering assistance.
- F. The Department shall not issue any permit for the siting or expansion of an asbestos monofill which will be located closer than five hundred (500) yards from any occupied residence. No asbestos monofill shall be constructed within three (3) miles of the corporate ~~boundaries of any city or town.~~
- G. Disposal sites approved by the Department to receive only solid waste shall not accept for disposal any waste classified as hazardous waste.

OKLAHOMA STATUTES
ANNOTATED

**Title 27A. Environment and
Natural Resources
Title 28. Fees**

**1999
Cumulative
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Replacing 1998 pocket part supplementing 1997 main volume

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- ~~2. A certification from a professional engineer registered in the State of Oklahoma that the innovative treatment technique will allow the facility to meet applicable federal and state discharge and land application requirements; and~~
- 3. A statement from the owner of the facility that should the facility subsequently fail to meet any federal or state discharge or land application requirement that the owner of the facility will immediately take all necessary action to install a recognized treatment technique.

Amended by Laws 1997, c. 131, § 1, eff. Nov. 1, 1997.

¹ Title 27A, § 2-6-101 et seq.

§ 2-6-403.1. Inspections of existing sewage disposal systems

The Department of Environmental Quality shall not require a departmental inspection of an existing individual sewage disposal system prior to a service connection to a public water supply system.

Added by Laws 1997, c. 131, § 2, eff. Nov. 1, 1997.

PART 5. OTHER SURFACE IMPOUNDMENTS AND LAND APPLICATIONS

§ 2-6-501. Activities requiring water quality permit—Facility changes, discharge of sewage—Rules

Notes of Decisions

Nuisance 3

3. Nuisance

Partnership which owned property surface and its general partners were not precluded from relying on definition of "public nuisance," regarding pollution of waters of state, in Oklahoma's Water Pollution Control Act (OWPCA) in their public nuisance claim against oil and gas well operator, arising from alleged pollution of groundwater by operation of oil and gas wells on

or near property, despite contention that appropriate definition was found in different statute, defining public nuisance as one which affects at the same time entire community or neighborhood; language of statutory provisions were not in conflict, and Act provision carried legislature's intent into effect by declaring any pollution of state waters to be of such consequence as to affect at the same time entire community or neighborhood. *N.C. Corff Partnership, Ltd. v. OXY USA, Inc.*, Okla.App. Div. 4, 929 P.2d 288 (1996), rehearing denied, certiorari denied.

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

PART 1. OKLAHOMA HAZARDOUS WASTE MANAGEMENT ACT

§ 2-7-126. Orders

In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act,¹ the Department of Environmental Quality may issue a written order to any person whom the Department has reason to believe has violated or is presently in violation of the Oklahoma Hazardous Waste Management Act, or any rule promulgated thereunder.

1. Such order may require compliance with the Oklahoma Hazardous Waste Management Act or such rule immediately or within a specified time period or both. Such order may also assess an administrative penalty for any past or current violation of the Oklahoma Hazardous Waste Management Act or the rules and for each day or part of a day that such person fails to comply with such order.

a. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations.

b. Any penalty assessed in the order shall not exceed Twenty-five Thousand Dollars (\$25,000.00) per day of noncompliance for each violation of the Oklahoma Hazardous Waste Management Act, the rules or the order. In assessing such penalties, the Executive Director shall consider the serious

27A § 2-7-126 ENVIRONMENT AND NATURAL RESOURCES

~~ness of the violation or violations and any good faith efforts to comply with applicable requirements.~~

2. Any order issued pursuant to this section shall become a final order unless, no later than fifteen (15) days after the order is served, the person or persons named therein request an administrative enforcement hearing. Upon such request the Department shall promptly provide for the hearing. The Department shall dismiss such proceedings where past and current compliance with the Oklahoma Hazardous Waste Management Act, the rules and the order is demonstrated.

- a. Orders and hearings are subject to the Administrative Procedures Act.²
- b. A final order following an enforcement hearing may assess an administrative penalty of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.
- c. The Department may adopt procedural rules as necessary and appropriate to implement the provisions of this section.

3. Any order issued pursuant to the Oklahoma Hazardous Waste Management Act may require that corrective action be taken beyond the hazardous waste facility boundary where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that, despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake such action.

Amended by Laws 1998, c. 186, § 2, eff. Nov. 1, 1998.

¹ Title 27A, § 2-7-101 et seq.

² Title 75, § 250 et seq.

§ 2-7-129. Violations—Civil penalties

United States Supreme Court

Toxic waste, private action for recovery of past clean up costs under Resource Conservation and Recovery Act, imminent endangerment requirement, see *Meghrig v. KFC Western, Inc.*, U.S. Cal. 1996, 116 S.Ct. 1251, 516 U.S. 479, 134 L.Ed.2d 121, on remand 83 F.3d 1174.

§ 2-7-134. Summary suspension of permit for failure to remit penalty or fee—Revocation proceedings

A. Unless otherwise authorized by the Department of Environmental Quality or stayed by a court of review, if a hazardous waste treatment, storage, disposal or recycling facility fails to remit to the Department any administrative penalty assessed against the facility pursuant to the provisions of the Oklahoma Environmental Quality Code, within the time period established by the final or consent order, the Department shall summarily suspend the hazardous waste operating permit of the facility.

B. Unless otherwise authorized by the Department or stayed by a court of review, if a hazardous waste treatment, storage, disposal or recycling facility fails to pay to the Department any fee required to be remitted to the Department on a quarterly, annual or other periodic basis pursuant to the provisions of this article or by rule promulgated pursuant thereto within sixty (60) days after an invoice is mailed by certified mail, return receipt requested, to the facility by the Department, the Department shall summarily suspend the hazardous waste operating permit of the facility.

C. Following suspension of a permit pursuant to the provisions of this section, the Department shall promptly institute proceedings for revocation of the permit pursuant to Section 2-3-502 of Title 27A of the Oklahoma Statutes.

D. Unless otherwise ordered by the Department or a court of review, the suspension or revocation of a hazardous waste operating permit shall not be deemed to relieve the facility from permit requirements for corrective action, closure of hazardous waste units, postclosure maintenance and monitoring, or similar requirements which relate primarily to remediation or closure.

E. The suspension or revocation of a hazardous waste operating permit shall not be deemed to require cessation of any operations at the facility which are unrelated to the treatment, storage, disposal or recycling of waste.

Added by Laws 1998, c. 186, § 3, eff. Nov. 1, 1998.

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Title 252 (Department of Environmental Quality), Chapter 205 (Hazardous Waste Management) of *The Oklahoma Administrative Code (OAC)*, effective June 12, 2000: Sections 252:205-1-1 et seq.

Section	Description	Page
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252:205-1-1(a)	Purpose and applicability.	551
252:205-1-1(c) introductory paragraph and (c)(1)	Applicability of the OHWMA Rules.	551
252:205-1-2 introductory paragraph	Introductory paragraph for definitions.	551
252:205-1-2 "OHWMA"	Definitions.	551
252:205-1-2 "Post-closure permit"	Definitions.	551
252:205-1-3(c)	Persons subject to this Chapter must also comply with all applicable State and Federal laws and rules.	552
Subchapter 3: Incorporation By Reference		
252:205-3-1	Reference to 40 CFR.	552
252:205-3-2(a)(2)	Incorporation by reference of 40 CFR 124.31 through 124.33.	552
252:205-3-2(b) - (l)	Incorporation by reference of 40 CFR Parts 260 through 266, 268, 270, 273 and 279.	552-553
252:205-3-2(m)	Excepted CFR Regulations.	553
252:205-3-4	Terminology related to 40 CFR.	553-554
252:205-3-5	Inclusion of CFR Citations and Definitions.	554
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Subchapter 5: Additional Generator Requirements		
252:205-5-1 (except 252:205-5-1(4))	Disposal plan requirements.	554
252:205-5-2	SQG and CESQG exemption from disposal plan requirements.	554
252:205-5-3	Quarterly reporting.	554-555
252:205-5-4	No endangerment provisions for generators.	555
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252:205-7-3	Manifest, disposal plan required.	555
252:205-7-4 (except the phrase "or in accordance with 252:205-15-1(d))	Mixing waste prohibited by transporters.	555
Subchapter 9: Additional Treatment, Storage Disposal and Recycling Requirements		
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252:205-11-1(b) through 252:205-11-1(e)	Parcel of land owned by affected property owners.	557
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252:205-13-1(d)	Testing of spilled or leaked materials.	558
252:205-13-1(e)	Waste materials resulting from a release.	558

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

OFFICE OF THE SECRETARY OF STATE



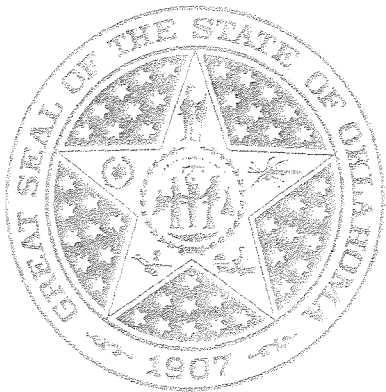
I, the undersigned Secretary of State, certify that I am the person having legal custody of the original records of *The Oklahoma Register* (and its predecessor, *The Oklahoma Gazette*) and *The Oklahoma Administrative Code (OAC)*, and that the attached copies (identified below) represent true and correct copies of official records that comprise rules in effect on June 12, 2000 (as identified below), as filed by the DEPARTMENT OF ENVIRONMENTAL QUALITY and published by the Secretary of State in the official *Oklahoma Administrative Code*, pursuant to the Administrative Procedures Act, 75 O.S., Sections 250 et seq.:

FROM the 2000 Supplement to Oklahoma Administrative Code (OAC):

FROM Title 252 (Department of Environmental Quality):

Chapter 205 (Hazardous Waste Management) - Pages 551-569

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of the State of Oklahoma at the City of Oklahoma City this 26th day of November, 2001.



