

US EPA ARCHIVE DOCUMENT

CHAPTER 2. PROCEDURES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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SUBCHAPTER 1. GENERAL PROVISIONS

Section

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252:2-1-1. 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.

252:2-1-2. 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 O.S. § 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.

252:2-1-3. 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

Section

- 252:2-3-1. Office location and hours; communications
- 252:2-3-2. Availability of records
- 252:2-3-3. Administrative fees [RESERVED]
- 252:2-3-4. Fee credits

252:2-3-1. 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.

252:2-3-2. 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.

252:2-3-3. Administrative fees [RESERVED]

252:2-3-4. Fee credits

The Executive Director may authorize Divisions of the DEQ which have programs that collect recurring fees to apply a credit towards certain future invoices for those fees. The credit must be applied only within the program from which the carryover fees are derived. Only the amount that is projected to exceed three months of funding beyond the upcoming budget year for that program can be credited. A summary of any credit applied shall be reported to the Environmental Quality Board. For a credit to be applied:

- (1) There must be a projected balance in the fee account

carried over from the previous year;

(2) The credit must be distributable pro rata among the fee payers;

(3) The credit must be large enough to justify its administrative cost;

(4) The Division is unaware of a longer-range need, such as match for a superfund clean-up project; and

(5) The Department can explain on the invoices that a carryover exists and that an identified one-time credit is being applied.

SUBCHAPTER 5. RULEMAKING

Section

- 252:2-5-1. Petitions for rulemaking
- 252:2-5-2. Rule development
- 252:2-5-3. Notice of permanent rulemaking
- 252:2-5-4. Rulemaking comment periods & hearings before the DEQ
- 252:2-5-5. Hearings before the Board or a Council
- 252:2-5-6. Preparation of rulemaking record

252:2-5-1. 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 252:2 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.

252:2-5-2. 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.

252:2-5-3. 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.

252:2-5-4. 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.

252:2-5-5. 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.

252:2-5-6. Preparation of rulemaking record

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

SUBCHAPTER 7. DECLARATORY RULINGS

Section

252:2-7-1. Declaratory rulings

252:2-7-1. 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 252:2 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

Section

- 252:2-9-1. Purpose and applicability
- 252:2-9-2. Enforcement petitions
- 252:2-9-3. Declaratory ruling petitions
- 252:2-9-4. Administrative permit hearing petitions
- 252:2-9-5. Matters filed by DEQ
- 252:2-9-6. Administrative hearings
- 252:2-9-7. Administrative Law Judges and Clerks
- 252:2-9-8. Service
- 252:2-9-9. Responsive pleading
- 252:2-9-10. Prehearing conferences
- 252:2-9-11. Prehearing scheduling conference
- 252:2-9-12. Discovery
- 252:2-9-13. Prehearing Order
- 252:2-9-14. Subpoenas
- 252:2-9-15. Record
- 252:2-9-16. Motions
- 252:2-9-17. Continuances
- 252:2-9-18. Evidentiary hearing procedures
- 252:2-9-19. Default
- 252:2-9-20. Settlement
- 252:2-9-21. Proposed orders
- 252:2-9-22. Final orders
- 252:2-9-23. Reconsideration
- 252:2-9-24. Judicial review

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

(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:

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

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

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

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.

(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 252:2-9-7(d), the Administrative Law Judge, with the consent of all parties, may vary the procedures of this Chapter.

252:2-9-7. 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.

252:2-9-8. 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.

252:2-9-9. 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.

252:2-9-10. 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 252:2-9-11; and
- (10) such other matters as may aid disposition.

252:2-9-11. 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.

252:2-9-12. 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.

252:2-9-13. 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.

252:2-9-14. 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.

252:2-9-15. 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.

252:2-9-16. 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 252:2-9-8. 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.

252:2-9-17. 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.

252:2-9-18. 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 252:2-9-21 (Proposed

order) and 252:2-9-22 (Final order).

252:2-9-19. 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.

252:2-9-20. 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.

252:2-9-21. 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.

252:2-9-22. 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 252:2-9-19, 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.

252:2-9-23. 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.

252:2-9-24. Judicial review

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

SUBCHAPTER 11. ADMINISTRATIVE PENALTY PROCEEDINGS

Section

- 252:2-11-1. Applicability
- 252:2-11-2. Notice of Violation ("NOV")
- 252:2-11-3. Administrative compliance and penalty orders
- 252:2-11-4. Determining penalty
- 252:2-11-5. Assessment orders
- 252:2-11-6. Penalty-only proceedings
- 252:2-11-7. Considerations for self-reporting of noncompliance

252:2-11-1. 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.

252:2-11-2. 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.

252:2-11-3. 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 noncompliance, 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 252:2-9-8. 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.

252:2-11-4. 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.

252:2-11-5. 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.

252:2-11-6. 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 252:2-11-4.

(d) **Service.** The administrative penalty order shall be served in accordance with Rule 252:2-9-8. 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.

252:2-11-7. Considerations for self-reporting of noncompliance

(a) **Purpose.** The DEQ monitors the environmental compliance of regulated entities through activities such as periodic inspections and record reviews, but the regulated entities have a superior vantage point and generally greater resources to monitor their own performance. The public interest in environmental protection is served by positive incentives to promote, achieve and maintain compliance as well as by the negative incentive of a unilateral agency enforcement action with an associated penalty. The DEQ should encourage voluntary disclosure and prompt remedial action. The DEQ believes it is conducive to improved environmental compliance to mitigate an administrative and civil penalty which would otherwise be appropriate, in those cases where a regulated entity has disclosed an apparent violation, has taken prompt and appropriate action to correct the violation and its consequences, and has taken affirmative action to prevent its recurrence.

