

US EPA ARCHIVE DOCUMENT

TITLE 252. OKLAHOMA ADMINISTRATIVE CODE

**CHAPTER 002. PROCEDURES OF THE
DEPARTMENT OF ENVIRONMENTAL QUALITY**



**O K L A H O M A
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**1000 N.E. Tenth
Oklahoma City, Oklahoma 73117-1212**

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**CHAPTER 002. PROCEDURES OF THE DEPARTMENT
OF ENVIRONMENTAL QUALITY**

SUBCHAPTER 1. GENERAL PROVISIONS

252:002-1-1. Purpose

(a) **Purpose.** This Chapter establishes the organization and procedures of the Department of Environmental Quality.

(b) **Fair construction.** This Chapter is intended to simplify procedures, avoid delays, save expenses and facilitate implementing the Oklahoma Environmental Quality Code and any other Oklahoma Statutes under which the DEQ has jurisdiction.

(c) **Scope.** The rules in this Chapter are not intended to limit the lawful authority of the DEQ. The DEQ may address any matter under its jurisdiction and change any procedure for good cause.

(d) **Severability.** The repeal or invalidity of any particular rule of this Chapter or Title shall not affect other rules.

252:002-1-2. Definitions

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

"APA" means the Oklahoma Administrative Procedures Act, 75:250.1 et seq.

"Board" means the Environmental Quality Board.

"Code" means the Oklahoma Environmental Quality Code, 27A:2-1-101 et seq.

"Council" means the Air Quality Council, the Hazardous Waste Management Advisory Council, the Laboratory Services Advisory Council, the Radiation Management Advisory Council, the Solid Waste Management Advisory Council, the Water Quality Management Advisory Council and the Waterworks and Wastewater Works (Operator Certification) Advisory Council.

"DEQ" or "Department" means the Oklahoma Department of Environmental Quality and its officers and employees.

"Executive Director" means the Executive Director of the Department of Environmental Quality.

"Individual proceeding" means the same as defined in 75:250.3(7), a part of which includes an administrative evidentiary hearing.

"Respondent" means a person or legal entity named in a petition for an individual proceeding against whom relief is sought.

"Proposed rule or rule changes" means rules proposed for recommendation and adoption or repeal.

"Rule package" means a set of rules or rule changes or a single rule or rule change proposed for a specific program or purpose.

252:002-1-3. Description of Department of Environmental Quality

(a) **History.** The DEQ was created January 1, 1993, as a result of environmental legislation in 1992. On July 1, 1993, it assumed jurisdiction over air quality, hazardous waste, solid waste, water quality, environmental laboratory services and certification, radiation management and other programs and functions as specified in the Code.

(b) **Organization.** The DEQ consists of programs in air quality, waste management, water quality, complaints and local services, and offices of customer assistance, business and industry assistance, local government assistance, and administrative hearings. Such organization may be revised by the Executive Director. Organizational charts may be obtained upon request to the Office of the Executive Director.

(c) **Duties.** The DEQ has the following duties:

(1) to implement the Code and other statutes under which it has jurisdiction;

(2) to serve as the official state environmental agency of Oklahoma to cooperate with federal agencies in the management of environmental programs designated by law;

(3) to perform such duties as required by law; and

(4) to provide administrative assistance to the Board and Councils.

SUBCHAPTER 3. GENERAL OPERATION

252:002-3-1. Office location and hours; communications

(a) **Office.** The principal office of the DEQ is 1000 N.E. 10th Street, Oklahoma City, Oklahoma 73117-1212.

(b) **Hours of operation.** Office hours are from 8:00 a.m. to 4:30 p.m., unless otherwise designated by the Executive Director, each day except Saturday and Sunday and state holidays.

(c) **Communications.** Unless a person is working with a particular person or departmental area, written communication to the DEQ shall be addressed to the Executive Director at the principal office.

252:002-3-2. Availability of records

(a) **Availability.** Records of the DEQ, not otherwise confidential or privileged from disclosure by law, shall be available to the public for inspection and copying at the DEQ's principal office or other offices during normal business hours. The DEQ may take reasonable precautions in order to ensure the safety and integrity of records under its care.

(b) **Removal.** Records may be removed from the DEQ's offices or storage areas only with permission of the record's custodian.

(c) **Reproduction.**

(1) **By DEQ.** The DEQ may limit the number of copies made and the time and personnel available for reproduction of open records requested by a member of the public or refer the requester to the provisions of paragraphs (2) and (3) of this subsection.

(2) **Commercial reproduction.** With advance notice to the DEQ, persons may arrange for the pick-up, reproduction and return of open records by a commercial copying service at their expense.

(3) **Other.** Provided the approval of the DEQ is obtained in advance and suitable floor space is available, a requester may bring in and use his own copy machine.

(d) **Confidentiality.** Any person submitting information, data or materials to the DEQ may assert and substantiate a claim of confidentiality upon submission. Absent such assertion and substantiation, information or materials shall be recognized and treated by the DEQ as being available for disclosure.

(e) **Certification.** Copies of official records of the DEQ may be certified by the Executive Director or Assistant Director or their designees.

(f) **Charge.** The DEQ's administrative fee schedule shall apply to in-house copying or reproduction of open records for or by members of the public.

252:002-3-3. Administrative fees [RESERVED]

SUBCHAPTER 5. RULEMAKING

252:002-5-1. Petitions for rulemaking

(a) **Rulemaking request.** Any person may file a petition with the DEQ formally requesting the adoption, amendment, or repeal of one or more rules.

(b) **Form and content of petition.** Rulemaking petitions shall be in writing and filed with the DEQ. A petition shall include the information and follow the format of OAC 252:002 Appendix A, Petition for Rulemaking. After the petition is filed, the DEQ shall provide a copy to the Board.

(c) **Referral.** The DEQ shall refer a filed petition to the appropriate Council or if none, to the appropriate program of the DEQ, for review. A petition referred to a Council shall be set on the agenda of the next available Council meeting.

(d) **Status.** If rulemaking based on the petition does not commence within 30 calendar days after the next available Council meeting or after referral to a program of the DEQ, the petition shall be deemed denied. The DEQ shall advise the Board of the status of petitions and shall provide the petitioner a copy of any final action relating to the petition.

252:002-5-2. Rule development

The DEQ may commence the development of rules and rule changes at the request of, or on behalf of, the Board or a Council or upon petition by an interested person. The DEQ may appoint committees to assist in the development of such rules.

252:002-5-3. Notice of permanent rulemaking

The DEQ shall cause notice of proposed permanent rulemaking and of dates of known hearings to be given in accordance with the APA. Notice of the continuation of any rulemaking hearing shall be announced at the hearing or meeting from which the hearing is to be continued and shall not require publication.

252:002-5-4. Rulemaking comment periods & hearings before the DEQ

(a) **Comments.** The DEQ may ask for oral or written comments on proposed rules or rule changes from any person at any time.

(b) **Hearings.** On behalf of the Board or a Council, the DEQ may conduct a rulemaking hearing separate from a Board or Council meeting to receive comments on proposed permanent rule packages.