M. Hunter
Secretary of State

By:

Reggie Coe

CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

Subchapter	Section
1. General Provisions	252:205-1-1
3. Incorporation by Reference	252:205-3-1
5. Additional Generator Requirements	252:205-5-1
7. Additional Transporter Rules	252:205-7-1
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Appendix B. Permit Application Fees	
Appendix C. Annual Facility Monitoring Fees	

[Authority: 27A O.S., §§ 2-2-101, 2-2-201, 2-7-106, and 2-7-107]
 [Source: Codified 6-11-99]

SUBCHAPTER 1. GENERAL PROVISIONS

Section	
252:205-1-1.	Purpose, authority and applicability
252:205-1-2.	Definitions
252:205-1-3.	Consideration of other laws
252:205-1-4.	Public records and confidential information

252:205-1-1. Purpose, authority and applicability

(a) **Purpose.** The rules in this Chapter implement the Oklahoma Hazardous Waste Management Act, 27A O.S. § 2-7-101 *et seq.*, the Hazardous Waste Fund Act, 27A O.S. § 2-7-301 *et seq.*, the Oklahoma Hazardous Waste Reduction Program, 27A O.S. § 2-11-201 *et seq.*, and the Recycling, Reuse and Source Reduction Incentive Act, 27A O.S. § 2-11-301 *et seq.*

~~(b) **Authority.** OAC 252:205 was promulgated and adopted under the Oklahoma Environmental Quality Code, 27A O.S. § 2-1-101 *et seq.*, and the laws set forth in paragraph (a) above.~~

(c) **Applicability.** The rules in this Chapter apply to:

- (1) Any person who handles, transports, treats, stores, recycles, and/or disposes of hazardous wastes pursuant to the OHWMA;
- ~~(2) Any municipality or county seeking a matching grant for emergency response training and protective equipment pursuant to the Hazardous Waste Fund Act;~~
- (3) Any generator of hazardous waste who voluntarily participates in the Hazardous Waste Reduction Program; and
- (4) Any person seeking a tax credit pursuant to the Recycling, Reuse and Source Reduction Incentive Act.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-1-2. Definitions

In addition to the definitions contained in the statutes specified in 252:205-1-1(a) above, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

~~“Off site recycling facility” means any facility which receives off-site shipments of hazardous waste to be recycled or processed for recycling, through any process conducted at the facility including fuel blending or burning;~~

“OHWMA” means the Oklahoma Hazardous Waste Management Act, 27A O.S. § 2-7-101 *et seq.*;

“Post closure permit” means the same as “operations permit” for procedural purposes except the assessment of permitting fees;

~~“RRSIA” means the Recycling, Reuse and Source Reduction Incentive Act, 27A O.S. § 2-11-301 *et seq.*;~~

“Reuse” for the purpose of applying for a tax credit under RRSIA, means the introduction of a material into a manufacturing process that, if discarded, would be classified as a hazardous waste. A material is “reused” if it is:

- (A) Used as an ingredient (including use as an intermediate) in an industrial process to make a product; or
- (B) Used in a particular function or application as an effective substitute for a commercial product;

“Speculative accumulation” is defined at 40 CFR 261.1(b)(8);

“Transfer facility” as used in the following definition of “transfer station”, means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation;

“Transfer station” as used in Subchapter 15, means ~~transfer facility where hazardous waste is transferred~~

US EPA ARCHIVE DOCUMENT

~~one container or tank to another or where hazardous waste in separate containers or tanks is combined.~~

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-1-3. Consideration of other laws

~~(a) Permitting. All applicants seeking licenses, permits, certificates, registration, approval, charter or similar form of permission by law required by any of the statutes specified in 252:205-1-1(a) are also subject to the Oklahoma Uniform Environmental Permitting Act, 27A O.S. § 2-14-101 et seq., and the uniform permitting rules found in 252:2-15.~~

~~(b) Zoning. This Chapter does not abrogate in any way the zoning authority of any duly constituted zoning agency.~~

(c) **Other.** Persons subject to this Chapter must also comply with all applicable state and Federal laws and rules.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-1-4. Public records and confidential information

(a) **Public record.** Information obtained by the DEQ and copies of official records of the DEQ regarding hazardous waste facilities and sites shall be made available to the public in accordance with the Oklahoma Open Records Act, 51 O.S. § 24A. 1, Procedures of the DEQ (OAC 252:2), and in substantial accordance with 40 CFR Part 2.

Availability to the public. Information about facilities and sites for treatment, storage and disposal of hazardous waste shall be made available to the public in substantially the same manner, and to the same degree, as would be the case if the EPA were carrying out the provisions of federal law in Oklahoma. [Also see Procedures of the Department of Environmental Quality, Availability of Records, 252:2-3-2.]

(c) **Availability to EPA.** All records submitted to the DEQ shall be available to the EPA unless they are submitted under a claim of confidentiality separate and distinct from State Program Requirements in 40 CFR Part 271.

(d) **Disclaimer.** The DEQ expressly disclaims and denies any duties, responsibilities or obligations other than as stated in (a) and (b) of this Section. Submitters of records claimed to be confidential are advised that it is their responsibility, not the DEQ's responsibility, to monitor and/or defend claims of confidentiality with the EPA. The DEQ expressly disclaims and denies responsibility or liability for any disclosure by the EPA of records claimed by the submitter to be confidential.

(e) **Hazardous Waste Reduction Plans.** In accordance with 27A O.S. § 2-11-204(D), information in Hazardous Waste Reduction Plans is not a public record. Certified summary reports are public records.

(f) **Applications for Tax Credit.** An application for a tax credit is a public record. If the applicant demonstrates that the application contains information that is a trade secret, the applicant shall provide a general summary description that can be made available to the public. Although the detailed financial data contained in the application may be declared

~~confidential, the dollar amount of any tax credit allowed will be public information.~~

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

SUBCHAPTER 3. INCORPORATION BY REFERENCE

Section

252:205-3-1.	Reference to 40 CFR
252:205-3-2.	Incorporation by reference
252:205-3-3.	Subsequent incorporations
252:205-3-4.	Terminology related to 40 CFR
252:205-3-5.	Inclusion of CFR citations and definitions
252:205-3-6.	Inconsistencies or duplications
252:205-3-7.	Mercury-containing lamps [REVOKED]

252:205-3-1. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1, 1999, as well as any new or superseding provisions listed in 252:205-3-3.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1475, eff 4-10-00 (emergency); Amended at 17 Ok Reg 1896, eff 6-12-00]

252:205-3-2. Incorporation by reference

~~(a) Part 124. Procedures For Decision Making, those sections required by 40 CFR 271.14, with the following additions:~~

~~(1) § 124.19 (a) through (e) and (e);~~

(2) §§ 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(b) **Part 260. Hazardous Waste Management System: General, except 260.20 through 260.22.** In the 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements: (a) Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)]; (b) Leak detection requirements for all new underground tank systems [3004(o)(4)]; and (c) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory authority other than HSWA, the date relative to the commencement of installation is November 2, 1987. In 260.33(a) delete "in the region where the recycler is located".

(c) **Part 261. Identification and Listing of Hazardous Waste.** In 261.4(e)(3)(iii) delete "in the Region where the sample is collected". In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

(d) **Part 262. Standards Applicable to Generators of Hazardous Waste.** In 262.42(a)(2) delete "for the Region in which the generator is located".

(e) **Part 263. Standards Applicable to Transporters of Hazardous Waste.**

(f) **Part 264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 264.1(f), 264.149, 264.150, 264.301(l) and Appendix VI to Part 264.** In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988. In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987. In 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987. In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(g) **Part 265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), 265.149 and 265.150.** In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988. In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987. In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987. In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.

(h) **Part 266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.** Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same.