(b) **Conditions for not seeking administrative and civil penalties.** Except in the case of habitual noncompliance or as otherwise provided in this section, in evaluating enforcement action for a regulated entity's actual or apparent failure to comply with DEQ rules, the DEQ will not seek an administrative or civil penalty when the following circumstances are present:

- (1) The regulated entity voluntarily, promptly and fully discloses the apparent failure to comply with applicable state environmental statutes or rules to the appropriate DEQ regulatory program in writing before the program learns of it or is likely to learn of it imminently;
- (2) The failure is not deliberate or intentional;
- (3) The failure does not indicate a lack or reasonable question of the basic good faith attempt to understand and comply with applicable state environmental statutes or rules through environmental management systems appropriate to the size and nature of the activities of the regulated entity;
- (4) The regulated entity, upon discovery, took or began to take immediate and reasonable action to correct the failure (i.e., to cease any continuing or repeated violation);
- (5) The regulated entity has taken, or has agreed in writing with the appropriate program to take, remedial action as may be necessary to prevent recurrence of such failure. Any action the regulated entity agrees to take must be completed;
- (6) The regulated entity has addressed, or has agreed in writing with the appropriate program to address, any environmental impacts of the failure in an acceptable manner;
- (7) The regulated entity has not realized and will not realize

a demonstrable and significant economic or competitive advantage as a result of non-compliance; and

(8) The regulated entity cooperates with the DEQ as the DEQ performs its duties and provides such information as the DEQ reasonably requests to confirm the entity's compliance with these conditions.

(c) **Partial qualification.** Notwithstanding the failure of a regulated entity to meet all of the conditions in subsection b, the DEQ will consider the nature and extent of such actions of the regulated entity in mitigation of any administrative or civil penalty otherwise appropriate. If the regulated entity meets all conditions in subsection b except item 7 relating to significant economic or competitive advantage, the DEQ will seek an administrative or civil penalty only to the extent of the economic or competitive advantage gained.

(d) **Relationship to federal/state agreements.** In the event of any conflict, the elimination or mitigation of penalties pursuant to subsections b and c is subject to agreements between the DEQ and the United States Environmental Protection Agency relating to regulatory program delegation or authorization from the United States Environmental Protection Agency to the DEQ.

(e) **Applicability.** This section applies to all enforcement cases arising from violations discovered by or brought to the attention of the DEQ after the effective date of this section.

SUBCHAPTER 13. FORMAL PUBLIC MEETINGS AND
ADMINISTRATIVE PERMIT PROCEEDINGS

PART 1. FORMAL PUBLIC MEETINGS

Section

252:2-13-1. Formal public meetings [REVOKED]

PART 3. ADMINISTRATIVE PERMIT PROCEEDINGS

252:2-13-30. Scope; purpose of proceedings
252:2-13-31. Definitions
252:2-13-32. Request for administrative permit hearing
252:2-13-33. Relationship to other rules
252:2-13-34. [RESERVED]
252:2-13-35. Prehearing verification conference
252:2-13-36. Selection of Lead Counsel
252:2-13-37. Identification of issues
252:2-13-38. Administrative record
252:2-13-39. Withdrawal and dismissal
252:2-13-40. Evidentiary hearing procedures on draft permits
252:2-13-41. Orders
252:2-13-42. Issuance or denial of permit

PART 1. FORMAL PUBLIC MEETINGS

252:2-13-1. Formal public meetings [REVOKED]

PART 3. ADMINISTRATIVE PERMIT PROCEEDINGS

252:2-13-30. 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.

252:2-13-31. 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.

252:2-13-32. 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.

252:2-13-33. 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 252:2) 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 252:2-9-7 (Administrative Law Judges and Clerks);
- (2) OAC 252:2-9-8 (Service);
- (3) OAC 252:2-9-10 (Prehearing conferences);
- (4) OAC 252:2-9-11 (Prehearing scheduling conference);
- (5) OAC 252:2-9-12 (Discovery);
- (6) OAC 252:2-9-13 (Prehearing Order);
- (7) OAC 252:2-9-14 (Subpoenas);
- (8) OAC 252:2-9-16 (Motions);
- (9) OAC 252:2-9-17 (Continuances);
- (10) OAC 252:2-9-18 (Evidentiary hearing procedures);
- (11) OAC 252:2-9-19 (Default);
- (12) OAC 252:2-9-20 (Settlement);
- (13) OAC 252:2-9-21 (Proposed orders);
- (14) OAC 252:2-9-22 (Final orders); and
- (15) OAC 252:2-9-23 (Reconsideration).

252:2-13-34. [RESERVED]

252:2-13-35. 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.

252:2-13-36. 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.

252:2-13-37. 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 252:2-9-2(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.

252:2-13-38. 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.

252:2-13-39. 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.

252:2-13-40. Evidentiary hearing procedures on draft permits

(a) **Order of procedure.** For information on order of procedure, see OAC 252:2-9-18.

(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.

252:2-13-41. Orders

(a) **Proposed and Final Orders.** For information on Proposed and Final Orders, see OAC 252:2-9-21 and 252:2-9-22.

(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.

252:2-13-42. 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

PART 1. UNIFORM PERMITTING PROGRAM IN GENERAL

Section

- 252:2-15-1. Purpose and applicability
- 252:2-15-2. Definitions
- 252:2-15-3. Common permitting procedures and timelines
- 252:2-15-4. Pending failures
- 252:2-15-5. Air quality permit timelines
- 252:2-15-6. Hazardous waste permit timelines
- 252:2-15-7. Solid waste permit timelines
- 252:2-15-8. Water quality permit timelines
- 252:2-15-9. Other permits

PART 3. TIER I, II AND III PROCESS REQUIREMENTS

- 252:2-15-26. Tier processes described
- 252:2-15-27. Unclassified applications
- 252:2-15-28. Permit decision-making authority
- 252:2-15-29. Published notices
- 252:2-15-30. Tier I process requirements
- 252:2-15-31. Tier II process requirements
- 252:2-15-32. Tier III process requirements

