

US EPA ARCHIVE DOCUMENT

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

PART 1. OKLAHOMA HAZARDOUS WASTE MANAGEMENT ACT

§ 2-7-101. Short Title

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

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

Hazardous waste shall be subject to the provisions of the "Oklahoma Hazardous Waste Management Act" and shall not be subject to the provisions of the "Oklahoma Solid Waste Management Act".

§ 2-7-103. Definitions

As used in the Oklahoma Hazardous Waste Management Act:

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. 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.

§ 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. 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.

§ 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 postclosure, 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 Act 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.

§ 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.

§ 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 Act 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;

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.

§ 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 persons 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.

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.

§ 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, 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 a 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. 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, 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 Environmental 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 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.

§ 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;

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.

§ 2-7-111. Prohibited disposal - Hazardous waste facility for on-site or off-site treatment, 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 Section 2-7-113, 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 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 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 storage or treatment 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 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.

§ 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.

§ 2-7-113. Permit issuance - Public Notice - Administrative hearing and procedures

[Repeal of this section effective July 1, 1996.]

A. The Department 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. Upon submission of an application for a new permit or for the major modification of an existing hazardous waste permit which involves a fifty percent (50%) or more increase in permitted capacity for storage, treatment or disposal, including incineration, which shall be a public record, the applicant shall notify affected property owners.

B. In addition to the notice required by subsection A of this section, and prior to issuing a new hazardous waste permit or the major modification of an existing hazardous waste permit, the Department shall require the applicant to give notice, by newspapers and radio stations local to the hazardous waste facility proposed for a permit, of a forty-five-day opportunity to submit written comment, or request a formal public meeting, or both, on the granting of the permit. If within forty-five (45) days after such notice, the Department receives from any person residing or doing business in Oklahoma, written request for such public meeting, it shall hold the same and allow opportunity for presentation of written and oral views. Whenever possible, the Department shall hold such public meeting at a location convenient to the population center nearest the proposed site, and prior to any related administrative permit hearing conducted pursuant to subsection C of this section. When a public meeting is scheduled, the forty-five day comment period shall automatically be extended to the close of the meeting.

C. 1. The notice required by subsection B of this section shall also offer an opportunity during the public comment period for persons to request in writing an administrative permit hearing to participate in as a party as follows:

- a. For an application for a construction permit which was filed with the Department prior to July 1, 1994, any of the affected.

property owners or qualified interest groups may request an administrative permit hearing.

- b. For an application filed with the Department on or after July 1, 1994, for a new permit or for the major modification of an existing permit which involves a fifty percent (50%) or more increase in permitted capacity for storage, treatment or disposal (including incineration), such opportunity shall be available to any person or qualified interest group who raises one or more issues about the draft permit during the comment period or formal public meeting, and who claims to hold a demonstrable environmental interest and who alleges the construction or operation of the proposed facility or activity would directly and adversely affect such interest.
- c. An applicant who raises one or more issues during the public comment period or formal public meeting may also request a hearing.

2. When an administrative hearing request is pending before the Department, the Department shall complete its review of the application, consider comments received, and either deny the application or prepare a response to comments and a proposed permit for hearing requesters to review.

3. All requests for a hearing on a proposed permit shall be combined in a single hearing. The hearing shall be a quasi-judicial proceeding, and shall be conducted by an Administrative Law Judge in accordance with the Administrative Procedures Act, the Code and rules promulgated by the Board.

4. The applicant shall be a party to the hearing.

5. The Department shall schedule a prehearing conference within sixty (60) days after it mails the proposed permit and response to comments to hearing requesters for review and confirmation of their requests. The Department shall move expeditiously to an evidentiary proceeding in which parties shall have the right to present evidence before the Department on whether the proposed permit and the technical data, models and analyses, and information in the application upon which the proposed permit is based are in substantial compliance with applicable provisions of the Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

6. Failure of any party to participate in the administrative proceeding with good faith and diligence may result in a default judgment with regard to that party;

provided, however, that no final permit shall be issued solely on the basis of any such judgment.

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

E. A major modification of a 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.

F. 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. Any person aggrieved by such permit may seek judicial review.

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

[Effective July 1, 1996]

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 and 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. Any person aggrieved by such permit may seek judicial review.

§ 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.

§ 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 subsection 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.

§ 2-7-116. Permits - Application - Liability insurance - Bond - Financial responsibility - Operation of facility - Insolvency - 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 Act and the Environmental Quality Code..

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 Hazardous Waste Management Act. If the applicant is not financially able to operate and maintain a hazardous waste facility, as required by the 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 Code 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 1980 or other applicable law.

§ 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, 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 by the industries located 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.

§ 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, the Oklahoma Environmental Permitting Act, 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.

§ 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, 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 Act 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.

§ 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.

§ 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 Act 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, storage 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 recycling of hazardous waste shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year.
- 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 Act 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.

§ 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).

§ 2-7-123. Permit issuance - Notice

Upon issuance of any permit issued pursuant to the requirements of the Hazardous Waste Management Act, 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.

§ 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.

§ 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 off-site 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.

§ 2-7-126. Orders

In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act, 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.
- 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.