(i) **Part 268. Land Disposal Restrictions, except 268.5, 268.6, 268.10, 268-11, 268-12, 268.13, 268.42(b) and 268.44(a) through (g), and 268.44(m) through (p).**

(j) **Part 270. Permit Programs, except 270.14(b)(18).**

(k) **Part 273. Universal Waste Rule.**

(l) **Part 279. Used Oil Management Standards.** The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."

(m) **Excepted CFR Regulations.** Authority for carrying out excepted CFR regulations remains with EPA.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 16 Ok Reg 3484, eff 8-3-99 (emergency); Amended at 17 Ok Reg 1475, eff 4-10-00 (emergency); Amended at 17 Ok Reg 1896, eff 6-12-00]

~~252:205-3-3. Subsequent incorporations~~

The new or superseding amendments to 40 CFR contained in 64 FR 36465-36490, published July 6, 1999, dealing with hazardous waste lamps as universal waste are incorporated by reference.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 16 Ok Reg 3484, eff 8-3-99 (emergency); Amended at 17 Ok Reg 1475, eff 4-10-00 (emergency); Amended at 17 Ok Reg 1896, eff 6-12-00]

252:205-3-4. Terminology related to 40 CFR

(a) For purposes of interfacing with 40 CFR, the following terms apply:

(1) "Administrator" is synonymous with Executive Director except in §§ 262.12, 262.55, 262.56, 262.57, 262.87, 263.11, 270.5, 270.10(e)(2) and (3) and (f)(2) and (3), and 270.32(b)(2). In 260.10 and 270.2, the definition of "Administrator" is not synonymous with "Director". The terms as used in the excepted sections retain the meanings as defined in the CFR;

(2) "Regional Administrator" and "EPA Regional Administrator" are synonymous with Executive Director except in §§ 124.5(d), 124.10(b), 262.55, 262.56, 262.57, Item 19 of the Appendix to Part 262, 270.5, 270.10(f)(2) and (3) and (g)(1)(i) & (iii), 270.11(3) and 270.14(b)(20). See also §§ 264.12(a) and 265.12(a) where "Regional Administrator" should be replaced with "Regional Administrator and Executive Director". In 260.10 and 270.2, the definition of "Regional Administrator" is not synonymous with "Executive Director". The terms as used in the excepted sections retain the meanings as defined in CFR;

(3) "Act" is synonymous with the Oklahoma Hazardous Waste Management Act;

(4) "State" is synonymous with the DEQ;

(5) "EPA" is the United States Environmental Protection Agency, except in § 124.6 where "EPA" should be replaced with "DEQ", and as otherwise indicated in subparagraph 252:205-3-2(a)(2);

(6) "Environmental Appeals Board" is synonymous with Executive Director;

(7) §§ 3008, 3013 and 7003 of the federal Resource Conservation and Recovery Act when referenced in the CFR should be read as including the analogous state enforcement authority set forth in the Oklahoma Environmental Quality Code; and

(8) "DOT" and "Department of Transportation" is the U. S. Department of Transportation.

(b) **Financial security mechanisms.** The owner shall provide the financial assurance instruments as provided in 40 CFR 264.151, except that:

- (1) the phrase "Department of Environmental Quality" ("DEQ" or "the Department"), an agency of the State of Oklahoma" shall be used instead of "Environmental Protection Agency";
- (2) "Director" shall be used instead of "Regional Administrator";
- (3) "DEQ" shall replace "EPA";
- (4) "Act" shall replace § 3008 of the Resource Conservation and Recovery Act"; and
- (5) the certification in each instrument that the language is identical to respective provisions of 40 CFR 264.151 shall include the phrase "United States Environmental Protection Agency approved amendment, for the State of Oklahoma."

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-3-5. Inclusion of CFR citations and definitions

When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-3-6. Inconsistencies or duplications

In the event that there are inconsistencies or duplications the requirements of those rules incorporated by reference in 252:205-3-2, and the rules in this Chapter, the federal rules incorporated by reference shall prevail, except where the state rules in this Chapter are more stringent.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

~~252:205-3-7. Mercury-containing lamps [REVOKED]~~

~~[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Revoked at 17 Ok Reg 1475, eff 4-10-00 (emergency); Revoked at 17 Ok Reg 1896, eff 6-12-00]~~

SUBCHAPTER 5. ADDITIONAL GENERATOR REQUIREMENTS

Section	
252:205-5-1.	Disposal plans
252:205-5-2.	SQG exemption from disposal plan requirements
252:205-5-3.	Quarterly reporting requirements
252:205-5-4.	No endangerment provisions for generators
252:205-5-5.	Manifest requirements

252:205-5-1. Disposal plans

All persons generating hazardous waste in Oklahoma or generating hazardous waste to be stored, treated, recycled or disposed of in Oklahoma shall file a disposal plan with the

DEQ on DEQ forms and shall obtain the DEQ's approval prior to offering the waste for transport.

(1) The generator must update the disposal plan as needed and must notify the DEQ at least five working days before any changes are implemented. The DEQ requires a minimum of five (5) working days to process and approve new or amended disposal plans. Changes shall not be implemented until approved by the DEQ.

(2) One-time disposal plans may be issued for emergency clean-up or waste removal.

(3) The DEQ may require supporting documentation including but not limited to, laboratory analyses and Material Safety Data Sheets to verify information submitted. If specific technical process knowledge is provided which the Department determines adequately identifies the waste, laboratory analysis will not be required.

~~(4) If a disposal plan is canceled for non-payment of fees, the generator must complete a new application and re-submit supporting documentation to the DEQ for approval.~~

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

252:205-5-2. SQG exemption from disposal plan requirements

Small quantity generators and conditionally exempt small quantity generators are not required to file disposal plans (252:205-5-1) or quarterly reports (252:205-5-3) with the DEQ.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-5-3. Quarterly reporting requirements

(a) **General.** All persons generating hazardous waste within Oklahoma including on-site treatment, storage, recycling, or disposal facilities, shall submit a report to the DEQ in a prescribed format which may include electronic submissions. The quarterly report shall be submitted no later than 60 days after the end of each quarter.

(b) **Content.** Quarterly reports shall include the total amount of hazardous waste generated and, when applicable, for each hazardous waste generated in a quarter:

- (1) The appropriate waste stream number from the generator's disposal plan;
- (2) The EPA ID number of all transporters who transported the waste;
- (3) The EPA ID number of the receiving facility; and
- (4) The handling code(s) corresponding to the method the generator expects the designated receiving facility to use.

(c) **Characteristic hazardous waste.** If characteristic hazardous waste is treated on-site to render it non-hazardous, the quarterly report shall so indicate.

(d) **Reporting exclusions.** This section does not apply to waste which is not subject to the substantive federal regulations

adopted by reference by 252:205-3-2. There are many such exclusions, including but not limited to:

- (1) Hazardous wastewater which is properly disposed of on-site in facilities permitted under the Clean Water Act;
- (2) Hazardous wastewater which is properly disposed of on-site in Class I injection wells permitted under the Safe Drinking Water Act; and
- (3) Hazardous wastes which are treated in elementary neutralization units to render them non-hazardous.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-5-4. No endangerment provisions for generators

All generators must comply with 252:205-9-1.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-5-5. Manifest requirements

- (a) All large quantity generators shall include the disposal plan number on the Hazardous Waste Manifest before offering hazardous waste for shipment.
- (b) Oklahoma large quantity generators shall, on at least a quarterly basis, submit copies of manifests signed by receiving facilities for wastes transported outside the United States.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

SUBCHAPTER 7. ADDITIONAL TRANSPORTER RULES

Section	
252:205-7-1.	Transporters required to register
252:205-7-2.	Leakage, other releases prohibited in transport
252:205-7-3.	Manifest, disposal plan required
252:205-7-4.	Mixing waste prohibited by transporters

252:205-7-1. Transporters required to register

- (a) **Registration required.** Owners or operators of vehicles which pick up or deliver hazardous waste in Oklahoma shall register on forms available from the DEQ. Persons who transport hazardous waste only within a generator's plant site, or within the boundaries of a disposal or processing facility are not required to register so long as no movement occurs along a public right-of-way.
- (b) **Exemptions.** Conditionally exempt small quantity generators (CESQGs) who transport their own hazardous wastes to a facility owned or operated by the CESQG or its parent company.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

252:205-7-2. Leakage, other releases prohibited in transport

The transporter shall insure that the waste will be adequately contained so as to prevent any leakage, spillage, blowing, or dumping of the waste while in transport.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-7-3. Manifest, disposal plan required

No person shall transport hazardous waste without a completed manifest containing the disposal plan number of the generator if the generator is required to have a disposal plan.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-7-4. Mixing waste prohibited by transporters

Transporters shall not mix or combine incompatible hazardous waste within a common container. Transporters shall not mix or combine hazardous waste from separate containers or transfer waste from one container to another container except at an approved transfer station ~~or in accordance with 252:205-15-1(d).~~

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

SUBCHAPTER 9. ADDITIONAL TREATMENT, STORAGE, DISPOSAL AND RECYCLING REQUIREMENTS

Section	
252:205-9-1.	No endangerment or degradation
252:205-9-2.	Monthly reports
252:205-9-3.	Buffer zones
252:205-9-4.	Provisions for on-site inspectors
252:205-9-5.	Additional closure requirements
252:205-9-6.	Additional waste analysis requirements
252:205-9-7.	Acceptance of waste

252:205-9-1. No endangerment or degradation

- (a) Hazardous waste sites and facilities shall be located, constructed, maintained, operated, and closed in a manner to prevent any endangerment of the public health and safety or degradation of the environment.
- (b) Degradation of the environment shall be deemed to have occurred if the site or facility causes or may cause a discharge or release to the air, land, or water which statistically increases (or decreases, in the case of pH) the level of a parameter indicative of hazardous waste contamination over what may normally be expected to be found in the environment at that time.
- (c) A statistical increase (or decrease) shall be determined use of the tests specified in 40 CFR Parts 264 and 265.