PART 5. TIER CLASSIFICATIONS

- 252:2-15-40. Air quality applications - Tier I
- 252:2-15-41. Air quality applications - Tier II
- 252:2-15-42. Air quality applications - Tier III
- 252:2-15-43. Hazardous waste management applications - Tier I
- 252:2-15-44. Hazardous waste management applications - Tier II
- 252:2-15-45. Hazardous waste management applications - Tier III
- 252:2-15-46. Laboratory certification applications - Tier I
- 252:2-15-47. Laboratory certification applications - Tier II
- 252:2-15-48. Laboratory certification applications - Tier III
- 252:2-15-49. Operator certification applications - Tier I
- 252:2-15-50. Operator certification applications - Tier II
- 252:2-15-51. Operator certification applications - Tier III
- 252:2-15-52. Radiation management applications - Tier I
- 252:2-15-53. Radiation management applications - Tier II
- 252:2-15-54. Radiation management applications - Tier III
- 252:2-15-55. Solid waste management applications - Tier I
- 252:2-15-56. Solid waste management applications - Tier II
- 252:2-15-57. Solid waste management applications - Tier III
- 252:2-15-58. UIC applications-Tier I
- 252:2-15-59. UIC applications - Tier II
- 252:2-15-60. UIC applications - Tier III
- 252:2-15-61. Water quality applications - Tier I
- 252:2-15-62. Water quality applications - Tier II
- 252:2-15-63. Water quality applications - Tier III
- 252:2-15-64. Brownfields applications - Tier I
- 252:2-15-65. Brownfields applications - Tier II
- 252:2-15-66. Brownfields applications - Tier III

PART 7. REVIEW PROCEDURES AND PERMITTING TIME LINES

- 252:2-15-70. Common review procedures and time lines
- 252:2-15-71. Pending failures
- 252:2-15-72. Air quality permit time lines
- 252:2-15-73. Hazardous waste permit time lines
- 252:2-15-74. Solid waste permit time lines
- 252:2-15-75. Water quality permit time lines
- 252:2-15-76. Other permits
- 252:2-15-76.1. Brownfields time lines
- 252:2-15-77. Pre-issuance permit review and correction

PART 9. CONSOLIDATED PERMITTING

- 252:2-15-90. Consolidation of permitting process

PART 1. UNIFORM PERMITTING PROGRAM IN GENERAL

252:2-15-1. Purpose and applicability

(a) **Purpose.** The rules in this Subchapter implement the Oklahoma Uniform Environmental Permitting Act, 27A O.S.Supp. 1995, § 2-14-101 et seq., and apply to applicants for and holders of DEQ permits and other authorizations.

(b) **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.

(c) **Applicability.**

(1) Applications filed with the DEQ on and after July 1, 1996, are subject to the procedural requirements of 27A O.S.Supp. 1995, § 2-14-101 et seq., this Subchapter and other applicable rules of the Board.

(2) Applications filed before July 1, 1996, are subject to the statutory and regulatory procedural requirements existing at the time of the filing unless the applicant elects to comply with the statutes and rules described in paragraph 1 of this subsection.

252:2-15-2. Definitions

In addition to terms defined in 252:2-1-2, the following words and terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Uniform Environmental Permitting Act, 27A O.S. § 2-15-101 et seq.

"**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**" See 27A O.S.Supp. 1995, § 2-14-103(1).

"**Major facility**", as used in air quality tier classifications, means a source subject to the permitting requirements of 40 CFR Part 70.

"**Minor source**", as used in air quality tier classifications, means a source that is not subject to the permitting requirements of 40 CFR Part 70.

"**Off-site**", as used in hazardous waste, solid waste and UIC tier classifications, means a facility which receives waste from various sources for treatment, storage, processing, or disposal.

"**On-site**", as used in hazardous waste, solid waste and UIC tier classifications, means a facility owned and operated by an industry for the treatment, storage, processing, or disposal of its own waste exclusively.

"**Part**" means a numbered Part of this Subchapter.

"**Program**" means a regulatory section or division of the DEQ.

"**Submittal**" means a document or group of documents provided as 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.

"**UIC**" means underground injection control.

252:2-15-3. Common permitting procedures and timelines [AMENDED AND RENUMBERED TO 252:2-15-70]

252:2-15-4. Pending failures [AMENDED AND RENUMBERED TO 252:2-15-71]

252:2-15-5. Air quality permit timelines [AMENDED AND RENUMBERED TO 252:2-15-72]

252:2-15-6. Hazardous waste permit timelines [AMENDED AND RENUMBERED TO 252:2-15-73]

252:2-15-7. Solid waste permit timelines [AMENDED AND RENUMBERED TO 252:2-15-74]

252:2-15-8. Water quality permit timelines [AMENDED AND RENUMBERED TO 252:2-15-75]

252:2-15-9. Other permits [RENUMBERED TO 252:2-15-76]

PART 3. TIER I, II AND III PROCESS REQUIREMENTS

252:2-15-26. Tier processes described

To implement the three tiered permitting processes of the Act, applications are classified in Part 5 as Tier I, II or III. The steps an applicant must follow for a Tier I, II or III application are shown in Appendix C of this Chapter.

252:2-15-27. Unclassified applications

The tier designation for any type of application not classified in this Subchapter shall be determined according to 27A O.S.Supp. 1995, § 201.

252:2-15-28. Permit decision-making authority

(a) **Designated positions.** The Executive Director may delegate in writing the power and duty to issue, renew, amend, modify and deny permits and take other authorization or registration action. Unless delegated to a Division Director by formal assignment or rule, the authority to act on Tier I applications shall be delegated to positions within each permitting program having technical supervisory responsibilities and, for local actions authorized by law, to environmental specialist positions held by the DEQ's local services representatives. The authority to act on emergency permits or Tier II applications shall be delegated to the Division Director of the applicable permitting division.

(b) **Revision.** The Executive Director may amend any delegation in writing.