(c) **Hearing procedures for oral comments.** Persons wishing to comment orally at a hearing on permanent rule packages may be asked to make a written request. The hearing officer may set reasonable time limits on oral presentations, may

exclude repetitive or irrelevant comments and may require that the presentations be submitted in writing prior to the close of the comment period.

(d) **Comment period for written comments.** Comments on proposed permanent rule packages may be submitted in writing at the hearing or by the end of the specified public comment period, or both.

(e) **Length of comment period.** The comment period shall end at the conclusion of the hearing unless extended for no more than 30 days. (f) **Summary of comments.** The DEQ shall maintain a summary of comments received on proposed rule packages at rulemaking hearings and during written comment periods and provide the summary to the Board or a Council prior to the Board's or Council's final action on such rules.

252:002-5-5. Hearings before the Board or a Council

At the request of the Board or a Council, the DEQ may designate a hearing officer to conduct a rulemaking hearing on proposed permanent rule packages before those bodies.

252:002-5-6. Preparation of rulemaking record

The DEQ shall maintain a rulemaking record on all rules adopted or repealed by the Board.

SUBCHAPTER 7. DECLARATORY RULINGS

252:002-7-1. Declaratory rulings

Any person who alleges that any DEQ rule or order interferes with or impairs, or threatens to interfere with or impair, their legal rights may petition the DEQ, formally requesting a declaratory ruling on the applicability of the rule or order.

(1) **Form and content of petition.** All such petitions shall be in writing and filed with the Administrative Law Clerk. The petition shall include the information and follow the format of OAC 252:002 Appendix B, Petition for Declaratory Ruling. After the petition is filed, the DEQ shall provide a copy to the Board at its next available meeting.

(2) **Determination.** Petitions for declaratory rulings shall be determined by the DEQ. Rulings shall state the findings and conclusions upon which they are based. If the DEQ refuses to make a ruling, then the petition shall be deemed to have been denied. If the DEQ commences an individual proceeding on the petition, it shall offer an opportunity for a hearing to the petitioner. After the DEQ issues a ruling or the Executive Director issues a final order, the DEQ shall provide a copy of the ruling or final order to the Board at its next available meeting.

(3) **Mailing.** The DEQ shall mail a copy of the ruling or final order to the petitioner.

SUBCHAPTER 9. INDIVIDUAL PROCEEDINGS IN GENERAL

252:002-9-1. Purpose and applicability

(a) **Purpose and applicability.** The purpose of this Subchapter is to establish general procedures for individual proceed-

ings conducted by the DEQ for purposes of enforcement and administrative permit proceedings as specified by Subchapter 13 of this Chapter.

(b) **Applicable law.** The APA, the Code and this Chapter govern individual proceedings, including administrative hearings, undertaken by the DEQ.

252:002-9-2. Enforcement petitions

(a) **Persons entitled.** Individual proceedings may be initiated by DEQ program areas by filing a petition or an administrative compliance or penalty order with the Administrative Law Clerk.

(b) **Petition content.** Each petition shall name the Respondent(s) and shall contain a reference to the statutes and rules involved, and a brief statement of the facts giving a right to relief and of the relief requested. The petition shall be signed by the person presenting the same, or his attorney (see APA § 310), and shall include the signer's address and phone number.

(c) **Petition style.** The style of documents in a matter shall appear in substantially the following form:

BEFORE THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN RE: [Nature of proceeding)
and name of Respondent)
e.g. Request for _____])
) No. [Year & Case #]
[name of program area or person],)
Petitioner.)

[Nature of Request]

252:002-9-3. Declaratory ruling petitions

For information on declaratory ruling petitions, see Subchapter 7 of this Chapter.

252:002-9-4. Administrative permit hearing petitions

For information on administrative permit hearing petitions, see Subchapter 13 of this Chapter.

252:002-9-5. Matters filed by DEQ

A petition or administrative compliance or penalty order filed by a DEQ program area shall include notice of the opportunity to request an administrative hearing and shall be served on the named Respondents.

252:002-9-6. Administrative hearings

(a) **Request.** A hearing request shall be in writing and shall be filed with the Administrative Law Clerk as part of or in response to a filed Petition.

(b) **Scheduling.** The DEQ shall schedule an administrative hearing after receipt of a proper and timely request.

(c) **Notice.** When the DEQ schedules an administrative hearing, the Administrative Law Clerk shall notify the parties of the date, time and place of the hearing. Such notice shall satisfy the notice requirements of the APA and shall be made

at least fifteen (15) days prior to the hearing unless otherwise provided by law or agreed by the parties.

(d) **Procedure.** The Administrative Law Judge may refer to District Court Rules and Procedure in the absence of applicable APA and DEQ statutes and rules, including this Chapter. Subject to the limitations in OAC 252:002-9-7(d), the Administrative Law Judge, with the consent of all parties, may vary the procedures of this Chapter.

252:002-9-7. Administrative Law Judges and Clerks

(a) **Administrative Law Judge.** The Executive Director may designate an Administrative Law Judge for any administrative hearing properly and timely requested of the DEQ, unless precluded by law. Administrative Law Judges shall be familiar with the rules of procedure and generally familiar with the substantive rules governing the matter, and shall not have had prior involvement in the matter other than as an Administrative Law Judge. The Administrative Law Judge so designated shall have full authority to conduct all aspects of the hearing proceedings except for the issuance of a Final Order.

(b) **Administrative Law Clerk.** The Executive Director may designate an Administrative Law Clerk to maintain the administrative hearing dockets and records, and perform such other duties as described in this Chapter or incidental thereto.

(c) **References to Administrative Law Judge.** The Executive Director or designee may perform functions described in this Section for Administrative Law Judges.

(d) **Authority.** Administrative Law Judges have complete authority to conduct administrative hearing proceedings and may take any action not inconsistent with the provisions of the rules of this Chapter or of the APA for the maintenance of order at hearings and for the expeditious, fair, and impartial conduct of the proceedings. Administrative Law Judges may, without limitation:

- (1) arrange and issue notice of the date, time and place of hearings and conferences;
- (2) establish the methods and procedures to be used in the presentation of the evidence;
- (3) hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;
- (4) administer oaths and affirmations;
- (5) regulate the course of the hearing and govern the conduct of participants;
- (6) examine witnesses;
- (7) rule on, admit, exclude and limit evidence, at or before hearings;
- (8) establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for such purposes;
- (9) rule on motions and pending matters;
- (10) divide the hearing into stages or join claims of parties whenever the number of parties is large or the issues are numerous and complex; and
- (11) restrict attendance by persons not parties to the hearing in appropriate cases.

(e) **Technical assistance.** At the request of the Administrative Law Judge, the Executive Director may designate a

DEQ representative, who has had no assigned responsibilities related to the matter at issue, to serve as technical adviser to the Administrative Law Judge.