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(d) Discharges in compliance with state or federal permits and rules shall not be deemed as degradation.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-9-2. Monthly reports

(a) **Monthly reports required.** Owners/operators of hazardous waste treatment, storage, disposal, and recycling facilities shall submit reports monthly in a format prescribed by the DEQ, which may include electronic submissions, identifying hazardous waste which is managed at the facility.

(b) **Content.** The report shall be submitted within 30 days of the end of each month and shall include:

- (1) The generator EPA ID number;
- (2) All EPA waste numbers applicable to the waste;
- (3) The appropriate EPA handling codes for storage, treatment, disposal or recycling methods applicable to the waste;
- (4) For all waste generated on-site and managed in permitted or interim status units, the amount of waste generated; and
- (5) For all waste generated off-site, the amount of waste received and the EPA ID number of all transporters who transported the waste; and
- (6) Copies of all hazardous waste manifests for waste generated outside the United States received at the facility during the month.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

252:205-9-3. Buffer zones

(a) No treatment, storage or disposal in a land treatment unit shall occur within 50' of the site perimeter. No treatment, storage, or disposal in a surface impoundment, waste pile, or landfill unit shall occur within 200' of the site perimeter.

(b) Existing units which become newly regulated due to changes in the statutory or regulatory requirements are excluded from the buffer zone restrictions to the extent of the encroachment existing as of the effective date of the statutory or regulatory changes.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

252:205-9-4. Provisions for on-site inspectors

The DEQ may add or include provisions for a full-time inspector in the permit conditions of commercial hazardous waste treatment, storage or disposal or recycling facilities. Permittees subject to these conditions shall provide on-site DEQ inspectors with reasonable office facilities.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-9-5. Additional closure requirements

(a) The provisions of 40 CFR 264 or 265, Subparts G and H, shall apply to all areas where hazardous waste is handled, including all recycling units, staging and processing areas, and temporary hazardous waste storage areas.

(b) The closure cost estimate may not incorporate any value that may be realized by the sale of recycled products.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-9-6. Additional waste analysis requirements

(a) Prior to receipt of a hazardous waste for storage, treatment, disposal or recycling, the owner/operator of a treatment, storage or disposal facility or off-site recycling facility must obtain detailed chemical and physical analyses of a representative sample of the waste. The analyses must contain all information necessary to appropriately treat, store, dispose, or recycle the waste.

(b) Prior to receipt of any industrial waste not identified as hazardous waste at a treatment, storage or disposal facility or off-site recycling facility, the owner/operator must obtain the following records and maintain them in the facility operating record:

- (1) Information regarding the chemical and physical nature of the waste which reasonably, considering the source, establishes that the waste does not exhibit any characteristic of hazardous waste as described by 40 CFR Subpart C. This information may include laboratory analyses, material safety data sheets, and analysis of raw materials, feedstocks, and process descriptions; and
- (2) An affidavit by the original waste generator stating that the waste does not include any listed waste.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-9-7. Acceptance of waste

No hazardous waste treatment, storage, disposal, or recycling facility shall accept hazardous waste from a large quantity generator unless the generator's disposal plan number is included on the manifest.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

SUBCHAPTER 11. ADDITIONAL PERMIT PROCEDURES

Section

- 252:205-11-1. Emergency plans relating to affected property owners
- 252:205-11-2. Exclusionary siting criteria
- 252:205-11-3. Upgrades of county roads and bridges

252:205-11-1. Emergency plans relating to affected property owners

(a) In addition to the plans required by 40 CFR 264 Subpart D (contingency plans and emergency procedures), applicants for new proposed off-site treatment, storage, ~~recycling~~ or disposal sites shall also prepare a separate Emergency Plan to minimize hazards to the health and property of affected property owners from emergency situations or from sudden or nonsudden releases of hazardous waste or its constituents. This Emergency Plan shall follow the criteria of 40 CFR 264 Subpart D but shall specifically relate to each parcel.

(b) For purposes of these rules, a parcel of land owned by one or more affected property owners is a present possessory fee simple estate in land, excluding future interests.

(1) All discrete parcels, regardless of size, as specified in the county land records on the day the permit application is submitted, shall be counted equally, regardless of the number of affected property owners who may own concurrent interests in such parcel.

(2) The owner who is occupying a parcel, if there is only one owner in occupancy, or a majority of the owners, or the executor, administrator or trustee on behalf of a parcel undergoing probate or otherwise, shall represent the approval or disapproval of the Emergency Plan on behalf of the parcel for purposes of the OHWMA.

(3) A calculation of approval or disapproval by a majority of the affected property owners shall be made by summing the numbers of parcels whose owners approve or disapprove the Emergency Plan. A majority is a simple majority of the parcels.

(4) Approval or disapproval of the Emergency Plan by an affected property owner does not signify approval or disapproval of the technical aspects of the facility, nor limit the right under the Act of any affected property owner to oppose the permit.

(c) If an applicant has obtained the written approval of the Emergency Plan from the affected property owners of all or a majority of the parcels, the applicant shall certify this to the Department. When the DEQ determines that all necessary approvals have been obtained, it shall then proceed with the process of issuance or denial of the permit.

(d) Affected property owners of a parcel of land who do not approve the Emergency Plan must specify reasons for non-approval which are based solely upon minimization of hazards to their health and property within forty five days of notice of the application being filed. Failure to do so shall cause the DEQ to exclude those affected property owners from a calculation of a majority of affected property owners.

(e) For a determination of affected property owners, the area considered to be within one mile of the facility shall be measured from the outer perimeter of the site as specified in the permit application.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-11-2. Exclusionary siting criteria

(a) **Ground water resources and recharge areas.**

(1) **Presumption of unapprovable site.** The DEQ shall presume that the proposed location is unapprovable if it lies wholly or partially within an area designated as an actual or potential unconsolidated alluvial aquifer or terrace deposit aquifer or bedrock aquifer or recharge area, as shown on the maps described as "Sheet 1 - Unconsolidated Alluvium and Terrace Deposits" and "Sheet 2 - Bedrock Aquifers and Recharge Areas" of the "Maps Showing Principal Ground Water Resources and Recharge Areas in Oklahoma," compiled by Kenneth S. Johnson, Oklahoma Geological Survey (1983), or any successor map(s) compiled by the Oklahoma Geological Survey.

(2) **Rebuttal of presumption.** The applicant may rebut the presumption by submitting site-specific hydrological and geological data and other information sufficient to demonstrate clearly and convincingly that the proposed location does not lie in a prohibited area.

(3) **DEQ reliance upon Oklahoma Geological Survey.** In making a determination whether a proposed location is within a prohibited area, the DEQ shall request and rely upon review and conclusions by the Oklahoma Geological Survey.

(4) **Site-Specific Information.** The Department may require site-specific hydrological and geological information for proposed facility locations outside a designated principal groundwater resource or recharge area where there is reason to believe that the proposed location may be unsuitable due to localized groundwater conditions.

(5) **Groundwater protection plan.** In determining whether a groundwater protection plan with financial assurance is required for an on-site facility pursuant to 27A O.S. § 2-7-111(B), the procedures used in subsections (1)-(4) of this section shall be used.

(6) **Existing facilities.** Existing facilities in these areas may continue to operate and may modify or expand their operations to the extent permitted by 27A O.S. § 2-7-111.

(b) **Water wells.** The DEQ shall not grant a permit for a new hazardous waste disposal facility proposed to be located within one-quarter mile of any public or private water supply well except private water supply wells on the applicant's property. Water supply wells that are demonstrated by the applicant to be permanently abandoned may be plugged upon a demonstration that the applicant has the right to plug them. The applicant shall notify the DEQ that the abandoned water wells have been plugged. If abandoned water wells are identified by the applicant during the preparation of his application or during the permit process, the applicant shall notify the DEQ so that these wells can be included in the Class V well inventory.