252:2-15-29. Published notices

(a) **Notice content.** In addition to content requirements of the Act, all published legal notice(s) shall contain the:

- (1) Name and address of the applicant;
- (2) Name, address and legal description of the site, facility and/or activity;
- (3) Purpose of notice;
- (4) Type of permit or permit action being sought;
- (5) Description of activities to be regulated;
- (6) Locations where the application may be reviewed;

- (7) Names, addresses and telephone numbers of contact persons for the DEQ and for the applicant;
 - (8) Description of public participation opportunities and time period for comment and requests;
 - (9) Any other information required by DEQ rules; and
 - (10) Any information the applicant deems relevant.
- (b) **Proof of publication.** An applicant, within twenty (20) days after the date of publication, shall provide the DEQ with a written affidavit of publication for each notice published. In case of a mistake in a published notice, the DEQ may approve the publication of a legal notice of correction or may require that the entire legal notice be republished.

252:2-15-30. Tier I process requirements

- (a) **Pre-application conference.** Prior to filing an application, an applicant may request a conference with the DEQ.
- (b) **Application filing.**
 - (1) **Copies.** Two (2) copies of a Tier I application shall be filed with the DEQ except when the application form or instructions specifies that only one (1) copy is needed. Applicants for residential systems (OAC 252:640) and small public sewage systems (OAC 252:655-29) permits shall file their two copies with the local DEQ office for the county in which the real property is located.
 - (2) **Fees.** Fees established in DEQ program rules shall be payable at the time of application and are not refundable.
 - (3) **Notice to landowner.** Applicants must demonstrate to the DEQ that they are not seeking a permit for land or for any operation upon land owned by others without their knowledge. Applicants shall certify by affidavit filed with the DEQ that: they own the real property; or they have a current lease or easement which is given to accomplish the permitted purpose; or if they do not own the real property, they have provided legal notice to those who do. The DEQ may rely on the affidavit, and the applicants shall bear the burden of meeting any challenges. Legal notice is governed by Oklahoma law which, for example, authorizes: service by sheriff or private process server; service by certified mail, restricted delivery; or service by publication, if the person cannot be located through due diligence. Notice to the person who signed a lease or to the administrator or executor of a trust or an estate may be sufficient.
 - (4) **Withdrawal.** An applicant may withdraw an application at any time with written notice to the DEQ and forfeiture of fees.
- (c) **Application review.** Unless stated otherwise in new laws or rules, applications are subject to the laws and rules of the DEQ as they exist on the date of filing and afterward as changed, up to the date of issuance or denial. See Part 7 for review procedures and time lines.
- (d) **Issuance or denial.**
 - (1) **Compliance required.** A new, modified or renewed permit or other authorization shall not be issued until the DEQ has determined the application is in substantial compliance with applicable requirements of the Code and rules of the Board.
 - (2) **Conditions for issuance.** The Department may not issue a

new, modified or renewed permit or other authorization if:

(A) The applicant has not paid all monies owed to the DEQ or is not in substantial compliance with the Code, rules of the Board and the terms of any existing DEQ permits and orders. The DEQ may impose special conditions on the applicant to assure compliance and/or a separate schedule which the DEQ considers necessary to achieve required compliance; or

(B) Material facts were misrepresented or omitted from the application and the applicant knew or should have known of such misrepresentation or omission.

(3) **Issuance.** See 252:2-15-28.

252:2-15-31. Tier II process requirements

(a) **Pre-application conference.** "Tier I" requirements apply. See 252:2-15-30.

(b) **Application.** "Tier I" requirements apply. See 252:2-15-30, except the applicant shall file three (3) copies of the application with the DEQ and place one (1) copy for public review in the county in which the site, facility or activity is located.

(c) **Published notice of filing.** See 27A O.S. § 2-14-301 and 252:2-15-29.

(d) **Application review.** "Tier I" requirements apply. See 252:2-15-30.

(e) **Draft permit or draft denial.** See 27A O.S. § 2-14-302.

(f) **Notice of draft permit/denial.** See 27A O.S. § 2-14-302 and 252:2-15-29. For permit modification actions, only those issues relevant to the modification(s) shall be reopened for public review and comment.

(1) **Exception to notice requirement.** Applicants for solid waste transfer station permits shall be exempt from public comment and public meeting requirements if the board of county commissioners of the county of the proposed site, after opportunity for written or oral public comment, has found the application to be within the scope of the county's solid waste management plan. See 27A O.S. Supp. 1995, § 2-10-307.

(2) **Additional notice.** In addition to Section 302 notice:

(A) Applicants for a NPDES, RCRA or UIC permit are subject to applicable additional notice provisions of federal requirements promulgated as rules of the Board.

(B) Applicants for a proposed wastewater discharge or emissions permit which may affect the water quality or air quality of a neighboring state must give written notice to the environmental regulatory agency of that state.

(C) Applicants for a solid waste landfill permit shall provide notice by certified mail, return receipt requested, to owners of mineral interests and to adjacent landowners whose property may be substantially affected by installation of a landfill site. See *DuLaney v. OSDH*, Okl., 868 P.2d 676 (1993).

(g) **Public comment and formal public meeting.** See 27A O.S. § 2-14-302 and 27A O.S. § 2-14-303. The DEQ shall determine the location of any formal public meeting to be held and the designated presiding officer shall establish its procedures.

(h) **Response to comments.** See 27A O.S. § 2-14-304.

(i) **Issuance or denial.** "Tier I" requirements apply. See 252:2-

15-30.

252:2-15-32. Tier III process requirements

- (a) **Pre-application conference.** "Tier I" requirements apply. See 252:2-15-30.
- (b) **Filing, fees and withdrawal.** "Tier II" requirements apply. See 252:2-15-31.
- (c) **Notice of filing and process meeting opportunity.** The applicant shall include a 30-day opportunity to request a process meeting in the published notice of filing. See 27A O.S. § 2-14-301(B) and 252:2-15-29.
- (d) **Process meeting.** See 27A O.S. § 2-14-301(B). The location of and procedures for the process meeting shall be determined by the DEQ.
- (e) **Application review.** "Tier I" requirements apply. See 252:2-15-30.
- (f) **Draft permit or draft denial.** See 27A O.S. § 2-14-302.
- (g) **Notice of draft permit/denial.** "Tier II" requirements apply. See 252:2-15-31.
- (h) **Public comment period and public meeting.** "Tier II" requirements apply. See 252:2-15-31.
- (i) **Proposed permit and notice.** After the DEQ reviews public comments and prepares a proposed permit by amending the draft permit in response to comments as necessary, the applicant shall publish notice of the proposed permit and of the opportunity to request an administrative permit hearing. See 27A O.S. § 2-14-304 and 252:2-15-29.
- (j) **Administrative permit hearing.** See 27A O.S. § 2-14-304 and, for procedures, Subchapter 13 of this Chapter, except references to "draft permit" in Subchapter 13 shall mean "proposed permit" as used in 27A O.S. § 2-14-103 and 27A O.S. § 2-14-304 (C) and (D).
- (k) **Response to comments.** See 27A O.S. § 2-14-304.
- (l) **Issuance or denial.** "Tier I" requirements apply. See 252:2-15-30.

