

US EPA ARCHIVE DOCUMENT

Section

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ARTICLE I. SHORT TITLE AND GENERAL DEFINITIONS

§ 2-1-101. Short title—Subsequent enactments

A. Chapter 2 of this title¹ shall be known and may be cited as the "Oklahoma Environmental Quality Code".

B. All statutes hereinafter enacted and codified in Chapter 2 of this title shall be considered and deemed part of the Oklahoma Environmental Quality Code. Added by Laws 1993, c. 145, § 12, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

§ 2-1-102. Definitions

As used in the Oklahoma Environmental Quality Code:¹

1. "Administrative hearing" means an individual proceeding, held by the Department when authorized by the provisions of this Code² and conducted pursuant to the Administrative Procedures Act,³ this Code and rules promulgated thereunder, for a purpose specified by this Code. "Administrative hearing" in-

cludes "administrative permit hearing", "enforcement hearing" and "administrative enforcement hearing" within the context of this Code. An "administrative hearing" shall be a quasi-judicial proceeding;

2. "Administrative Procedures Act" means the Oklahoma Administrative Procedures Act;

3. "Board" means the Environmental Quality Board;

4. "Code" means Chapter 2 of this title;

5. "Department" means the Department of Environmental Quality;

6. "Enforcement hearing" means an individual proceeding conducted pursuant to the Administrative Procedures Act, this Code and rules promulgated thereunder, for the purpose of enforcing the provisions of this Code, rules promulgated thereunder and orders, permits or licenses issued pursuant thereto. The term "administrative hearing" shall mean the same as "enforcement hearing" when held for enforcement purposes. An "enforcement hearing" shall be a quasi-judicial proceeding;

7. "Environment" includes the air, land, wildlife, and waters of the state;

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

9. "Industrial wastewater treatment permit" shall mean permits issued by the Department after July 1, 1993, under Section 2-6-501 of Title 27A of the Oklahoma Statutes, and waste disposal permits issued on or before June 30, 1993, by the Oklahoma Water Resources Board for land application of industrial waste or surface impoundments or disposal systems for industrial waste or wastewater;

10. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined;

11. "Person" means an individual, association, partnership, firm, company, public trust, corporation, joint-stock company, trust, estate, municipality, state or federal agency, other governmental entity, any other legal entity or an agent, employee, representative, assignee or successor thereof;

12. "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

13. "Public meeting" means a formal public forum, held by the Department when authorized by the provisions of this Code, and conducted by a presiding officer pursuant to the requirements of this Code and

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E. 1. An appointment shall be made by the Governor within ninety (90) days after a vacancy has occurred due to resignation, death, or any cause resulting in an unexpired term. In the event of a vacancy on the Board due to resignation, death, or for any cause resulting in an unexpired term, if not filled within ninety (90) days following such vacancy, the Board may appoint a provisional member to serve in the interim until the Governor acts.

2. A member may be reappointed to succeed himself for one additional term.

3. In all future appointments to the Environmental Quality Board, the Governor shall recognize the geographic diversity of the state and endeavor to appoint members representing each quadrant of the state.

F. 1. The Board shall hold meetings as necessary at a place and time to be fixed by the Board. The Board shall select, at its first meeting, one of its members to serve as chair and another of its members to serve as vice-chair. At the first meeting in each calendar year thereafter, the chair and vice-chair for the ensuing year shall be elected. Special meetings may be called by the chair or by five members of the Board by delivery of written notice to each member of the Board. A majority of the Board present at the meeting shall constitute a quorum of the Board.

2. Members of the Board shall receive necessary travel expenses according to the provisions of the State Travel Reimbursement Act.¹

G. The Board shall:

1. Appoint and fix the compensation of the Executive Director of the Department of Environmental Quality;

2. Be the rulemaking body for the Department of Environmental Quality;

3. Review and approve the budget request of the Department to the Governor;

4. Assist the Department in conducting periodic reviews and planning activities related to the goals, objectives, priorities and policies of the Department;

5. Provide a public forum for receiving comments and disseminating information to the public and the regulated community regarding goals, objectives, priorities, and policies of the Department at least quarterly. The Board shall have the authority to adopt nonbinding resolutions requesting action by the Department in response to comments received or upon the Board's own initiative; and

6. Review and evaluate the need for amendments or additions to the Oklahoma Statutes regarding the programs and functions of the Department and make legislative recommendations to the Legislature.