(c) **Flood plain.** No permit or modification of an existing permit which includes disposal of hazardous waste within a one-hundred year flood plain shall be granted, except for post-closure, corrective action or remedial activities conducted under the direction of the DEQ. For existing facilities, this modification prohibition applies only to land disposal units and to modifications of such units which would increase disposal rates or designate new areas for disposal.

(d) **Surface water.** No permit shall be granted for a new hazardous waste disposal facility proposed to be located within

one mile of the conservation pool elevation of any reservoir which supplies water for a public water supply or within one of any scenic river.

(e) **Air pollution.** No permit shall be granted for a new off-site hazardous waste disposal facility proposed to be located within one mile of any public school, educational institution, nursing home, hospital or public park.

(f) The Hazardous Waste Management Act also contains exclusionary siting criteria. See 27A O.S. § 2-7-111(B) and (C)(1) and § 2-7-114, as amended.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

252:205-11-3. Upgrades of county roads and bridges

The owner/operator shall submit a certificate of acceptance of the completed upgrades by the appropriate board(s) of county commissioners or the Oklahoma Department of Transportation, as appropriate, pursuant to 27A O.S. § 2-7-115(B)(2).

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

SUBCHAPTER 13. MISCELLANEOUS

Section
252:205-13-1. Incidents

252:205-13-1. Incidents

(a) **Release of hazardous waste.** Upon release of materials that are or become hazardous waste whether by spillage, leakage, or discharge to soils or to air or to surface or ground waters (outside the limits of a discharge permit), or by other means, and which could threaten human health or the environment, the owner or operator shall immediately notify the DEQ and take all necessary action to contain, remediate, and mitigate hazards from the release.

(b) **Contained releases.** The owner/operator is not required to notify the DEQ of a release if it is completely contained in a secondary containment area.

(c) **National Response Center.** When a report is required to be made to the National Response Center pursuant to 40 CFR 262.34 (a) (4), 262.34 (d) (5), or 264.56 (d) (2) or 265.56 (d) (2), a report must also be made immediately to the DEQ at 1-800-522-0206.

(d) **Determination of waste category.** Spilled or leaked materials and soils and other matter that may be contaminated with such materials shall be tested by the responsible person to determine whether they are hazardous waste, nonhazardous industrial waste or solid waste.

(e) **Proper disposal of waste from release.** Waste materials resulting from a release shall be properly disposed of in accordance with the applicable rules.

~~(f) **Recyclable materials.** Materials that are to be recycled shall be collected and properly stored to prevent further contamination of the environment.~~

~~(g) **Remediation plan.** The DEQ may require submission of a remediation plan that meets the closure requirements of 40 CFR 265.111 and 265.114.~~

~~(h) **Costs.** The Executive Director may assess costs relating to expenses and damages incurred by the DEQ in responding to a release and overseeing its remediation. Costs shall be borne by the responsible person(s).~~

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

SUBCHAPTER 15. TRANSFER STATIONS

Section	
252:205-15-1.	Applicability and consideration of other laws
252:205-15-2.	Development and Operations Plan
252:205-15-3.	Design and operation
252:205-15-4.	Modifications
252:205-15-5.	Exclusionary siting criteria
252:205-15-6.	No endangerment

252:205-15-1. Applicability and consideration of other laws

(a) **Types of waste handled.** The owner/operator of a transfer station which handles hazardous waste or both hazardous and solid wastes must comply with this Subchapter.

(b) **Solid waste permits.** The owner/operator of a hazardous waste transfer station operating or proposing to operate under an approved Plan which includes compliance with 252:205-15-2(c) is not subject to solid waste permitting rules.

(c) **RCRA permits.** The rules in this Subchapter do not supersede any obligations to obtain a hazardous waste permit.

(d) **Exempt activities.** The following are exempt from this Subchapter:

- (1) Activities of hazardous waste generators to consolidate waste on-site prior to shipment;
- (2) Activities regulated by hazardous waste permits which specifically address compliance with the plan requirements identified in 252:205-15-2(b); and
- (3) Activities immediately responding to a discharge of hazardous waste or material which becomes a hazardous waste when discharged or an imminent and substantial threat of a discharge of hazardous waste.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-15-2. Development and Operations Plan

(a) **Plan required.** No person may construct or operate a hazardous waste transfer station without DEQ approval of a Transfer Station Development and Operations Plan (Plan).

~~(b) **Content.** The owner/operator of a transfer station shall identify and discuss all of the hazardous wastes which may be~~

managed at the Transfer Station and the handling of any solid wastes to be managed as non-hazardous. The following shall be submitted:

- (1) Engineering plans for the construction design and a detailed description of all buildings, ramps, on-site roads, waste transfer and holding areas, and equipment used on-site;
- (2) A description of all proposed Transfer Station solid and hazardous waste handling activities including:
 - (A) estimations of waste holding capacities;
 - (B) description of wastes, tanks and containers;
 - (C) hours of operation;
 - (D) waste transfer and bulking procedures including associated compatibility analyses;
 - (E) provisions to assure that solid wastes destined for disposal in non-hazardous waste facilities are not co-mingled with hazardous waste; and
 - (F) truck and equipment cleaning and decontamination procedures.
- (3) A description of all safety, training and security provisions including site access and security provisions, site inspections, and personnel training in accordance with 40 CFR 264.14 through 264.17. The Plan shall also include a contingency and site safety plan that meets the requirements of 40 CFR 264, Subparts C and D;
- (4) A description of spill control, containment, and remediation measures;
- (5) A design and operations plan for waste transfer and unloading activities demonstrating that those activities are limited to areas with adequate secondary containment structures to prevent releases to soil, surface water or groundwater; and
- (6) Information on closure and mechanisms to meet the financial assurance and liability requirements of 40 CFR 264, Subparts G and H.

(c) The owner/operator of a hazardous waste transfer station which handles solid waste destined for management at a solid waste facility must also demonstrate compliance with applicable rules in OAC 252:520, including location standards, if the hazardous waste Transfer Station Development and Operations Plan is to be used in lieu of a solid waste permit.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-15-3. Design and operation

All transfer stations shall be designed and operated to minimize releases to the air from waste transfer and unloading activities. Activities shall be conducted only in areas protected by secondary containment structures approved in the Plan.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-15-4. Modifications

(a) A proposed modification to an approved Plan which would alter the design or operation of a transfer station shall be

requested in writing and shall not be implemented without the DEQ's prior approval.

- (b) The DEQ may modify an approved Plan to require compliance with current rules.
- (c) Modification to approved Plans shall be according to 40 CFR 270.42.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-15-5. Exclusionary siting criteria

- (a) The siting criteria for locating hazardous waste Transfer Stations are the same as those for any hazardous waste treatment, disposal, recycling, or storage facility in 252:205-11-2 and 27A O.S. § 2-7-111.
- (b) The siting criteria for locating hazardous waste Transfer Stations which also handle solid wastes destined for management at a solid waste facility include those listed in Subchapter 11 and, in addition, those in OAC 252:520.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 130, eff 6-1-00]

252:205-15-6. No endangerment

All owners/operators of Transfer Stations shall comply with 252:205-9-1.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

SUBCHAPTER 17. TAX CREDIT AND WASTE REDUCTION INCENTIVES

PART 1. TAX CREDITS

Section	
252:205-17-1.	Certification
252:205-17-2.	Tax credit limitations
252:205-17-3.	Application procedures for tax credit
252:205-17-4.	Criteria for approval of tax credit
252:205-17-5.	Special conditions: new and unproven technologies
252:205-17-6.	Required information in tax credit application

PART 3. WASTE REDUCTION INCENTIVES

252:205-17-20.	Applicability
252:205-17-21.	Incentives
252:205-17-22.	Refund for volume reduction
252:205-17-23.	Refund for toxicity reduction
252:205-17-24.	Refund for elimination of a waste stream
252:205-17-25.	Maximum total refund
252:205-17-26.	Limitations
252:205-17-27.	Application for fee reduction

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PART 1. TAX CREDITS

~~(5) Dilution of a hazardous waste because dilution is not considered recycling, reuse or source reduction.~~

~~[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]~~

252:205-17-1. Certification

(a) **Net investment cost.** Upon evaluation by the DEQ of an application in accordance with 27A O.S. § 2-11-304(A)(1)-(4) the DEQ will issue a certificate to the Oklahoma Tax Commission specifying the actual or estimated agreed net investment cost of approved recycling, reuse, or source reduction processing operations.

(b) **Energy recovery.** Energy recovery from the destruction of a hazardous waste may be considered as recycling, and the equipment or devices needed to effectuate such recovery may be eligible under this Subchapter. In order to claim energy recovery, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel, and at least seventy-five percent of this recovered energy must be exported and utilized on an annual basis. Credit will not be allowed for internal use of recovered heat in the same unit.

(c) **Remedial action.** Equipment installed for the purpose of recycling or reuse of hazardous waste recovered as a result of the clean-up of spills and/or remedial action at hazardous waste sites may be eligible.