PART 5. TIER CLASSIFICATIONS

252:2-15-40. Air quality applications - Tier I

The following air quality authorizations require Tier I applications:

- (1) Construction permit for a minor source.
- (2) Operating permit for a minor source.
- (3) Operating permit for a major facility, issued after a construction permit, which does not differ from the construction permit in any manner which would otherwise subject the operating permit application to public review.
- (4) New, modified or renewed authorization under a general permit.
- (5) Modification of a minor source's construction and/or operating permit when the source remains a minor source after the modification.
- (6) Minor modification of a major facility's construction and/or operating permit.
- (7) Acid rain permits.
- (8) Burn approval.

- (9) Relocation permit.
- (10) Temporary permit.
- (11) Plant-wide emission plan approval.
- (12) Administrative amendment of all permits and other authorizations.
- (13) Extension of a minor source's construction permit.
- (14) Extension of a major facility's construction permit with no or minor modification.
- (15) Renewal of an operating permit for a minor source.

252:2-15-41. Air quality applications - Tier II

The following air quality authorizations require Tier II applications.

- (1) Operating permit for a major facility, issued after a construction permit, which differs from the construction permit in a manner which subjects the operating permit application to public review.
- (2) Operating permit for a major facility that does not have a construction permit.
- (3) Significant modification, as defined in OAC 252:100-8-7(e)(2), of a major facility's construction or operating permit.
- (4) New, modified or renewed general permit.
- (5) Time extension of a major facility's construction permit with a modification that would otherwise be subject to public review.
- (6) Renewal of an operating permit for a major facility.
- (7) A construction permit for a new major facility or a major modification to an existing major facility.

252:2-15-42. Air quality applications - Tier III

(a) **New major stationary sources.** A construction permit for any new major stationary source listed in this subsection requires a Tier III application. For purposes of this section, "Major stationary source" means:

- (1) Any of the following sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation:
 - (A) carbon black plants (furnace process),
 - (B) charcoal production plants,
 - (C) chemical process plants,
 - (D) coal cleaning plants (with thermal dryers),
 - (E) coke oven batteries,
 - (F) fossil-fuel boilers (or combustion thereof), totaling more than 250 million BTU per hour heat input,
 - (G) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,
 - (H) fuel conversion plants,
 - (I) glass fiber processing plants,
 - (J) hydrofluoric, sulfuric or nitric acid plants,
 - (K) iron and steel mill plants,
 - (L) kraft pulp mills,
 - (M) lime plants,
 - (N) incinerators, except where used exclusively as air pollution control devices,
 - (O) petroleum refineries,

- (P) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,
- (Q) phosphate rock processing plant,
- (R) portland cement plants,
- (S) primary aluminum ore reduction plants,
- (T) primary copper smelters,
- (U) primary lead smelters,
- (V) primary zinc smelters,
- (W) secondary metal production plants,
- (X) sintering plants,
- (Y) sulfur recovery plants, or
- (Z) taconite ore processing plants, and

(2) Any other source not specified in paragraph (1) of this definition which emits, or has the potential to emit, 250 tons per year or more of any pollutant subject to regulation.

(b) **Existing incinerators.** An application for any change in emissions or potential to emit, or any change in any permit condition, that would have caused an incinerator to be defined as a major stationary source when originally permitted shall require a Tier III application.

(c) **Potential to emit.** For purposes of this section, "potential to emit" means emissions resulting from the application of all enforceable permit limitations as defined in OAC 252:100-1-3.

252:2-15-43. Hazardous waste management applications - Tier I

The following hazardous waste management authorizations require Tier I applications.

- (1) Class 1 modification of any hazardous waste permit requiring prior Department approval as specified in 40 CFR § 270.42.
- (2) Modification to a recycling permit in accordance with 27A O.S. Supp. 1994, § 2-7-118(A).
- (3) Class 2 permit modification as defined in 40 CFR § 270.42.
- (4) Emergency hazardous waste disposal plan approval.
- (5) Hazardous waste generator disposal plan approval.
- (6) Technical plan approval.
- (7) Hazardous waste transporter license.
- (8) Hazardous waste transfer station plan modification which is not related to capacity.
- (9) Emergency permit issued in accordance with 40 CFR § 270.61.
- (10) Interim status closure plan approval in accordance with 40 CFR § 265.113(d)(4).
- (11) Minor administrative modification of all permits and other authorizations.
- (12) Renewal of disposal plan approval and transporter license.
- (13) New, modified or renewed authorization under a general permit.
- (14) Approval of temporary authorizations in accordance with 40 CFR § 270.42.

252:2-15-44. Hazardous waste management applications - Tier II

The following hazardous waste management authorizations require Tier II applications.

- (1) On-site hazardous waste treatment, storage or disposal permit.

- (2) Mobile recycling permit.
- (3) Research & Development permit.
- (4) Class 3 modification of any hazardous waste permit as specified in 40 CFR § 270.42.
- (5) Modification of an on-site hazardous waste facility permit for a fifty percent (50%) or greater increase in permitted capacity for storage, treatment, and/or disposal, including incineration.
- (6) Modification of an on-site hazardous waste facility permit for an expansion of permitted boundaries.
- (7) Modification of on-site hazardous waste facility permit in which the application is for new treatment, storage, or disposal methods or units which are significantly different from those permitted.
- (8) Renewal of a hazardous waste treatment, storage or disposal permit.
- (9) Hazardous waste transfer station plan approval.
- (10) Hazardous waste transfer station plan modification involving increase in approved capacity.
- (11) Variance which is not part of a permit application.
- (12) Variance which is part of a Tier II permit application.