H. As the rulemaking body for the Department of Environmental Quality, the Board is specifically charged with the duty of promulgating rules which will implement the duties and responsibilities of the Department pursuant to this Code.² Except as provided in this subsection, rules within the jurisdiction of

a Council provided for by this act³ shall be promulgated with the advice of such Council. Proposed permanent rules within the jurisdiction of a Council shall not be considered by the Board for promulgation until receipt of the appropriate Council's recommendation on such promulgation; however, the Board may promulgate emergency rules without the advice of the appropriate Council when the time constraints of the emergency, as determined by the Board, do not permit the timely development of recommendations by the Council. All actions of the Councils with regard to rulemaking shall be deemed actions of the Board for the purposes of complying with the Administrative Procedures Act.⁴

Added by Laws 1992, c. 398, § 7, eff. Jan. 1, 1993. Renumbered from Title 27A, § 7 and amended by Laws 1993, c. 145, §§ 14, 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 55, eff. July 1, 1993.

¹ Title 74, § 500.1 et seq.

² Title 27A, § 2-1-101 et seq.

³ Title 27A, § 1-1-101 et seq.

⁴ Title 75, § 250 et seq.

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

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

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

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

¹ Title 27A, § 2-1-101 et seq.

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

Insofar as permitted by law and upon recommendation from the appropriate Council, rules promulgated by the Environmental Quality Board may incorporate a federal statute or regulation by reference. Any Board rule which incorporates a federal provision by reference incorporates the language of the federal provision as it existed at the time of the incorporation by reference. Any subsequent modification, repeal or invalidation of the federal provision shall not be deemed to affect the incorporating Board rule.

Added by Laws 1994, c. 353, § 3, eff. July 1, 1994.

PART 2. COUNCILS

§ 2-2-201. Advisory councils

A. There are hereby created:

1. The Water Quality Management Advisory Council;
2. The Hazardous Waste Management Advisory Council;
3. The Solid Waste Management Advisory Council;
4. The Radiation Management Advisory Council;

and

- (1) one member representing an industry located in this state generating solid waste,
 - (2) one member representing a political subdivision of this state who shall be a member of the local governmental body of a city or town, and
 - (3) one member representing the field of geology, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
- (1) one member representing the solid waste disposal industry in this state,
 - (2) one member representing the field of engineering, and
 - (3) one member representing the transportation industry.

2. The jurisdictional areas of the Solid Waste Management Advisory Council shall include Article X of this chapter,² the Oklahoma Waste Tire Recycling Act⁴ and such other areas as designated by the Board.

F. 1. All members of the Radiation Management Advisory Council shall be knowledgeable of radiation hazards and radiation protection. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
 - (1) one member representing an industry located in this state which uses sources of radiation in its manufacturing or processing business,
 - (2) one member representing a statewide nonprofit environmental organization, and
 - (3) one member representing the engineering profession who shall be a professional engineer employed and experienced in matters of radiation management and protection,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing the faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of radiation management and protection,
 - (2) one member representing the general public, and
 - (3) one member representing the field of industrial radiography, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
 - (1) one member representing the transportation industry,

- (2) one member representing the petroleum industry who is trained and experienced in radiation management and protection, and
- (3) one member representing an institution within this state who shall be experienced in matters of radiation management and protection.

2. The jurisdictional areas of the Radiation Management Advisory Council shall include Article IX of this chapter⁵ and such other areas as designated by the Board.

G. 1. All members of the Laboratory Services Advisory Council shall be knowledgeable of laboratory services and certification programs. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
 - (1) one member representing a private laboratory within the state certified by the Department,
 - (2) one member representing the field of hydro-geology, and
 - (3) one member representing permit holders required to routinely submit laboratory analyses results to the Department,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing a private laboratory within the state certified by the Department,
 - (2) one member representing a public laboratory within the state certified by the Department, and
 - (3) one member representing the field of microbiology, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
 - (1) one member representing a private laboratory within the state certified by the Department,
 - (2) one member representing permit holders required to routinely submit laboratory analyses results to the Department, and
 - (3) one member representing the field of environmental chemistry.

2. The jurisdictional areas of the Laboratory Services Advisory Council shall include Article IV of this chapter⁶ and such other areas designated by the Board.