(d) **Replacement of equipment.** Replacement of existing equipment is eligible for consideration only if the equipment being replaced has exceeded its design lifetime as specified at the time of installation. Replacement of existing equipment with equipment that will allow more complete recycling or increased source reduction will be considered, regardless of age.

(e) Any particular piece of equipment, plant, or property shall only be eligible for one tax credit allowance. Sale or transfer of that item to a new owner shall not recreate the eligibility for a tax credit.

(f) Trucks, trailers, containers, portable storage units or similar items that are necessary for the installation of processes used for the recycling, reuse or source reduction of hazardous waste may be considered. Equipment purchased or leased but not used solely for the recycling, reuse or source reduction of hazardous waste will be prorated based on use. Only equipment that is physically used in Oklahoma will be considered.

~~[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]~~

252:205-17-2. Tax credit limitations

The following are not eligible for consideration for a tax credit under this Subchapter:

- (1) Storage facilities used for the purpose of speculative accumulation;
- (2) Recycling of materials in a manner constituting disposal as described in 40 CFR Part 266;
- (3) Recycling, reuse or source reduction of materials that are not hazardous waste;
- (4) Operating expenses, interest charges, design costs and permit application costs; and

252:205-17-3. Application procedures for tax credit

(a) An application for a tax credit must be submitted separately from other permit applications. Application forms are available from the DEQ. Applicants must comply with the Oklahoma Uniform Environmental Permitting Act (27A O.S. § 2-14-101 *et seq.*) and rules 252:2-15).

(b) The applicant must include the actual or estimated capital expenditures required to purchase and install the facility. Estimates must show all unit costs and bid quotations from equipment suppliers. The applicant must list names, addresses, telephone numbers and other relevant contact numbers, i. e. telefacsimile and internet, of all suppliers, contractors, and related participants in the installation of the facility.

(c) After the equipment is installed, the applicant shall notify the DEQ that the facility is ready to be inspected. The applicant must point out any deviations from the approved application. Deviations will be evaluated by the DEQ to determine if a new application will be required. The DEQ will verify that the specified equipment has been installed and that it is operational. If so, the DEQ will issue the certification to the Oklahoma Tax Commission.

~~[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]~~

252:205-17-4. Criteria for approval of tax credit

To qualify for approval of a tax credit under this subchapter:

- (1) The tax credit must be taken within three years of the installation and initial use of the facility.
- (2) The proposed facility or equipment must have been previously demonstrated to be effective and to perform as specified unless/unproven technology procedures are followed in accordance with 252:205-17-5.
- (3) The facility must be physically located in the State of Oklahoma.

~~[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]~~

252:205-17-5. Special conditions: new and unproven technologies

In addition to the requirements of 252:205-17-4, the following apply to persons who wish to use technologies that have not been proven to be effective or workable:

- (1) If the review and evaluation of an application for a tax credit using unproven technologies indicates that the proposed facility has a high likelihood of being successful, but supporting data is not available to allow final approval by the DEQ, the DEQ may issue an Approval in Principle in lieu of the formal approval and certification to the Tax Commission. ~~The Approval in Principle shall~~

~~list the assumptions made in deciding upon its issuance and the conditions the facility is expected to meet before a formal approval and certification to the Oklahoma Tax Commission can be made.~~

(2) The Approval in Principle will automatically expire two years from the date of its issuance. It may be reissued if a new application is submitted to the DEQ and a determination made that the conditions under which the first approval was issued are still applicable and that a high likelihood of success is still feasible.

(3) Once the owner/operator of the facility has satisfactorily demonstrated that the technology performs as specified and has supplied documentation to the DEQ showing that the conditions of the Approval in Principle have been satisfied, the DEQ shall issue a formal approval and provide certification to the Oklahoma Tax Commission showing eligibility for a tax credit.

(4) The applicant must notify the DEQ of any significant change in the design of the facility or in the equipment actually installed, or if there is an increase in costs of more than twenty percent from that specified in the application. Any significant change from the original application shall be cause for the DEQ to reevaluate the application and make a new determination whether or not the project should be approved.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-17-6. Required information in tax credit application

The applicant must submit the following information in an application:

(1) A description of the current or proposed plant process, as it relates to the recycling, reuse or source reduction operations, including flow diagrams and engineering drawings.

(2) A description of the proposed recycling, reuse or source reduction facility, including flow diagrams and engineering design drawings, the exact equipment necessary for the facility to perform as specified either by brand name and serial number, or by design specifications and drawings, and the estimated life expectancy and the vendor's name for each piece of equipment.

(3) The amount and character of waste streams prior to use of the facility and the amount and character of waste streams after use of the facility. If there is no current plant process, the applicant should provide information on the amount of hazardous waste expected to result from the proposed facility.

(4) A justification for the process decisions made, including a description of the recycling, reuse, or source reduction alternatives considered.

(5) A certification that the facility will be used in Oklahoma to process hazardous waste generated in Oklahoma. If the facility will be processing waste generated in other states, the applicant must specify the percentage of waste generated in Oklahoma.

~~(6) Income or savings that will be generated from the installation and operation of the facility.~~

(7) Actual invoices of installed unit costs or estimates of costs if the facility has not been built.

(8) If the facility to be installed uses a proven technology. If it is not a proven technology, the application must specify when supporting documentation will be available to determine if the technology will perform as specified.

(9) The date that construction or installation of the facility is scheduled to begin and the date the facility is scheduled to begin operations.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

PART 3. WASTE REDUCTION INCENTIVES

252:205-17-20. Applicability

The rules in this Part provide economic incentives to encourage Oklahoma generators to reduce the volume or the toxicity of the hazardous waste they generate.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-17-21. Incentives

(a) **Large quantity generators.** The DEQ shall give a reduction of up to one-half of the in-state hazardous waste treatment or disposal fee specified in 27A O.S. § 2-7-121 to an Oklahoma large quantity generator who:

(1) Expands its full-time equivalent employment, up to a doubling of employees, while generating proportionally less hazardous waste than in the previous state fiscal year; or

(2) Significantly reduces the toxicity of all or part of the hazardous waste which it generates, as demonstrated by a health-based risk analysis submitted by the generator in accordance with 27A O.S. § 2-11-204 (C).

(b) **Small quantity generators.** The DEQ shall give the maximum reduction of one-half of the in-state hazardous waste treatment or disposal fee specified in 27A O.S. § 2-7-121 to an Oklahoma small quantity generator who:

(1) Expands its full-time equivalent employment, up to a doubling of employees, while generating proportionally less hazardous waste than in the previous state fiscal year; or

(2) Significantly reduces the toxicity of all or part of the hazardous waste which it generates, as demonstrated by a health-based risk analysis submitted by the generator in accordance with 27A O.S. § 2-11-204(C).

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-17-22. Refund for volume reduction

~~Each generator who expands its full-time equivalent employment while generating proportionally less hazardous~~

waste than in the previous state fiscal year will receive a disposal fee refund per ton of waste disposed in the application as calculated in Appendix A.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-17-23. Refund for toxicity reduction

(a) Each generator who significantly reduces the toxicity of all or part of the hazardous waste which it generates, as demonstrated by a health-based risk analysis submitted by the generator in accordance with 27A O.S. § 2-11-204 (C) will receive a disposal fee refund per ton of waste disposed in the application year. The amount of the fee refund will be equal to the unit of hazardous waste decreased in toxicity divided by the total units of hazardous waste generated, multiplied by the dollar amount of the applicable fee at the time of treatment or disposal.

(b) The degree to which the toxicity of a wastestream is reduced must be clearly demonstrated by a health-based risk analysis that examines the concentrations of hazardous waste constituents and the likely means of exposure to employees and to the public.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-17-24. Refund for elimination of a waste stream

The DEQ will refund an additional \$0.50/ton for elimination of a hazardous waste stream through source reduction techniques.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-17-25. Maximum total refund

The maximum amount refunded shall not exceed one-half of the total fees assessed.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-17-26. Limitations

Fee reductions will not be given for reductions in volume or toxicity that result from production phase-outs or decline in production levels.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-17-27. Application for fee reduction

(a) Small quantity generators shall submit a completed Small Quantity Generator's Hazardous Waste Reduction Plan form.

(b) Large quantity generators shall submit a Hazardous Waste Reduction Plan according to 27A O.S. § 2-11-204(E) and the following documents:

(1) A written request for reduction in fees, including:

(A) Documentation of reduction in hazardous waste generation compared with the applicable baseline year data and information to support claims of proportionate increase in employment during the same time period; or

(B) Documentation of reduction in hazardous waste toxicity, including health-based risk analysis data in compliance with 27A O.S. § 2-11-304(C).

(2) A copy of the facility's Hazardous Waste Reduction Plan; and

(3) A copy of the DEQ's Hazardous Waste Reduction Plan Summary Form.

(c) The previous state fiscal year's data will be used to establish the baseline for employment and waste generation data for those generators submitting Hazardous Waste Reduction Plans and requests for fee reductions after July 1, 1993. Applications for fee reduction must be submitted by October 1 following the application year.