252:2-15-45. Hazardous waste management applications - Tier III

The following hazardous waste management authorizations require Tier III applications.

- (1) Off-site hazardous waste treatment, storage, disposal, incineration and/or recycling permit.
- (2) Modification of an off-site hazardous waste facility permit for a fifty percent (50%) or greater increase in permitted capacity for storage, treatment, and/or disposal, including incineration.
- (3) Modification of an off-site hazardous waste facility permit for an expansion of permitted boundaries.
- (4) Modification of off-site hazardous waste facility permit in which the application is for new treatment, storage, or disposal methods or units which are significantly different from those permitted.
- (5) Variance which is part of a Tier III application.

252:2-15-46. Laboratory certification applications - Tier I

A Tier I application shall be required for a new, modified, amended or renewed laboratory certification.

252:2-15-47. Laboratory certification applications - Tier II

None.

252:2-15-48. Laboratory certification applications - Tier III

None.

252:2-15-49. Operator certification applications - Tier I

The following authorizations require Tier I applications.

- (1) Waterworks operator certification (standard and temporary).
- (2) Wastewater works operator certification (standard and temporary).
- (3) Waterworks laboratory operator certification.

- (4) Wastewater works laboratory operator certification.
- (5) Septic tank installer certification.
- (6) Septic tank cleaner license.
- (7) Landfill operator and/or manager certification.
- (8) Waterworks helper registration.
- (9) Wastewater works helper registration.
- (10) Amendments, modifications and renewals of all authorizations.

252:2-15-50. Operator certification applications - Tier II
None.

252:2-15-51. Operator certification applications - Tier III
None.

252:2-15-52. Radiation management applications - Tier I
The following radiation management authorizations require Tier I applications.

- (1) Industrial X-ray registration and the amendment, modification and/or renewal thereof.
- (2) X-ray fluorescence spectroscopy instrument license and the amendment, modification and/or renewal thereof.

252:2-15-53. Radiation management applications - Tier II
None.

252:2-15-54. Radiation management applications - Tier III
None.

252:2-15-55. Solid waste management applications - Tier I
The following solid waste management authorizations require Tier I applications.

(1) **New permits.**

(A) **Locally approved solid waste transfer stations.** Permit for a solid waste transfer station that, prior to application filing, received county commissioner approval according to 27A O.S.Supp. 1995, § 2-10-307.

(B) **Biomedical waste transfer stations using only sealed containers.** Biomedical waste transfer station permit when activities are limited to:

- (i) consolidation of sealed containers; and/or
- (ii) transfer of sealed containers from one vehicle or mode of transportation to another.

(C) **Disaster relief.** Emergency authorization for waste disposal resulting from a natural disaster.

(2) **Modifications.**

(A) **All facilities.**

(i) Modification of a solid waste permit to add methods, units or appurtenances for liquid bulking processes; yard waste composting; recycling operations; waste screening; or baling, chipping, shredding or grinding equipment or operations.

(ii) Modification to any solid waste permit to make minor changes.

(iii) Modification of plans for closure and/or post-

closure.

(iv) Administrative modification of all permits and other authorizations.

(B) **On-site and off-site land disposal facilities.** Modification of an existing land disposal permit for a lateral expansion within permitted boundaries.

(C) **Capacity increases of less than 25% with exceptions.**

The modification of a solid waste permit, excluding incineration permits, involving a request for less than twenty-five percent (25%) increase in permitted capacity for storage, processing or disposal when the request is for equivalent methods, units or appurtenances as those permitted and which does not involve expansions of permitted boundaries.

(3) **Plans and other authorizations.** The approval of new and when applicable, modified or renewed:

(A) Plans for composting of yard waste only.

(B) Permit transfers.

(C) Non-hazardous industrial solid waste disposal plans.

(D) Technical plans.

(E) County solid waste management plans.

(F) Individual authorizations under a general permit.

(G) All other administrative approvals required by OAC 252:510 or OAC 252:520.

252:2-15-56. Solid waste management applications - Tier II

The following solid waste management authorizations require Tier II applications.

(1) New permits.

(A) **On-site solid waste processing facilities with exception.** Permit for an on-site solid waste processing facility except yard waste composting as listed under Tier I, Rule 252:2-15-55.

(B) **Solid waste transfer stations with exceptions.** Permit for a solid waste transfer station except:

(i) a transfer station permit with county commissioner approval as listed under Tier I, Rule 252:2-15-55, or

(ii) a biomedical waste transfer station permit listed under Tier I, Rule 252:2-15-55.

(C) **On-site incinerators with exceptions.** Permit for an on-site incinerator except those exempt under OAC 252:520 or those that have an approved Air Quality permit or Solid Waste Management Plan.

(D) **On-site land disposal sites.** Permit for an on-site solid waste disposal site.

(E) **Material Recovery Facility (MRF).** Permit for a Material Recovery Facility if waste is not source-separated.

(2) Modifications.

(A) **All facilities.** Modification of a permit for a change in waste type.

(B) **On-site facilities.** Any modification of an on-site solid waste permit, except as listed under Tier I, Rule 252:2-15-55.

(C) **Off-site facilities.**

(i) Modification of any off-site solid waste permit involving a request for more than twenty-five percent (25%) but less than fifty percent (50%) increase in permitted

capacity for storage, processing or disposal (excluding incineration) when the request is for equivalent methods, units or appurtenances as those permitted, except those listed under Tier I, Rule 252:2-15-55.

(ii) Modification of any off-site processing facility involving an expansion of permitted boundaries.

(D) **Incinerators.**

(i) Modification of an on-site incinerator permit for any increase in permitted capacity for storage, processing, or disposal.