252:002-9-8. Service

(a) **Methods of service.** Service of a petition and initial notice of hearing shall be by personal delivery served by a person licensed to make service of process in civil cases, or by certified mail with delivery shown by return receipt, or by publication if it is shown that service cannot be made by any other means despite the exercise of due diligence. Where the DEQ is serving a petition or notice, personal service may be made by a person designated by the Executive Director to make such service for the DEQ. Service by certified mail shall be effective on the date of receipt or, if refused, on the date of refusal by the Respondent. Acceptance or refusal by any officer of a business or an authorized agent for a business shall constitute acceptance or refusal by the party addressed.

(b) **Proof of service.** The person making service shall file proof of service thereof with the Administrative Law Clerk promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service does not affect the validity of service. The Administrative Law Judge may refer to the Oklahoma Pleading Code for guidance regarding service.

(1) **Acknowledgment.** Acknowledgment in writing by the recipient, or appearance by the recipient at a hearing without objecting to service, is equivalent to proof of service.

(2) **Actions on a license.** Service by mail in a matter seeking to revoke or suspend any license may be deemed complete when there is an affirmation that the notice was mailed by certified mail to the licensee's last known address, and that he or she may not be found otherwise, despite the exercise of due diligence. The Administrative Law Judge shall inquire into and determine whether due diligence has been exercised.

(c) **Service by mail.** Except for service of the petition and initial notice, service by mail is complete upon mailing, and may be shown by the postmark.

(d) **Service on representative.** Service made upon an attorney of record constitutes service upon the party the attorney represents. Service made upon a person authorized by Oklahoma law to receive service on behalf of a party constitutes service upon that party.

252:002-9-9. Responsive pleading

A Respondent may file, and the Administrative Law Judge may direct a Respondent to file, a responsive pleading to the enforcement petition or order that initiated the action.

252:002-9-10. Prehearing conferences

(a) **General.** The Administrative Law Judge may schedule and conduct prehearing conferences as necessary to identify parties and issues and to set schedules and agendas for hearing-related activities. The Administrative Law Clerk shall notify the parties of the scheduling of a prehearing conference. The Administrative Law Judge may authorize a prehearing conference by telephone. On request, prehearing conferences shall be on the record.

(b) **Subjects.** Prehearing conferences may address:

- (1) identification and simplification of issues, including the elimination of frivolous claims or defenses;
- (2) amendments to the pleadings;
- (3) the plan and schedule of discovery and limitations to be placed thereon;
- (4) identification of admissions of fact to avoid unnecessary proof and cumulative evidence;
- (5) the identification of witnesses and substance of testimony, exhibits, and documents;
- (6) the use of prehearing briefs and prefiled testimony in the form of sworn affidavits;
- (7) settlement of all or some of the issues before the hearing;
- (8) adoption of special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, novel or difficult legal questions, or evidence problems;
- (9) scheduling pursuant to OAC 252:002-9-11; and
- (10) such other matters as may aid disposition.

252:002-9-11. Prehearing scheduling conference

(a) **Purpose.** A prehearing scheduling conference may be held for the scheduling of matters to be accomplished. Such conference shall be designed to expedite the disposition of the action and discourage wasteful prehearing activities, establish early and continuing control of the management of the hearing, and set dates for prehearing activities.

(b) **Scheduling.** The Administrative Law Judge may enter an interim order which establishes, insofar as feasible, the time:

- (1) to amend the pleadings;
- (2) to file and hear motions;
- (3) to complete discovery;
- (4) of further prehearing conferences; and
- (5) for accomplishing any other matters appropriate in the circumstances of the case.

(c) **Changes in scheduling order.** The Administrative Law Judge may change dates and time periods set in the scheduling order by issuing a modifying order upon good cause shown.

252:002-9-12. Discovery

All parties shall act in good faith in the scheduling and conduct of discovery. Failure of a party to provide reasonable opportunity for the opposing party to depose any witness shall be grounds to exclude the testimony of that witness at the hearing. Discovery shall be conducted in accordance with the Oklahoma Discovery Code unless otherwise ordered by the Administrative Law Judge for good cause.

252:002-9-13. Prehearing Order

(a) **Purpose and form.** Following a prehearing conference, the Administrative Law Judge may issue a Prehearing Order which recites and schedules the action to be taken and which shall control the course of the action unless modified by a subsequent order to prevent manifest injustice.

(b) **Content.** The Prehearing Order should include the results of the conference and advice to the Administrative Law Judge regarding the factual and legal issues, including summaries of material evidence, to be presented. The Prehearing Order

should also present all questions of law in the case. All exhibits shall be marked, listed and identified in the Prehearing Order. If there is objection to the admission of any exhibits, the grounds for the objection must be specifically stated. Witnesses shall also be listed along with the nature of their testimony. No exhibit or witness may be added to the Prehearing Order once the Order has been prepared, signed, and filed by the Administrative Law Judge without a showing to the Administrative Law Judge by the requesting party that injustice would be created if the evidence or testimony were not allowed.

(c) **Applicability.** The contents of the Prehearing Order shall supersede the pleadings and govern the hearing of the case unless amended or allowed by the Administrative Law Judge to prevent injustice.

252:002-9-14. Subpoenas

(a) **Issuance.** Subpoenas for the attendance of witnesses, the furnishing of information required by the Administrative Law Judge and the production of evidence shall be issued by the Administrative Law Clerk upon written request by a party or on the Administrative Law Judge's own motion. Subpoenas shall be served and a return made in the same manner as provided for state court proceedings.

(b) **Failure to obey.** The Executive Director may seek an appropriate judicial order to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing, or who refuse to answer a proper question during a hearing. The hearing may proceed despite any such refusal but the Administrative Law Judge may, in his discretion at any time, continue the proceedings as necessary to secure a court ruling.

252:002-9-15. Record

(a) **To be made.** A record of the hearing shall be made, which shall be a tape recording unless otherwise agreed by the parties and the Administrative Law Judge. The recording will not be transcribed as a matter of course. A transcript may be obtained by submitting a written request to the Administrative Law Clerk and tendering payment in an amount sufficient to pay the cost of having the recording transcribed.

(b) **Court reporter.** A party may request a court reporter (CSR or LSR). The requesting party shall pay the costs, and the original transcript shall be filed in the case file as part of the record in the case. Each person or party requesting copies shall make arrangements for such with the reporter, and pay the costs.

(c) **Maintained.** The record of a proceeding and the file containing the notices and the pleadings will be maintained in a location designated by the Office of Administrative Hearings. All pleadings, motions, orders and other papers submitted for filing in such a proceeding shall be date/file-stamped by the Administrative Law Clerk upon receipt. The burden of showing substantial prejudice by any failure to correctly file-stamp any submittal shall be upon the party asserting such.

(d) **Designation on appeal.** On appeal, the parties may designate and counter-designate portions of the record to save costs, following the procedures applicable in the Courts of Oklahoma.

252:002-9-16. Motions

(a) **Filing.** All requests for action in a matter already before the DEQ shall be made in the form of a motion or cross petition, signed by the party presenting same or his attorney, and filed with the Administrative Law Clerk. A cross petition shall be served in the manner provided in Rule 252:002-9-8. A copy of any motion shall be mailed by the movant to all parties of record concurrently with the filing of the motion, and a certification of such mailing shall appear on the motion.