§ 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, 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, 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.

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

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

§ 2-7-129. Violations - Civil penalties

In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act, 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. 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 violations occurs.

§ 2-7-130. Violations - Criminal penalties

Except as otherwise provided by the Oklahoma Hazardous Waste Management Act 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.

§ 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 Act or rules promulgated thereunder occurs shall initiate and prosecute any civil or criminal proceeding provided by the Oklahoma Hazardous Waste Management Act.

§ 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.

§ 2-7-133. Intervention

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

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 with 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;
3. Interest resulting from the deposit of such monies; and
4. Any other sums designated for deposit to the fund from any source, public or private.

D. Any trust established pursuant to the provisions of this section shall be governed by the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes.

E. 1. Such Trust shall be governed by a Board of Trustees of not less than six nor more than ten members. Each county within the Trust area shall be represented equally on the Board of Trustees.

2. Each Trustee shall be appointed by a majority vote of the county commissioners of the county that the Trustee represents. A Trustee may be removed prior to the expiration of the term of office by a majority vote of the county commissioners of the county that the Trustee represents. In the event there are two or more Trustees from each county, the initial appointments shall be made so that the terms are staggered. After the initial appointment, each Trustee shall serve a term of two (2) years and may be reappointed.

3. The Trustees shall receive no compensation for service on the Board of Trustees, but may be reimbursed for actual and necessary expenses incurred in the

performance of their duties as trustees in accordance with the State Travel Reimbursement Act.

4. Any action of the Board of Trustees must be approved by a two-thirds vote of the total authorized membership of the Board.

5. The Trustees shall have authority to exercise such powers as are necessary to perform the duties and functions imposed by the provisions of this section.

F. The Board of Trustees shall meet not less than twice each calendar year. At the first meeting in a new calendar year the members shall elect a chairman, a vice-chairman, a secretary, and a treasurer.

Part 3. Hazardous Waste Fund Act

§ 2-7-301. Short Title

This part shall be known and may be cited as the "Hazardous Waste Fund Act".

§ 2-7-302. Purpose of act

The purposes of the Hazardous Waste Fund Act are to:

1. Protect public health and safety, and the natural resources of the State of Oklahoma;
2. Provide for response to environmental emergencies and incidents; and
3. Establish a fund administered by the Department which will be available to monitor hazardous waste management facilities and to respond and assist municipalities and counties in responding to any emergency situation involving hazardous waste.

§ 2-7-303. Definitions

As used in the Hazardous Waste Fund Act and in addition to the definitions used in the Oklahoma Hazardous Waste Management Act:

1. "Discharge" means any releasing, spilling, leaking, leaching, seeping, pouring, draining, emptying, dumping, expelling or any other emitting of hazardous waste into the environment beyond the confines of a licensed disposal site; and

2. "Incident" means any occurrence or series of occurrences which result in the discharge of hazardous waste which create an injury to any person or property.

§ 2-7-304. Creation of fund - Status - Expenditures - Purpose - Control and management - Use - Emergencies

A. There is hereby created in the State Treasury a special fund for the Department to be designated as the "Hazardous Waste Fund". This fund shall consist of monies transferred to it from funds appropriated to the Department for this purpose and from other sources as provided by law. The fund shall be a continuing fund not subject to fiscal year limitations. Expenditures from the Hazardous Waste Fund shall be made upon warrants issued by the State Treasurer against claims submitted to the Director of State Finance for approval and payment. The fund shall be for the purpose of protecting public health and safety as prescribed in the Hazardous Waste Management Act and for providing basic emergency response training and protective equipment and for response or remediation activities authorized in subsection F of Section 2-7-121 of this title. The Department is authorized, upon the request of a municipality of county, to assist such municipality or county in the development of emergency response plans. The fund shall be under the control and management of the administrative authority of the Department. Pursuant to the provisions of the Hazardous Waste Fund Act, the Department is authorized to determine the manner in which such fund is to be used. The Department of Public Safety and the Department of Civil Emergency Management are authorized and directed to assist and cooperate with the Department in the performance of its duties under the Hazardous Waste Fund Act.

B. Hazardous waste fees paid into the Department of Environmental Quality Revolving Fund pursuant to the Hazardous Waste Management Act may be transferred to the Hazardous Waste Fund.

§ 2-7-305. Assistance to political subdivisions

To further benefit the citizens of the State of Oklahoma, the Department may, if funds are available from the fund, render financial assistance, by form of a matching grant not to exceed Fifty Thousand Dollars (\$50,000.00), to any municipality or county of the state, which has prepared an emergency response plan which has been approved by the Department, for the purpose of providing basic emergency response training and protective equipment to be used by such municipality or county in responding to incidents involving hazardous waste. Such financial assistance shall be available only to those applicants which have a significant potential for initiating emergency response to an incident involving hazardous waste. The Department shall give priority to municipalities or counties of the state in which off-site facilities are located.

§ 2-7-306. Rules

The Board shall promulgate rules to implement and administer the Hazardous Waste Fund Act.

§ 2-7-307. Report of use and disposition of funds

The Department shall annually submit a written report on the use and disposition of the fund to the Oklahoma State Legislature.