(ii) Modification of an off-site incinerator permit involving a request for increases less than fifty percent (50%) in permitted capacity for storage, processing, or disposal when the request is for equivalent methods, units or appurtenances as those permitted.

(3) **General permit.** New, modified or renewed general permit.

252:2-15-57. Solid waste management applications - Tier III

The following solid waste management authorizations require Tier III applications.

(1) **New permits.**

(A) **Off-site processing facilities with exceptions.** Permit for an off-site processing facility, unless otherwise specified in Tier I, Rule 252:2-15-55, or Tier II, Rule 252:2-15-56.

(B) **Off-site land disposal facility.** Permit for an off-site solid waste land disposal site.

(C) **Off-site incinerator.** Permit for an off-site incinerator.

(2) **Modifications.**

(A) **Off-site facilities: significant increase in capacity.** Modification of any off-site solid waste permit involving a fifty percent (50%) or greater increase in permitted capacity for storage, processing, and/or disposal, including incineration.

(B) **Off-site land disposal facility.** Modification of an off-site solid waste land disposal permit for an expansion of permitted boundaries.

(C) **Off-site facilities: different methods, units or appurtenances.** Modification of an off-site solid waste permit in which the request involves different methods, units or appurtenances than those permitted, except those listed under Tier I, Rule 252:2-15-55.

(3) **Variance approvals.** All variances.

252:2-15-58. UIC applications-Tier I

The following underground injection control authorizations require Tier I applications.

(1) Minor modification of a permit for Class I, III, and V wells in accordance with 40 CFR § 144.41.

(2) Modification of an approved closure and/or post-closure plan for a Class I hazardous waste injection well.

(3) Modification of an approved plugging and abandonment plan for Class I nonhazardous and Class III injection wells.

(4) Modification of an approved corrective action plan for a

Class I injection well.

- (5) Emergency permit in accordance with 40 CFR § 144.34.
- (6) New, modified or renewed authorization under a general permit.
- (7) Minor administrative modification of all permits and other authorizations.

252:2-15-59. UIC applications - Tier II

The following underground injection control authorizations require Tier II applications.

- (1) On-site Class I nonhazardous waste injection well permit.
- (2) Class III and V injection well permits except Class V permits issued under Tier III.
- (3) Modification and/or renewal of all DEQ-issued underground injection control well permits.

252:2-15-60. UIC applications - Tier III

The following underground injection control authorizations require Tier III applications.

- (1) Class I hazardous waste injection well permit.
- (2) Off-site Class I nonhazardous waste injection well permit.
- (3) Class V industrial waste injection well permit.

252:2-15-61. Water quality applications - Tier I

The following water quality authorizations require Tier I applications.

- (1) Permit for flow-through impoundment(s) as part of the pretreatment process.
- (2) Re-permitting of facility with an expiring permit for industrial non-discharging impoundment or septic tank system.
- (3) Re-permitting of expiring permit with minor or no change(s) for land application of sludge and/or wastewater for same site.
- (4) New, modified or renewed authorization under a general permit, including but not limited to general permits for stormwater, underground storage tanks and petroleum storage and treatment facilities.
- (5) Approval of new pretreatment program.
- (6) Closure plan approval.
- (7) Dredge and fill certification.
- (8) Approval of exemption for water line extensions.
- (9) Approval of exemption for water distribution and wastewater collection systems.
- (10) Approval for individual residential sewage disposal system.
- (11) Approval of small public sewage system:
 - (A) with less than 5,000 gallons per day which do not discharge, land apply wastewater or sludge, or have lift stations designed to handle a peak capacity greater than 10 gallons per minute; or
 - (B) which serves less than ten (10) residential units.
- (12) Residential development approval.
- (13) Transfer of discharge permit.
- (14) Minor modification of discharge permit.
- (15) Minor modification of permit for land application of sludge and/or wastewater.
- (16) Modification of or addition to a municipal wastewater

treatment system (including sewer line extensions).

(17) Modification of or addition to a public water supply treatment and/or distribution system.

(18) Modification of non-discharging impoundment and/or septic tank system permit.

(19) Modification of an approved pretreatment program.

(20) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.

252:2-15-62. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

(1) Permit for municipal wastewater treatment system.

(2) Permit for public water supply system.

(3) Discharge permit for minor facility.

(4) Individual storm water permit.

(5) Permit for industrial non-discharging impoundment or septic tank.

(6) Permit for land application of sludge and/or wastewater at new site system.

(7) Re-permitting of a facility with expiring discharge permit.

(8) Re-permitting of facility with expiring individual storm water discharge permit.

(9) Re-permitting with major change(s) from expiring permit for land application of sludge and/or wastewater for the same site.

(10) Variance including thermal components of effluent limitations for an individual discharge permit.

(11) Major modification of discharge permit.

(12) Major modification of permit for land application of sludge and/or wastewater.

(13) New, modified or renewed general permit.

252:2-15-63. Water quality applications - Tier III

A new discharge permit for a major facility requires a Tier III application.

252:2-15-64. Brownfields applications - Tier I

A Tier I application shall be required for a Memorandum of Agreement for site characterization.

252:2-15-65. Brownfields applications - Tier II

A Tier II application shall be required for all Certificates.

252:2-15-66. Brownfields applications - Tier III

None.

PART 7. REVIEW PROCEDURES AND PERMITTING TIME LINES

252:2-15-70. Common review procedures and time lines

(a) **Receipt 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 Division and/or Program 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 the Code or this Subchapter, the reviewer shall have 60 calendar days from the logged date of filing in which to determine whether the application is administratively complete.

(1) **Not complete.**

(A) Upon determining that the application is not complete, the reviewer shall immediately notify the applicant by mail, describing with reasonable specificity the inadequacies and measures necessary to complete the application.

(B) This notice shall not require or preclude further review of the application and further requests for specific information.

(C) If the reviewer does not notify the applicant of inadequacies, the period for technical review shall begin at the close of the administrative completeness review period.