(b) **Response.** Within ten (10) days after service of any written motion, any party to the proceedings may file a response to the motion. The time for response may be extended or shortened by the Administrative Law Judge for good cause shown.

252:002-9-17. Continuances

A motion for an extension or continuance shall state the reasons for the request and specify the length of time requested. Unless made before the Administrative Law Judge in open hearing, motions for extensions of time or for a continuance of the hearing to another date or time shall be in writing and filed with the Administrative Law Clerk. The Administrative Law Judge shall promptly grant or deny such request at his or her discretion. If the motion is denied, it may be renewed orally by the party at the hearing.

252:002-9-18. Evidentiary hearing procedures

(a) **Generally that of civil proceedings.** The order of procedure in hearings in all individual proceedings shall generally follow that which applies in District Court civil proceedings. At the discretion of the Administrative Law Judge, any party may reopen his case-in-chief, even after the adverse party has rested, consonant with the requirements of justice. Parties may stipulate to any lawful matter.

(b) **Further presentation.** After presentation of all cases-in-chief, parties to the action shall be confined to rebutting evidence unless the Administrative Law Judge, for good reasons in furtherance of justice, permits them to offer evidence in the original case.

(c) **Rulings.** The Administrative Law Judge shall rule on the admissibility of evidence and objections to evidence, and on motions or objections raised during hearings, except for motions for summary judgments. All objections to a ruling shall be made promptly with statement of basis or they will be deemed waived. Parties shall be deemed to have taken exception to any adverse ruling on an objection.

(d) **Summary judgment.** The granting of a motion for summary judgment shall be subject to the provisions of 252:002-9-21 (Proposed order) and 252:002-9-22 (Final order).

252:002-9-19. Default

Any Respondent who fails to appear as directed, after receipt of notice as provided by this Chapter, may be determined to have waived the right to appear and present a defense to the allegations contained in the notice and/or petition. A Final Order in such proceeding may be issued by the Executive Director granting by default no more than the relief prayed for in the petition.

252:002-9-20. Settlement

Administrative hearings may be resolved by agreed settlement or consent order with the concurrence of the Executive Director. The Administrative Law Judge may grant continuances to allow the parties to discuss settlement.

252:002-9-21. Proposed orders

(a) **Preparation of proposed orders.** The Administrative Law Judge shall hear all evidence and arguments applicable in a case and shall prepare a proposed order including findings of facts and conclusions of law. Prior to such preparation, the Administrative Law Judge may request or require briefs from the parties on any relevant issue. The Administrative Law Judge shall also have the discretion to request or accept from the parties, proposed findings and conclusions.

(b) **Service and presentation.** Upon finalization of a proposed order, the Administrative Law Judge shall:

(1) present the proposed order and the record of the matter to the Executive Director for review and entry of a final order; or

(2) serve it on the parties, by regular mail, offering an opportunity for parties to file exceptions to the proposed order before a final order is entered, pursuant to APA § 311; and then shall present the proposed order, the exceptions, if any, and the record of the matter to the Executive Director for entry of a final order. The parties may by written stipulation waive any of the requirements for a proposed order.

252:002-9-22. Final orders

(a) **Executive Director.** For proceedings heard by an Administrative Law Judge, the Executive Director may adopt, amend, or reject any findings or conclusions of the Administrative Law Judge or exceptions of any party, or may remand the proceeding for additional argument or the introduction of additional evidence at a hearing held for that purpose. This may be done after:

(1) the opportunity for exceptions has lapsed without receiving exceptions, or after exceptions, briefs and oral arguments, if any, are made; or

(2) review of the record.

(b) **Issuance.** At the conclusion of the proceedings and [except as provided in Rule 252:002-9-19, Default] after review of the record and/or proposed findings of fact and conclusions of law, the Executive Director shall issue a final order reflecting the findings of fact made, the conclusions of law reached, and specifying the action to be taken. Upon the resolution of motions of summary judgment that are dispositive of the entire case and rulings on standing that are adverse to a Petitioner(s), the Executive Director shall issue a final order.

(c) **Notice.** Parties shall be notified either personally or by mail of the issuance of a final order. A copy of the final order shall be provided to any party and its attorney.

252:002-9-23. Reconsideration

Any party may petition the DEQ for rehearing, reopening or reconsideration of any decision in an individual proceeding within ten days of its entry, pursuant to APA § 317. Nothing

in this Chapter shall prevent reconsideration of a matter in accordance with other statutory provisions.

252:002-9-24. Judicial review

The provisions of Section 318 of title 75 of the Oklahoma Statutes shall apply.

SUBCHAPTER 11. ADMINISTRATIVE PENALTY PROCEEDINGS

252:002-11-1. Applicability

The requirements of this Subchapter are in addition to the preceding requirements of this Chapter and are applicable to matters brought under 27A O.S.Supp. 1993, Sections 2-3-502, 2-5-110, and 2-7-126, or any similar statutes providing for the assessment by the DEQ of administrative penalties.

252:002-11-2. Notice of Violation ("NOV")

Unless otherwise provided by the particular enabling legislation, administrative penalty proceedings shall be preceded by a written notice of violation (NOV) informing the Respondent of the regulatory requirement at issue. This NOV must be served upon the Respondent and must state the factual allegations and particular standards or rules upon which the NOV is based. A letter, inspection sheet, petition, consent order or final order may constitute a NOV for purposes of instituting administrative penalty proceedings, if it meets the requirements of this Section.

252:002-11-3. Administrative compliance and penalty orders

(a) **When issued.** The Executive Director upon the request of a DEQ program area may issue an administrative order requiring compliance, assessing penalties for past violations and specifying penalties for continuing noncompliance. If a preceding Notice of Violation is required by the enabling legislation, an administrative compliance or penalty order shall be issued not less than fifteen days after service of the NOV upon the Respondent, or such reduced period as may be necessary to render the Order reasonably effectual.

(b) **Must specify.** An administrative compliance or penalty order shall specify the facts and conclusions upon which it is based and shall set a time for the Respondent to comply with the applicable regulations. The Order shall specify the penalty, not to exceed the statutory maximum per day of non-compliance, to be assessed in the event that the Respondent fails to comply with the Order within the prescribed time, and, if applicable, the penalty assessed for past violations of the Code, rules, or licenses or permits.

(c) **Service.** An administrative compliance or penalty order shall be served in accordance with Rule 252:002-9-8. The Order shall advise the Respondent that it shall become final unless an administrative hearing is requested in writing within fifteen (15) days of service of the Order.

(d) **Order following hearing.** Based on the hearing and record, an administrative compliance or penalty order will be sustained, modified, or dismissed by the Executive Director. If the hearing process extends beyond any compliance deadline specified in the Order, fines specified in the Order for

violations of the Order will continue to accrue during the hearing process unless the Administrative Law Judge stays the penalty upon request for good cause shown.