H. 1. The Air Quality Council created pursuant to Section 6, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1807.1) shall continue in effect as the Air Quality Advisory Council and exercise the powers and duties assigned to it by law. The current members of the Air Quality Council shall remain on the Council until the expiration of their individual terms of

- b. make recommendations to the Board or Department concerning the need and the desirability of conducting meetings, workshops and seminars; and

5. Cooperate with each other Council, the public, the Board and the Executive Director in order to coordinate the rules within their respective jurisdictional areas and to achieve maximum efficiency and effectiveness in furthering the objectives of the Department.

J. The Councils shall not recommend rules for promulgation by the Environmental Quality Board unless all applicable requirements of the Administrative Procedures Act have been followed, including but not limited to notice, rule impact statement and rule-making hearings.

K. Members of the Councils shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties, as provided in the State Travel Reimbursement Act.¹⁰ The Councils are authorized to utilize the conference rooms of the Department of Environmental Quality and obtain administrative assistance from the Department, as required.

Added by Laws 1992, c. 398, § 10, eff. Jan. 1, 1993. Renumbered from Title 27A, § 10 by Laws 1993, c. 145, § 359, eff. July 1, 1993 and amended by Laws 1993, c. 145, § 15, emerg. eff. June 7, 1993. Amended by Laws 1995, c. 80, § 1, eff. July 1, 1995.

¹ Title 27A, § 2-6-101 et seq.

² Title 27A, § 2-7-101 et seq.

³ Title 27A, § 2-10-101 et seq.

⁴ Title 27A, § 2-11-401 et seq.

⁵ Title 27A, § 2-9-101 et seq.

⁶ Title 27A, § 2-4-101 et seq.

⁷ Title 27A, § 2-5-101 et seq.

⁸ Title 27A, § 2-1-101 et seq.

⁹ Title 75, § 250 et seq.

¹⁰ Title 74, § 500.1 et seq.

ARTICLE III. DEPARTMENT OF ENVIRONMENTAL QUALITY AND EXECUTIVE DIRECTOR

PART 1. DEPARTMENT OF ENVIRONMENTAL QUALITY

§ 2-3-101. Creation—Powers and duties—Disclosure of interests—Employee classification—Programs—Departmental offices and divisions—Annual report—Environmental Quality Report—Environmental services contracts

A. 1. There is hereby created the Department of Environmental Quality.

B. Within its jurisdictional areas of environmental responsibility, the Department of Environmental Quality, through its duly designated employees or representatives, shall have the power and duty to:

1. Perform such duties as required by law; and
2. Be the official agency of the State of Oklahoma, as designated by law, to cooperate with federal agencies for point source pollution, solid waste, hazardous materials, pollution, Superfund, water quality, hazard-

ous waste, radioactive waste, air quality, drinking water supplies, wastewater treatment and any other program authorized by law or executive order.

C. Any employee of the Department in a technical, supervisory or administrative position relating to the review, issuance or enforcement of permits pursuant to this Code¹ who is an owner, stockholder, employee or officer of, or who receives compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department of Environmental Quality shall disclose such interest to the Executive Director. Such disclosure shall be submitted for Board review and shall be made a part of the Board minutes available to the public. This subsection shall not apply to financial interests occurring by reason of an employee's participation in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.

D. The Executive Director, Deputy Director, and all other positions and employees of the Department at the Division Director level or higher shall be in the unclassified service.

E. The following programs are hereby established within the Department of Environmental Quality:

1. An air quality program which shall be responsible for air quality;

2. Water programs which shall be responsible for water quality, including, but not limited to point source and nonpoint source pollution within the jurisdiction of the Department, public and private water supplies, public and private wastewater treatment, water protection and discharges to waters of the state;

3. Waste management programs which shall be responsible for hazardous waste, solid waste, radiation, and municipal, industrial, commercial and other waste; and

4. Special projects and services programs which shall be responsible for duties related to planning, interagency coordination, technical assistance programs, laboratory services and laboratory certification, recycling, education and dissemination of information.

F. Within the Department there are hereby created:

1. The Office of Complaints, Investigation and Mediation which shall be responsible for intake processing, investigation, mediation and conciliation of inquiries and complaints received by the Department and which shall provide for the expedient resolution of complaints within the jurisdiction of the Department;

2. The Office of Business Assistance which shall be responsible for advising and providing to licensees, permittees and those persons desiring to obtain a license or permit, the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Code.¹ The Office of Business Assistance shall intercede with other divisions or offices of the Department to assist businesses and other

partment of Oklahoma County and the Tulsa City-County Health Department for performance of environmental services within the jurisdictional areas of responsibility of the Department of Environmental Quality.