(d) Once a baseline year has been established, the data will be used as the basis of comparison for future fee reductions. Another baseline may be approved if the generator provides a written request for change and includes justification for use of another baseline year.

(e) The DEQ shall refund fees at the end of each fiscal year.

(f) The DEQ will review the biennial plan summary reports to evaluate any need for fee refund adjustment.

(g) The DEQ shall continue to refund fees as long as the generator continues to meet waste reduction criteria of 27A O.S. § 2-11-201 *et seq.* and the rules in this Part.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

SUBCHAPTER 19. ADDITIONAL RULES FOR RECYCLING

PART 1. REQUIREMENTS FOR OFF-SITE RECYCLERS

Section

- 252:205-19-1. Permit required
- 252:205-19-2. Federal rules
- 252:205-19-3. Replacement of recycling units
- 252:205-19-4. Operating record
- 252:205-19-5. Blending low-Btu fuel prohibited
- 252:205-19-6. Fees [REVOKED]
- 252:205-19-7. Processed hazardous waste to be recycled

PART 3. MOBILE RECYCLING UNITS

- 252:205-19-15. Mobile units

PART 5. TANK AND CONTAINER RECYCLERS

- 252:205-19-29. Applicability
- 252:205-19-30. Incidents
- 252:205-19-31. Handling of tank and container residues, and cleaning wash solutions
- 252:205-19-32. Storage Requirements
- 252:205-19-33. Notification Requirements
- 252:205-19-34. Recordkeeping

PART 1. REQUIREMENTS FOR OFF-SITE RECYCLERS

252:205-19-1. Permit required

(a) Owners/operators of off-site recycling facilities with units operational:

- (1) Before July 1, 1990, are not required to obtain a permit for those units, but must comply with the rules in this Subchapter.
- (2) After July 1, 1990 must obtain a permit for those units. Owners/operators of post-1990 off-site recycling facilities must also comply with the permit requirements of 40 CFR 270 and OAC 252:2. The owner/operator must include hazardous waste recycling units, staging and process areas, and permanent and temporary storage areas for recycled products and wastes in the permit application.

(b) **Subchapter 9.** Owners/operators of off-site recycling facilities shall comply with Subchapter 9.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-2. Federal rules

Owners/operators of off-site recycling facilities must comply with the following provisions of 40 CFR 264 for all hazardous waste recycling units, staging and process areas, and permanent and temporary storage areas for recycled products and wastes:

- (1) Subpart B- General Facility Standards
- (2) Subpart C- Preparedness & Prevention
- (3) Subpart D- Contingency Plan & Emergency Procedures
- (4) Subpart E- Manifest System, Recordkeeping & Reporting
- (5) Subpart G- Closure & Post-Closure
- (6) Subpart H- Financial Requirements
- (7) Subpart I- Use & Management of Containers
- (8) Subpart J- Tank Systems

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-3. Replacement of recycling units

(a) The owner/operator may replace recycling units which are not required to be permitted with functionally equivalent units not more than 10% difference in capacity upon prior approval of the DEQ.

(b) The owner/operator must apply for a permit modification to increase the capacity of the recycling units or to add new or different recycling units.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-4. Operating record

(a) **Operating record required.** The owner or operator of an off-site recycling facility must keep a written operating record at the facility.

(b) **Content.** The following information must be recorded as it becomes available and maintained in the operating record until closure of the facility:

- (1) A description and the quantity of each hazardous waste received;
- (2) The method(s) and date(s) of treatment, storage, or recycling of each hazardous waste received;
- (3) The location of all hazardous waste within the facility;
- (4) The quantity of hazardous waste at each location, including cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and
- (5) Complete documentation of the fate of all hazardous wastes received from off-site or generated on-site including records of the sale, reuse, off-site transfer, or disposal of all products and waste materials.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-5. Blending low-Btu fuel prohibited

Blending of low fuel value hazardous waste (containing less than 5,000 Btu/pound) with other materials or waste to create a hazardous waste fuel is prohibited as a form of recycling. This waste can not be burned in any hazardous waste recycling unit in Oklahoma.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-6. Fees [REVOKED]

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Revoked at 17 Ok Reg 1130, eff 6-1-00]

252:205-19-7. Processed hazardous waste to be recycled

Owners/operators who demonstrate to the DEQ that units containing hazardous wastes which have been processed for recycling have a demonstrable market and no longer contain constituents which pose a hazard to human health or the environment are not required to obtain a permit for those units, but must still comply with 252:205-19-1(b) and 19-4.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

PART 3. MOBILE RECYCLING UNITS

252:205-19-15. Mobile units

(a) **Applicability.** This Part applies to mobile recycling units that process hazardous waste at any facility which generates in excess of 1000 kilograms of hazardous waste in any calendar month. The requirements of this Part shall not apply to mobile recycling units when:

- (1) ~~The recycling is performed at the generator's site;~~

- ~~(2) The generator retains responsibility for proper management of the waste and any residues;~~
- (3) No waste generated by any other person is brought onto the site for treatment by the unit; and,
- (4) The generator and the recycler meet all applicable requirements for hazardous waste management.
- (b) **Permits.** Mobile recycling units subject to this Part shall obtain a Recycling Permit for a Mobile Unit. Application for such permit shall include the application fee and three copies of the following:
 - (1) A detailed description of the proposed recycling unit(s). This should include flow diagrams and engineering design drawings, specifying either by brand name and serial number, or by design specifications and drawings, the exact equipment necessary for the unit(s) to perform as specified.
 - (2) The amount and nature (including waste codes and available laboratory analyses) of current hazardous waste streams able to be processed and the amount and nature of waste streams expected to result from operation of the proposed unit(s).
 - (3) A description and quantification of any releases to the air, sewer, water, or ground that will result from operation of the recycling unit(s).
 - (4) A description of the procedures used to decontaminate the unit, and including disposal of all contaminated residuals, after completion of the on-site processing.
 - (5) Evidence of compliance with personnel training requirements equivalent to 40 CFR 265.16 for all personnel dealing with waste handling or processing.
 - (6) A generic contingency and safety plan which meets all applicable provisions of 40 CFR 265, Subparts C and D.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

PART 5. TANK AND CONTAINER RECYCLERS

252:205-19-29. Applicability

- (a) This part applies to facilities which receive tanks or containers from off-site for cleaning or reconditioning which are empty as described at 40 CFR 261.7 and which contain a chemical residue. Tanks or containers hold a chemical residue if such residue is visible and/or the tank or container requires cleaning to assure that it is free of residue.
- (b) Containers as described in 40 CFR 261.7 are assumed to contain a chemical residue until processed by the receiving facility to assure that such units are ready for resale.
- (c) This part does not apply to:
 - (1) Facilities permitted pursuant to 40 CFR 264;
 - (2) Facilities which only receive containers or tanks for filling with product or waste without on-site cleaning or reconditioning; or,
 - (3) Companies, their affiliates and subsidiaries which receive back only their own containers and, as applicable:

- ~~(A) Remove residues of unused commercial chemical product for use at their facilities;~~
- (B) Remove residues and manage such residues and wash wastes as hazardous or non-hazardous solid waste as determined per 40 CFR 261; or,
- (C) Treat removed residues and wash wastes in units permitted pursuant to sections 402 and 307(b) of the Clean Water Act.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-30. Incidents

Facilities subject to this part shall comply with 252:205-13-1.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-31. Handling of tank and container residues, and cleaning wash solutions

- (a) Chemical residues and wash solutions containing chemical residues generated by cleaning or reconditioning of tanks or containers shall be evaluated in accordance with 40 CFR 261 to determine if they are to be handled as hazardous wastes or as non-hazardous solid wastes.
- (b) Chemical residues and wash solutions containing chemical residues generated by cleaning or reconditioning of tanks and containers are not exempted from 252:205-19-31(a) by 40 CFR 261.7. However, no hazardous waste listings in 40 CFR 261 Subpart D shall apply to residues removed from containers regulated pursuant to this part. Wastes generated from using solvents listed in 40 CFR 261.31 during the cleaning or reconditioning process and which meet the listing definition are hazardous waste.
- (c) As determined, the following shall apply:
 - (1) 40 CFR 261.279 and OAC 252:205 shall apply to residues removed from containers regulated pursuant to this part unless exempted therein (e.g., exclusions for waste treated under §§ 402 and 307(b) of the Clean Water Act); however, the exemption found at 261.7 is modified pursuant to this part.
 - (2) For all non-hazardous solid waste, the generator is not exempt from applicable Oklahoma Regulations as specified by OAC 252:520.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-32. Storage Requirements

- (a) Facilities regulated pursuant to this part may not speculatively accumulate, as defined at 40 CFR 261.1(c)(8), tanks or containers awaiting cleaning or reconditioning. Tanks and containers which have not completed the full cleaning or reconditioning process must be so marked or placed into an area so marked and stored separately from containers or tanks which have been cleaned or reconditioned.