252:002-11-4. Determining penalty

In addition to factors specified by 27A O.S.Supp. 1993, Section 2-3-502(K)(2) or other law, the following factors, without limitation, may be considered in determining the amount of penalty specified in an administrative penalty order:

- (1) the gravity of the violation, including the likelihood of the development of adverse health effects caused by the violation, and the extent and severity of environmental degradation or adverse health effects caused or placed at risk by the violation,
- (2) the degree of variance from the applicable standards,
- (3) costs of correction of damage, and
- (4) good or bad faith of the Respondent.

252:002-11-5. Assessment orders

(a) **Failure to comply with administrative orders.** After an administrative compliance or penalty order is issued, proceedings may be conducted to determine whether the Respondent has failed to comply with the Order for any period of time.

(b) **Application for compliance and penalty hearing.** Any time the DEQ believes the Order has been violated, it may with reasonable promptness apply to the Administrative Law Judge for a compliance and penalty hearing, alleging the period of noncompliance and the amount of the administrative penalty that has accrued. The DEQ shall provide a copy of the application to the Respondent.

(c) **Elements to consider.** The Executive Director, in deciding whether an administrative penalty or compliance order has been violated and whether the penalties are appropriate, may consider efforts to comply with applicable requirements made by the Respondent after issuance of the Order.

(d) **Must request hearing within seven days.** The DEQ's application shall advise the Respondent that the Respondent's right to contest the determination of noncompliance and the amount of the fine is waived if the request for hearing is not made within seven (7) calendar days of receiving notice. A request for hearing is deemed made when received by the DEQ. If timely requested, the hearing must be promptly set and held.

(e) **Issuance of assessment orders.** An assessment order shall be issued by the Executive Director following the determination of the application. An assessment order must state the nature and period of the violation, and determine the amount of the fine. The fine is due and payable immediately upon issuance of the assessment order, unless otherwise provided therein. A copy of the assessment order will be provided to the Respondent.

(f) **Continuing violations.** If the DEQ believes that violations of the administrative compliance or penalty order continue after the issuance of an assessment order, the DEQ may apply within a reasonable time for the issuance of additional assessment orders covering periods of violation since the period covered by the issuance of a previous assessment order.

252:002-11-6. Penalty-only proceedings

(a) **General.** In accordance with 27A O.S.Supp. 1993, Section 2-3-502(L), the DEQ may, within three (3) years of discovery, issue an administrative penalty order proposing specified administrative penalties for non-continuing violations of the Code, rules promulgated thereunder, or permits or licenses issued pursuant thereto.

(b) **Must specify.** The administrative penalty order shall specify the facts and conclusions upon which it is based.

(c) **Determining Penalty.** For information on determining penalty, see 252:002-11-4.

(d) **Service.** The administrative penalty order shall be served in accordance with Rule 252:002-9-8. The Order shall advise the Respondent that it shall become final unless a hearing is requested in writing within fifteen (15) days of service of the Order.

(e) **Hearing.** Based on the hearing and the record, an administrative penalty order will be sustained, modified, or dismissed by the Executive Director.

SUBCHAPTER 13. FORMAL PUBLIC MEETINGS AND ADMINISTRATIVE PERMIT PROCEEDINGS

PART 1. FORMAL PUBLIC MEETINGS

252:002-13-1. Formal public meetings

(a) **Location.** The DEQ shall determine the location and the facility at which a formal public meeting on a permit application and/or draft permit shall be held.

(b) **Procedure.** The designated presiding officer of a formal public meeting shall establish the procedure by which such meeting shall be conducted based on the requirements of the Code and applicable program-specific rules.

PART 3. ADMINISTRATIVE PERMIT PROCEEDINGS

252:002-13-30. Scope; purpose of proceedings

(a) **Applicability.** In addition to the requirements of Subchapter 9 of this Chapter, the requirements of this Part shall apply to administrative hearings on draft permits.

(b) **Purpose.** The purpose of an administrative permit proceeding is to provide for an evidentiary proceeding for challenges to draft permits and to determine their compliance with the Code and rules promulgated thereunder.

252:002-13-31. Definitions

The following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Administrative permit hearing" means an evidentiary hearing conducted by the DEQ as part of an administrative permit proceeding.

"Administrative permit proceeding" means all prehearing conferences, evidentiary hearings and other proceedings connected with an individual proceeding on a draft permit.

"Joining of parties" means the grouping of parties to an administrative permit proceeding who assert rights to relief in respect of or arising out of the same draft permit.

"Lead Counsel" means the attorney acting as coordinating counsel for all petitioners or, if only one petitioner, that party's legal representative.

"Petitioner(s)" means a person or group who requests an administrative permit hearing and is determined by the Administrative Law Judge to have standing as a party to the action.

"Respondent" means an applicant whose formally filed permit application and the draft permit related thereto are the subject of an administrative permit proceeding.

252:002-13-32. Request for administrative permit hearing

(a) **Request.** A request for an administrative permit hearing must be in writing signed by the requester, requesters or authorized representative of a group of requesters and shall contain a brief statement of the basis of the request and the name and address of each requester. If the request is made by or on behalf of a group, the request should contain a list of names and addresses of group members. A request shall be considered an initial petition and should be personally delivered or sent to the address described in the notice telling of such request opportunity or to the DEQ's Office of Administrative Hearings.

(b) **Initiation of proceedings.** Unless otherwise provided by law, the initiation of administrative permit proceedings shall not occur until a draft permit has been prepared by the DEQ and amended, as appropriate, based on comments received during the public comment period.

(c) **Joinder of DEQ.** The DEQ, through the permit drafting program, shall be a party to the permit proceeding upon its own petition, or may be joined as a party upon order of the Administrative Law Judge. If the DEQ is not a party to the proceedings, the Administrative Law Judge may call witnesses, hear testimony and receive evidence from the permit drafting program. Such witnesses shall be subject to cross-examination by the parties.

(d) **Location for Administrative Permit Hearings.** Proceedings related to administrative permit hearings shall be held at the principal office of the DEQ unless otherwise specified by the Administrative Law Judge.

252:002-13-33. Relationship to other rules

In addition to the provisions of this Part, the requirements and procedures set forth in Subchapter 9 of this Chapter (OAC 252:002) for individual proceedings shall apply to administrative permit proceedings and hearings unless specified otherwise or in conflict. In cases of conflict, specific provisions of this Part control over Subchapter 9. The provisions include:

- (1) OAC 252:002-9-7 (Administrative Law Judges and Clerks);
- (2) OAC 252:002-9-8 (Service);
- (3) OAC 252:002-9-10 (Prehearing conferences);
- (4) OAC 252:002-9-11 (Prehearing scheduling conference);
- (5) OAC 252:002-9-12 (Discovery);
- (6) OAC 252:002-9-13 (Prehearing Order);
- (7) OAC 252:002-9-14 (Subpoenas);
- (8) OAC 252:002-9-16 (Motions);

- (9) OAC 252:002-9-17 (Continuances);
- (10) OAC 252:002-9-18 (Evidentiary hearing procedures);
- (11) OAC 252:002-9-19 (Default);
- (12) OAC 252:002-9-20 (Settlement);
- (13) OAC 252:002-9-21 (Proposed orders);
- (14) OAC 252:002-9-22 (Final orders); and
- (15) OAC 252:002-9-23 (Reconsideration).