(2) **Complete.** When 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), 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. 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) **Failure to respond.** Except for good cause shown, failure by an applicant to supplement an application within 180 days after the mailing date of a notice of deficiencies, or by a date agreed to by the DEQ and the applicant, shall void the application and forfeit the fees. The DEQ shall notify the applicant of an opportunity to show cause why this should not occur. Failure to show cause shall result in an order appealable according to 75 O.S. § 318.

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

252:2-15-71. 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.

252:2-15-72. Air quality permit time lines

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 (Part 70 sources) - 540 days.

(B) Major Sources (Part 70 sources other than PSD) - 365 days.

(C) Minor Sources - 180 days.

(2) Operating permits:

(A) Major Sources - 540 days.

(B) Minor Sources - 365 days.

(3) Relocation permits - 30 days.

252:2-15-73. Hazardous waste permit time lines

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

(1) Hazardous waste permits:

(A) New RCRA permit or the renewal thereof - 300 days.

(B) New State Recycling permit - 300 days.

(C) Class 3 permit modifications - 300 days.

(2) Closure plans, post-closure plans and transfer station plans and plan modifications - 300 days.

252:2-15-74. Solid waste permit time lines

The technical review period for solid waste permit applications and for each submittal and resubmittal shall be 90 days, subject to OAC 252:2-15-7-70.

252:2-15-75. Water quality permit time lines

Applications for new or modified water quality permits, certifications and authorizations shall be technically reviewed and permits shall be issued or denied within the following time frames:

(1) Discharges - 180 days.

(2) 401 Certifications - 180 days.

(3) Industrial Wastewater other than discharge - 180 days.

(4) Pretreatment Trust Users - 180 days.

(5) Public Water Supply - 90 days.

- (6) Underground Injection Control - 300 days.
- (7) Water Pollution Control Construction - 90 days.
- (8) Sludge management plan - 180 days.

252:2-15-76. 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.

252:2:15-76.1. Brownfields time lines

The technical review period for Brownfields applications and for each submittal and resubmittal shall be 60 days, subject to 252:2:15-70.

252:2-15-77. Pre-issuance permit review and correction

(a) **Review.** In addition to its own review, the DEQ may, for Tier I and II, and shall, for Tier III, at any time before issuance, ask an applicant to review a permit for calculation and clerical errors or mistakes of fact or law.

(b) **Correction.** The DEQ may correct any permit before it is issued.

(1) **Notice of significant corrections.** For permits based on Tier II and III applications, an applicant shall publish legal notice in one newspaper local to the site of any correction or change proposed by the DEQ which significantly alters a facility's permitted size, capacity or limits.

(2) **Comments.** The DEQ may open a public comment period, and/or reconvene a public meeting and/or administrative hearing to receive public comments on the proposed correction(s).

PART 9. CONSOLIDATED PERMITTING

252:2-15-90. Consolidation of permitting process

(a) **Discretionary.** Whenever an applicant applies for more than one permit for the same site, the DEQ may authorize, with the consent of the applicant, the review of the applications to be consolidated so that each required draft permit, draft denial and/or proposed permit is prepared at the same time and public participation opportunities are combined.

(b) **Scope.** When consolidation is authorized by the DEQ:

(1) The procedural requirements for the highest specified tier shall apply to each affected application.

(2) The DEQ may also authorize the consolidation of public comment periods, process and public meetings, and/or administrative permit hearings.

(3) Final permits may be issued together.

(c) **Renewal.** The DEQ may coordinate the expiration dates of new permits issued to an applicant for the same facility or activity so that all the permits are of the same duration.

(d) **Multiple modifications.** Subsections (a) and (b) of this section shall also apply to multiple Tier II and III applications for permit modifications.

SUBCHAPTER 17. COMPLAINT PROCESSING

Section

- 252:2-17-1. Purpose
- 252:2-17-2. Definitions
- 252:2-17-3. Receipt of complaints
- 252:2-17-4. Investigation of complaints
- 252:2-17-5. Notification
- 252:2-17-6. Referral of complaints

252:2-17-1. Purpose

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

252:2-17-2. 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.

252:2-17-3. 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.

252:2-17-4. 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.

252:2-17-5. 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.

252:2-17-6. 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: () Air Quality () Solid Waste
 () Hazardous Waste () Water Quality
 () Laboratory () Operator Certification
 () Radiation () 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

IN THE MATTER OF) Matter No.

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

Subject area: () Air Quality () Solid Waste
 () Hazardous Waste () Water Quality
 () Laboratory () Operator Certification
 () Radiation () 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: _____

APPENDIX C. PERMITTING PROCESS SUMMARY

Steps	Tier I	Tier II	Tier III
Filing - Applicant files application, pays any required fee, and provides landowner notice. Applicant may meet with the DEQ staff prior to this.	Yes	Yes	Yes
Notice of filing - Applicant publishes notice in one newspaper local to site.	No	Yes	Yes
Process meeting - Notice - 30-day opportunity is published with notice of filing. DEQ holds meeting if requested and sufficient interest is shown.	No	No	Yes
Administrative completeness review - DEQ reviews application and asks applicant to supply any missing information.	Yes	Yes	Yes
Technical review - DEQ reviews application for technical compliance and requests applicant to cure any deficiencies.	Yes	Yes	Yes
Draft permit or draft denial - DEQ prepares this after completing review.	No	Yes	Yes
Notice of draft permit, public comment period and public meeting request opportunity - Applicant publishes this in one newspaper local to site. (DEQ publishes notice of draft denial.)	No	Yes	Yes
Public comment period - 45 days for hazardous waste treatment, storage or disposal draft permits; 30 days for all others.	No	Yes	Yes
Public meeting - Conducted by DEQ if held	No	Yes	Yes
Review of comments - DEQ (written response)	No	Yes	Yes
Proposed permit - DEQ prepares this in response to comments on draft permit	No	No	Yes
Notice of proposed permit - Applicant publishes, in one newspaper local to site, notice of 20-day opportunity to review permit and request administrative hearing.	No	No	Yes
Administrative permit hearing - Conducted by DEQ if held. Results in final order.	No	No	Yes
Issuance or denial - DEQ's final decision	Yes	Yes	Yes