(b) All tanks and containers shall be stored under cover, or in a manner which will prevent the accumulation of precipitation in the tank or container or release to the environment of chemical residue. Any precipitation which may accumulate shall be considered a chemical residue requiring handling as described in 252:205-19-31.

(c) All tanks and containers shall be stored in such a manner that visual inspections can determine if spillage has occurred.

(d) Tanks and containers shall be inspected weekly for compliance with this section.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

252:205-19-33. Notification Requirements

(a) Facilities shall notify the Department of activities regulated pursuant to this part in the following manner:

- (1) Provide a general description of site utilization and processes; and,
- (2) Provide a general description of how processes and activities will be conducted in a manner that minimizes releases to soil, air, and water.

(b) Facilities in operation on the effective date of this Part must submit the information required by 252:205-19-33(a) no later than January 1, 1999. New facilities must submit the information required by 252:205-19-33(a) prior to initiation of cleaning or reconditioning operations. Facilities shall submit a new notification to the Department if operations significantly change from those described in the original notification. This new notification must be submitted prior to making significant changes in operations.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-19-34. Recordkeeping

(a) Facilities regulated pursuant to this part must maintain the following records on-site:

- (1) Documentation of waste determinations and analyses, as appropriate, for hazardous wastes generated;
- (2) Records of inspections performed pursuant to 252:205-19-32(d);
- (3) Records of remedial actions performed on-site in accordance with 252:205-13-1; and,
- (4) Records demonstrating that the facility is not speculatively accumulating under 252:205-19-32(a).

(b) Records required by paragraph 252:205-19-34(a) shall be kept for a period of three (3) years.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]

SUBCHAPTER 21. FEES

Section

252:205-21-1. General fee provisions

252:205-21-2. Generator fees

252:205-21-3. Transporter fees

252:205-21-4. Treatment, storage, off-site recycling, and disposal facility fees

252:205-21-1. General fee provisions

Fees are payable to the DEQ. Monitoring fees and renewal fees are due and payable and must be postmarked within sixty days from the invoice date. Ranges of fees for generator disposal plans, transporter registration, permit application and application resubmittals, and facility monitoring are set by law. See 27A O.S. § 2-7-119. A late fee of 20% of the renewal fee will be charged as a penalty for late renewal of fees less than \$10,000. For fees of \$10,000 or more, see the penalty clause of 27A O.S. § 2-3-301. The DEQ will not re-assess fees at time of transfer of ownership if units and EPA I.D. number remain unchanged.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-21-2. Generator fees

(a) **Disposal plan.** The fee for a disposal plan for one or two waste streams is \$100 per generator per year. Each additional waste stream is \$50 per year. There is no disposal plan fee for emergency incidents under 252:205-13-1. Disposal plans shall be canceled if the fees are not paid after the second notification.

(b) **Annual monitoring and inspection fee.** Oklahoma generators shall pay an annual fee of \$100, except small quantity generators who pay \$25. There is no monitoring fee for generators who obtain one-time disposal plans issued under 252:205-5-1 for emergency cleanup or waste removal.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

252:205-21-3. Transporter fees

The transporter registration period is from March 1 of a given year to the last day of February of the following year. The fees are as follows:

- (1) **Per vehicle.** For each trailer or other discrete transportation vehicle used in highway transportation of hazardous waste, there is an annual registration fee of \$20; or
- (2) **International Registration Plan.** Common carriers participating in the "International Registration Plan" may pay a fee equivalent to \$20 per vehicle calculated by the ratio of the previous year's Oklahoma manifested waste mileage divided by the total fleet national mileage, multiplied by the total number of fleet trailers and vehicles (excluding power units); or
- (3) **Per trip vehicle rental.** Transporters leasing or renting only one vehicle at a time for the transportation of hazardous waste may obtain a registration designated as per-trip rental by paying an annual fee of \$20. Each rental vehicle's identification information shall be reported to the DEQ before moving waste in that vehicle.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

~~252:205-21-4. Treatment, storage, off-site recycling, and disposal facility fees~~

~~Permit fees.~~

- ~~(1) New permit application fees are listed in Appendix B.~~
 - ~~(2) Renewal and post closure application fees shall be 1/2 of the fees listed in Appendix B, subject to the statutory minimum.~~
 - ~~(3) Fees for re-submission of an application shall be the minimum amount established by 27A O.S. § 2-7-119(B). Re-submission is deemed to occur when an applicant, at the request of the Department, provides additional information to make an application complete, which constitutes substantial recomposition of the application.~~
 - ~~(4) Fees for Tier 3 modifications are the application fees listed in Appendix B.~~
 - ~~(5) Application fees for an off-site recycling facility shall be the statutory minimum established for permit applications by 27A O.S. § 2-7-119(B).~~
- ~~(b) Refund of permit fees. Ninety percent (90%) of the fee is refundable for any applications withdrawn within 30 days.~~

~~(c) Monitoring and inspection fees.~~

- ~~(1) All hazardous waste facilities shall be charged annual fees for monitoring and inspection by the Department. These fees are in addition to the \$100 monitoring fee for generators.~~
- ~~(2) Facilities that treat, store, or dispose of hazardous waste, or receive off-site hazardous waste for recycling, are subject to the fee provisions of § 2-7-121(A) of the Act, except as provided by 27A O.S. § 2-7-121(B). The fee amounts and applicability are depicted in Appendix C of this Chapter. Facilities not subject to Appendix C of this Chapter shall be charged the minimum annual monitoring fee established at 27A O.S. § 2-7-119(B). (Appendix C of this Chapter is included for convenience and is subject to adjustment of the fees by statutory amendment.)~~

~~[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Amended at 17 Ok Reg 1130, eff 6-1-00]~~

APPENDIX A. REFUND FOR VOLUME REDUCTION

	1-25% Increase in Employees	26-50% Increase in Employees	51-75% Increase in Employees	76-100% Increase in Employees
21-50% waste reduction	\$ ÷ 3.5	\$ ÷ 2.8	\$ ÷ 2.3	\$ ÷ 2
11-20% waste reduction	\$ ÷ 4.6	\$ ÷ 3.5	\$ ÷ 2.8	\$ ÷ 2.3
1-10% waste reduction	\$ ÷ 6.8	\$ ÷ 4.6	\$ ÷ 3.5	\$ ÷ 2.8

\$ = Applicable fee at time of treatment or disposal

"Percent Waste Reduction" equals the amount of waste generated in the previous state fiscal year minus the amount of waste generated in the application year, divided by the amount of waste generated in the baseline year, times 100.

"Percent Increase in Employees" equals the number of employees in the application year minus the number of employees in the baseline year, divided by the number of employees in the baseline year, times 100.

~~Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency), Added at 16 Ok Reg 1819, eff 6-11-99]~~

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APPENDIX B. PERMIT APPLICATION FEES

The statutory minimum fee established for permit applications by 27A O.S. § 2-7-119(b) is \$5,000.

Basic Application Fee	Fee for Submission
All facilities	\$3,000
Facility or Regulated Unit Description	Fee for Submission For each type of permit requested, add the following amounts to the basic application fee to determine the total fee due.
Tanks & Containers	\$2,000
Waste Piles	\$2,500
Misc. Thermal unit	\$2,000
Incineration; Boiler & Ind. Furnaces; thermal treatment	\$12,000
Deep Well	\$15,000
Land Treatment Unit	\$6,000
Landfill, Surface Impoundment	\$20,000
Research	\$2,000
Recyclers	\$2,000

~~Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99; Revoked and reenacted at 17 Ok Reg 1130, eff 6-1-00~~

APPENDIX C. ANNUAL FACILITY MONITORING FEES

Disposition of Waste	On-site	Off-site
Waste Storage, Treatment, or Land Disposal	\$9.00/ton (minimum \$20,000/yr per facility)	\$9.00/ton (minimum \$50,000/yr per receiving treatment or land disposal facility, minimum \$20,000/yr per storage facility*)
Waste Recycling	-----	\$4.00/Ton (minimum \$20,000/yr per receiving facility, excluding receiving facilities which consistently receive or recycle fewer than ten (10) tons of hazardous waste per month)
Underground Injection	\$0.03 per gallon	\$0.03 per gallon
Facilities Conducting Research & Design Tests	_____	\$9.00/ton treatment, storage, or disposal \$4.00/ton recycling (minimum \$10,000/yr per receiving facility)

* For the purpose of the \$20,000/yr per receiving facility minimum fee only, storage includes physical separation or combining of wastes solely to facilitate efficient storage at the facility and/or efficient transportation. Any off-site facility which is permitted for treatment or land disposal in addition to storage will be subject to the \$50,000/yr per receiving facility minimum fee.

[Source: Added at 16 Ok Reg 244, eff 11-2-98 (emergency); Added at 16 Ok Reg 1819, eff 6-11-99]

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