252:002-13-34. [RESERVED]

252:002-13-35. Prehearing verification conference

(a) **Notice.** According to 75:309(b), the Administrative Law Judge shall give notice to requesters and Respondents of a prehearing verification conference on a request for an administrative permit hearing.

(b) **Purpose.** The prehearing verification conference shall be attended by all requesters and Respondents and/or their representatives for the purpose of examining notice and identifying parties and their representatives.

(c) **Verification of notice.** The Administrative Law Judge shall examine evidence and receive testimony on whether notice of the opportunity to request an administrative permit hearing was given in accordance with applicable law.

(d) **Verification of request.** The Administrative Law Judge shall verify whether each requester made a timely and proper request for the hearing.

(e) **Verification of standing.** The Administrative Law Judge shall verify the standing of all requesters to be parties pursuant to requirements set by applicable law.

(f) **Cure of deficiencies.** The Administrative Law Judge may allow deficiencies in notice or proof of standing to be cured.

(g) **Identification of representatives.** When verification is complete, each party shall identify its counsel. All counsel and individuals appearing pro se (representing themselves) shall enter a written entry of appearance with the Administrative Law Judge. In addition, each party shall designate one individual to receive notice and to take primary responsibility for the filing of documents with the Administrative Law Clerk.

(h) **Groups.** Members of a formally organized group may request to be considered as one party to the hearing and shall be considered a single entity if they meet applicable standing requirements for such a group or if ten (10) members meet the applicable standing requirements for individuals. A group qualified to be a single party must be represented by Counsel during administrative permit proceedings.

252:002-13-36. Selection of Lead Counsel

When more than one Petitioner is verified as a party and their representation is by more than one Counsel, the Petitioners shall select one Lead Counsel to coordinate action and communications on behalf of all Petitioners and their attorneys. The selection of a Lead Counsel shall not prohibit other attorneys for petitioners, or unrepresented Petitioners, from dividing responsibilities such as direct and cross examination, discovery, and opening/closing arguments. Designation as Lead Counsel shall not be deemed to establish an attorney-client relationship not otherwise existing. For good cause, the Administrative Law Judge may allow substitution of Lead Counsel and authorize additional Lead

Counsel when conflicts of interest appear.

252:002-13-37. Identification of issues

- (a) **Integrated petition.** The Lead Counsel, on behalf of all joined Petitioners, shall file an integrated petition in the office of Administrative Hearings within twenty (20) days after the completion of the prehearing verification conference. The integrated petition shall name the person against whom relief is requested, contain a reference to the statutes and/or rules involved, contain a brief statement of the facts giving a right to relief, and state clearly and concisely the action or relief sought and the ground therefor. The integrated petition shall be in the form set forth in Rule 252:002-9-2(c). Relief in the alternative may be pleaded. The petition shall also contain a preliminary listing of topics which the Petitioner(s) intends to put at issue in the hearing. Upon filing an integrated petition with the DEQ, Lead Counsel shall serve the Respondent with a copy of the petition and shall mail copies to, or make personal delivery to, all Petitioner(s) or their representatives.
- (b) **Answer.** The Respondent shall file an answer to the integrated petition within twenty (20) days after service of the petition upon him. An answer may contain specific responses or a general denial and shall be served by the Respondent on all other parties to the action.
- (c) **Cross petition.** The Respondent may file a cross petition and the named parties shall have the right to file answers within 20 days of service.
- (d) **Amendment of petition and answer.** The parties have the right to amend petitions and answers upon a showing of good cause and with leave of the Administrative Hearing Judge.

252:002-13-38. Administrative record

- (a) **Content.** In addition to the provisions of Subchapter 9 of this Chapter, the administrative permit hearing record shall include:
- (1) the permit application on file with the DEQ, as amended;
 - (2) all written comments received during the public comment period;
 - (3) the tape or transcript of the formal public meeting;
 - (4) documents resulting from the DEQ's review of the permit application and public comments;
 - (5) the draft permit, fact sheet and the response to comments, if any, issued by the DEQ; and
 - (6) all published notices.
- (b) **Admission into evidence.** The documents referenced in (a) of this Section may be admitted and received in evidence. The Administrative Law Judge may direct that a witness be provided to sponsor a portion or portions of these documents. The Administrative Law Judge may direct the appropriate party to produce the witness for cross-examination. If a sponsoring witness cannot be provided, the Administrative Law Judge may reduce the weight accorded the appropriate portion of the record.

252:002-13-39. Withdrawal and dismissal

- (a) **Withdrawal.** Any Petitioner may formally withdraw from the proceedings at any time by filing a statement of withdrawal with the Administrative Law Clerk.
- (b) **Dismissal and release.**

(1) **By motion of Petitioner(s).** At any time during the proceedings, Petitioner(s) may request dismissal of the action by filing a motion with the Hearing Clerk that is signed by all Petitioner(s) or their representative(s). Such dismissal shall be with prejudice unless the words "without prejudice" appear in the Order of Dismissal issued by the Administrative Law Judge.

(2) **By motion of Respondent.** An action shall be dismissed by the Administrative Law Judge upon withdrawal of the permit application by the Respondent. Any such dismissal shall be with prejudice as to that permit application and the draft permit related thereto.

(3) **By Administrative Law Judge.** An action may be dismissed by the Administrative Law Judge if all Petitioners fail to appear or to prosecute with diligence, or when Petitioner(s) are in disobedience to an Interim Order issued by the Administrative Law Judge. Any Petitioner may be dismissed from an ongoing action for failure to appear or prosecute with diligence or for disobedience to an Interim Order, only upon motion by a party to the action. Such dismissals shall not occur until a Petitioner subject to the Dismissal Order receives notice of the prospective dismissal and is given the opportunity to be heard concerning it. The Administrative Law Judge may release any party from the action upon proper motion at any time.

252:002-13-40. Evidentiary hearing procedures on draft permits

- (a) **Order of procedure.** For information on order of procedure, see OAC 252:002-9-18.
- (b) **Burden of proof.** The Respondent has the burden of proof as to issues raised by Petitioner(s).

(1) **Petitioner(s).** Petitioner(s) shall have the burden of going forward to present an affirmative case on the issues identified in the petition.

(2) **Respondent.** After the conclusion of the case of the Petitioner(s), the Respondent shall have the burden of presenting an affirmative case on all issues raised by the Petitioner(s).

(c) **Testimony and cross-examination.** The Administrative Law Judge may provide for the testimony of opposing witnesses to be heard consecutively. No cross-examination shall be allowed on questions of law, on matters that are not subject to challenge in an administrative hearing, or on questions of DEQ policy except to the extent such policy must be analyzed to disclose the basis for draft permit requirements. Issues between the parties that are relevant to the hearing but not raised at the hearing shall be dismissed as between the parties and may be so reflected in the final findings of fact and conclusions of law.

252:002-13-41. Orders

- (a) **Proposed and Final Orders.** For information on Proposed and Final Orders, see OAC 252:002-9-21 and 252:002-9-22.
- (b) **Final Orders.** Final Orders issuing from an administrative permit hearing shall be based on the applicable provisions of statutes and rules, and may be conditioned in accordance with findings and recommendations of the Administrative Law Judge.

252:002-13-42. Issuance or denial of permit

The applicant bears the burden of persuading the agency that the permit should issue. Title 75 O.S. 1991, § 307 is the appropriate mechanism to address any alleged failure by the DEQ to conform the issuance or denial of the permit to the requirements of a Final Order.

**SUBCHAPTER 15. ENVIRONMENTAL PERMIT
PROCESSING TIMES**

252:002-15-1. Purpose and applicability

(a) **Purpose.** The rules in this Subchapter establish time periods for issuance or denial of environmental permits and licenses that are required by law.

(b) **Permits included.** The provisions of this Subchapter apply to permits reviewed by the following Programs and their successors:

- (1) the Air Quality Division;
- (2) the Hazardous Waste Management Program;
- (3) the Solid Waste Management Program; and
- (4) the Water Quality Division.

(c) **Supersedes inconsistent rules.** Except as otherwise provided by statute, the provisions of this Subchapter shall supersede any inconsistent provision of other Chapters of this Title.

252:002-15-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"**Administratively complete**" means an application that contains the information specified in the application form and rules in sufficient detail to allow the DEQ to begin technical review.

"**Application**" means a document prepared in accordance with the rules and the forms and instructions provided by the respective Program and submitted with the expectation of providing that information necessary for review and determination of the permit. The application consists of the initial submittal and all supplements.

"**Program**" means the services or divisions of the DEQ that are specified in Section 252:002-15-1.

"**Submittal**" means each separately submitted document or document package that forms a part of an application.

"**Supplement**" means a response to a request for additional information following completeness and technical reviews, and information submitted voluntarily by the applicant.

252:002-15-3. Common permitting procedures and timelines

(a) **Filing of applications.** Unless otherwise provided in this Subchapter, upon the receipt of an application for filing and the proper fee, each Program shall:

- (1) file-stamp the application with the date of receipt, the Service name and an identification number;
- (2) assign the application to a named person who will do the review; and
- (3) timely log this information.

(b) **Administrative completeness review.** Unless otherwise provided in this Subchapter, the reviewer shall have 60 calendar days from the logged date of filing in which to initially determine if the application is administratively complete.

(1) **Not complete.** Upon determining that the application is not administratively complete, the reviewer shall immediately notify the applicant by mail, describing with reasonable specificity the inadequacies and measures necessary to complete the application. This notice shall not require or preclude further review of the application and further requests for specific information. If the reviewer does not notify the applicant of such inadequacies, the period for technical review shall begin at the close of the administrative completeness review period.

(2) **Complete.** Upon a determination that the application is administratively complete, the reviewer shall log the date and immediately notify the applicant by mail. The period for technical review begins.

(c) **Technical review.** Each Program involved shall have a certain time period to review each application for technical compliance with the relevant regulations and reach a final determination.

(d) **When times are tolled.** The time period for review is tolled (the clock stops) during litigation, during periods of public review and participation [includes public meetings and administrative permit hearings (and waiting periods therefor), public comment periods, time required for DEQ preparation of responses to public comments received, and review by other federal or State agencies], or when the Program has asked for supplemental information and advised the applicant that the time period is tolled pending receipt, or during the time in which an applicant amends his application of his own accord.

(e) **Supplemental time.** To compensate for time spent in reviewing inadequate materials, the DEQ's notice of deficiencies and request for supplemental information may specify that up to 30 additional calendar days may be added to the application processing time. This may also include the number of days the DEQ spent in preparing the notice and request. Requests for supplemental information and data may also specify that additional days for technical review equal to the number of days the applicant used to prepare and submit such supplement may be added to the application review time.

(f) **Withdrawal.** Unless specified otherwise in a program's rules, failure by an applicant to supplement an application within 180 days after the request shall be deemed to be a withdrawal unless the time is extended by agreement for good cause.

(g) **Extensions.** Extensions to the timelines of this Subchapter may be made as provided by law.

252:002-15-4. Pending failures

(a) **Circumstances outside agency control.** Technical review times shall be tolled for specified times when, prior to the deadline, the Executive Director certifies that a failure to meet a deadline is imminent and is caused by circumstances outside the control of the DEQ. Such circumstances include, but are not limited to, acts of God, a substantial and unexpected increase in the number of applications filed, and

additional review duties imposed on the DEQ from an outside source.

(b) **Other circumstances.** Where circumstances that are not clearly outside the control of the DEQ may cause a failure to meet a deadline, then:

- (1) at least thirty (30) calendar days prior to the deadline the DEQ shall reassign staff and/or retain outside consultants to meet such deadline.
- (2) the Applicant may agree to an extension of time for a specific purpose and period of time with refund of the entire application fee, unless a refund is prohibited by law.

252:002-15-5. Air quality permit timelines

The following air quality permits and authorizations shall be technically reviewed and issued or denied within the time frames specified below.

- (1) Construction permits:
 - (A) PSD - 540 days.
 - (B) Major Sources - 365 days.
 - (C) Minor - 180 days.
- (2) Operating permits for new construction or modifications - 730 days.
- (3) Relocation permits - 30 days.

252:002-15-6. Hazardous waste permit timelines

The following hazardous waste permits and authorizations shall be technically reviewed and issued or denied within the timeframes specified below.

- (1) Hazardous waste permits:
 - (A) New RCRA Operations permit or the renewal thereof - 300 days.
 - (B) New State Recycling permit - 300 days.
 - (C) New State Construction permit - 300 days.
 - (D) Class 3 permit modifications - 300 days.
 - (E) Underground Injection Control permit - 300 days.
- (2) Class 1 and Class 2 permit modifications - 300 days.
- (3) Closure plans, post-closure plans and transfer station plans and plan modifications - 300 days.

252:002-15-7. Solid waste permit timelines

Times for issuance or denial of applications for all solid waste permits shall be in accordance with applicable chapters of Solid Waste Regulations, OAC 252:500 et seq., or, if not specified therein, the technical review period for solid waste permit applications and for each submittal and resubmittal related thereto shall be 90 days, subject to OAC 252:002-15-3.

252:002-15-8. Water quality permit timelines

(a) Applications for Water Quality permits, certifications and authorizations shall be technically reviewed and permits shall be issued or denied within the following timeframes:

- (1) Dairy Waste - 180 days
- (2) Discharges - 180 days
- (3) 401 Certifications - 180 days
- (4) Industrial Wastewater other than discharge - 180 days
- (5) Pretreatment Trust Users - 180 days
- (6) Public Water Supply - 90 days

- (7) Septage and Septic Tank Cleaners - 120 days
- (8) Underground Injection Control (nonhazardous) - 420 days

- (9) Water Pollution Control Construction - 90 days

(b) Preliminary and secondary applications associated with the State Revolving Fund shall be reviewed and, if acceptable, transmitted to the Oklahoma Water Resources Board for approval. If the DEQ can not concur in the preliminary or secondary loan applications, it will notify the applicant in writing. Transmittal of application to the Oklahoma Water Resources Board or a written notice of non-approval shall occur within 90 days after receipt of the application.

252:002-15-9. Other permits

Any environmental license or permit that is not described in this Subchapter shall not be subject to these time frames but shall be reviewed with all due and reasonable speed.

SUBCHAPTER 17. COMPLAINT PROCESSING

252:002-17-1. Purpose

The rules in this Subchapter identify the procedures to process pollution complaints.

252:002-17-2. Definitions

The following words or terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Complaint" means any written or oral information submitted to ECLS alleging site-specific environmental pollution. Information must be submitted by persons expecting a response, and does not include referrals from federal agencies, information gained from facility inspections or DEQ employees, or self-reported incidents.

"ECLS" means the Environmental Complaints and Local Services Division of the DEQ.

"Enforcement Action" means:

- (A) any administrative compliance or penalty order;
- (B) any administrative petition to revoke or suspend a permit or license;
- (C) a consent order or proposed consent order in lieu of any enforcement action defined in subparagraph (A) or (B), of this definition; or
- (D) A civil petition, or a criminal information or complaint in municipal or district court.

"Mediation" means a voluntary negotiating process in which parties to a dispute agree to use a mediator to assist them in jointly exploring and settling their differences, with a goal of resolving their differences by a formal agreement created by the parties.

"Resolution" means the determination by the DEQ, based on analysis and investigation of a complaint, that there has not been a violation of Oklahoma environmental statutes or rules as alleged by a complaint, that the violation has been corrected, or that an Enforcement Action has been filed and the 14-day complainant comment period has been considered.

"Response" means the initiation of appropriate action, including but not limited to investigation or referral of a

complaint, and informing complainants regarding potential actions that may occur based on a complaint.

252:002-17-3. Receipt of complaints

- (a) **Toll free hot line.** The DEQ shall provide a toll-free hot line to receive environmental complaints.
- (b) **General mail or other DEQ phone numbers.** Complaints may be received by mail or by any of the DEQ's phone numbers during regular office hours.
- (c) **DEQ offices.** Complaints may be made in person at any of the DEQ's offices during regular office hours.

252:002-17-4. Investigation of complaints

After receipt of a complaint, ECLS may assign an investigator to the complaint. The investigator or other DEQ personnel may obtain any information which may tend to prove there has or has not been a violation of Oklahoma environmental statutes or rules, who the potentially responsible persons are, and any other information which may be needed to resolve the complaint.

252:002-17-5. Notification

- (a) **Potential actions.** Within two (2) working days of receipt of a complaint, the ECLS shall notify the complainant of the potential actions which may occur to resolve the complaint.
- (b) **Written notification.**
 - (1) Within seven (7) working days of the receipt of a complaint, the ECLS shall notify the complainant, in writing, of the determination of the course of action to be taken by the DEQ.
 - (2) Within seven (7) working days of the resolution of the complaint, the ECLS shall notify the complainant of the resolution. If complainants notify the DEQ they are dissatisfied with the resolution reached by the DEQ, complainants shall be notified in writing of their options, including but not limited to referral on written request to an outside source trained in mediation.
- (c) **Enforcement.** If as a result of a complaint the DEQ undertakes an Enforcement Action, the ECLS shall notify by mail the person whose complaint caused the Enforcement Action to be initiated of an opportunity to provide, within fourteen (14) calendar days after the date of the mailing of the notice, written information pertinent to the complaint.

252:002-17-6. Referral of complaints

- (a) **To appropriate agency.** If the DEQ receives a complaint which clearly falls within the jurisdiction of another state environmental agency, the complaint shall be referred to the appropriate agency within one working day of the date of determination of jurisdiction. Complaints referred to other agencies shall require no further action by the DEQ and will not be referred by the DEQ to mediation.
- (b) **To mediation.** Complainants who are not satisfied with the DEQ's resolution of their complaint may ask the ECLS in writing to refer their complaints to an outside source trained in mediation. Participation in the mediation process shall not hinder or interfere with any enforcement action taken by the DEQ. The ECLS shall maintain a roster of certified mediators which shall be available to the public. Complainants and persons named in the complaint shall be advised that

participation in the mediation process conducted by the outside source is completely voluntary and confidential and that fulfillment of any agreements reached in mediation shall be the responsibility of the parties of the dispute. The DEQ shall not be responsible for any mediation costs.

APPENDIX A. PETITION FOR RULEMAKING
BEFORE THE ENVIRONMENTAL QUALITY BOARD

IN THE MATTER OF _____) Matter No.
)
)
RULE OAC 252: _____) Date filed:

- Subject area:
- | | |
|--|---|
| <input type="checkbox"/> Air Quality | <input type="checkbox"/> Solid Waste |
| <input type="checkbox"/> Hazardous Waste | <input type="checkbox"/> Water Quality |
| <input type="checkbox"/> Laboratory | <input type="checkbox"/> Operator Certification |
| <input type="checkbox"/> Radiation | <input type="checkbox"/> Other |

Petition will be referred by the Department to its appropriate program and to any appropriate Council.

1. Nature of request:
- Adoption of new rule(s)
 - Amendment of existing rule(s)
 - Repeal of existing rule(s)

Identified as Rule Number(s): _____ (OAC number if known)

2. Attach a brief statement of the issues raised by the rule(s) which cause such a request to be made, a statement of your personal interest in the ruling, and how the proposed rulemaking would affect those interests and would affect others.
3. If this request has been discussed with the Department of Environmental Quality, please indicate the name of the Division and employee consulted; otherwise, state "n/a."

4. If a Council has considered this matter, please indicate the name of the Council and the date(s) the matter was considered; otherwise, state "n/a."

5. Attachment(s): suggested language further explanation

_____ by: _____
Name of Business or group (print name) (title)

or Name of Individual (print): _____

Signature: _____

Address: _____

Phone: _____

APPENDIX B. PETITION FOR DECLARATORY RULING
BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF) Matter No.
)
)

RULE OAC 252: _____) Date filed:
(or Case No. _____)

- Subject area:
- | | |
|--|---|
| <input type="checkbox"/> Air Quality | <input type="checkbox"/> Solid Waste |
| <input type="checkbox"/> Hazardous Waste | <input type="checkbox"/> Water Quality |
| <input type="checkbox"/> Laboratory | <input type="checkbox"/> Operator Certification |
| <input type="checkbox"/> Radiation | <input type="checkbox"/> Other |

Petition will be referred by the Department to its appropriate program.

1. Rule Number(s): _____ (OAC number if known)
2. Attach a brief statement of the issues raised by the rule(s) which cause such a request to be made and a statement of your personal interest in the ruling.
3. If this request has been discussed with the Department of Environmental Quality, please indicate the name of the Division and employee consulted; otherwise, state "n/a."

4. Attachment(s): List of Exhibits
 Further explanation

_____ by: _____
Name of Business or group (print name) (title)

or Name of Individual (print): _____

Signature: _____

Address: _____

Phone: _____