Added by Laws 1992, c. 398, § 9, eff. Jan. 1, 1993. Renumbered from Title 27A, § 9 and amended by Laws 1993, c. 145, §§ 16, 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 5, eff. July 1, 1993; Laws 1995, c. 246, § 1, eff. Nov. 1, 1995.

¹ Title 27A, § 2-1-101 et seq.

§ 2-3-102. Customer Services Division—Additional responsibilities

The Customer Services Division of the Department of Environmental Quality which includes, but is not limited to, the Offices of Business Assistance, Local Government Assistance and Citizen Assistance, in addition to responsibilities specified by Section 2-3-101 of this title and assigned to such Division or Offices by the Executive Director, shall:

1. Establish and maintain an information and referral system to assist the public in understanding and complying with state and local governmental requirements concerning the use of natural resources and protection of the environment. The system shall provide a telephone information service and disseminate printed materials;
2. Standardize permits in coordination with the Board and the Department;
3. Identify the public information procedures currently associated with each permit program;
4. Provide for the posting of the telephone number of the Offices of Business Assistance, Local Government Assistance and Citizen Assistance at offices of the county commissioners, municipal offices and other public information centers; and
5. Maintain copies of all current rules of the Department.

Added by Laws 1993, c. 145, § 17, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 4, eff. July 1, 1994.

§ 2-3-103. Administrative Law Judges—Duties—Qualifications—Proceedings

1. The Department shall employ one or more Administrative Law Judges within the Office of Administrative Hearings to conduct individual proceedings, preside over rulemaking hearings on behalf of the Board or Councils, upon request, and perform such other duties as are assigned to them by the Executive Director which are not inconsistent with their statutory duties.

2. Each Administrative Law Judge shall:

- a. have a general knowledge of the contaminants, pollutants, wastes and other materials which are regulated by the Oklahoma Environmental Quality Code,¹
- b. have a working knowledge of the laws and rules under this Code,¹

- c. be currently licensed to practice law by the Supreme Court of this state, and
- d. not be an owner, stockholder, employee or officer of, nor have any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by the Department.

3. Individual proceedings shall be conducted in compliance with Article II of the Administrative Procedures Act,² this Code and rules promulgated thereunder.

Added by Laws 1993, c. 145, § 18, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

² Title 75, § 308a et seq.

§ 2-3-104. Office of Complaints, Investigation and Mediation—Additional responsibilities

A. The Office of Complaints, Investigation and Mediation shall, in addition to the responsibilities specified by Section 16 of this act,¹ refer, upon written request, all complaints in which one of the complainants remains unsatisfied with the Department's resolution of said complaint to an outside source trained in mediation. Complainants and persons named in the complaint shall be made aware that participation in the mediation process conducted by the outside source is completely voluntary and confidential. Fulfillment of any agreements reached in mediation shall be up to the parties of the dispute. Participation in the mediation process shall not hinder or interfere with any enforcement action taken by the Department. Mediation may run parallel to any enforcement action. Participation by a complainant in the mediation process shall not preclude such complainants from seeking other relief provided by law.

B. The Office of Complaints, Investigation and Mediation shall maintain a roster of certified mediators which will be available to the public.

C. The Office of Complaints, Investigation and Mediation shall document the outcome of mediations to determine compliance with mediated agreements and for documentation of program success.

Added by Laws 1993, c. 145, § 19, eff. July 1, 1993.

¹ Title 27A, § 2-3-101.

§ 2-3-105. Pollution Prevention Program—Creation

A Pollution Prevention Program within the Department of Environmental Quality is hereby authorized. Added by Laws 1994, c. 134, § 1, eff. Sept. 1, 1994.

§ 2-3-106. Pollution prevention, defined

As used in this act ¹ and the Oklahoma Environmental Quality Act ² and the Oklahoma Environmental Quality Code,³ unless otherwise specified:

1.4. "Pollution prevention" means any practice which reduces the use of any hazardous substance or amount of any pollutant or contaminant prior to recycling, treatment or disposal, and reduces the hazards

2. Employ, discharge, appoint or contract with, and fix the duties and compensation of such assistants, attorneys, chemists, geologists, environmental professionals, medical professionals, engineers, sanitarians, administrative, clerical and technical, investigators, aides and such other personnel, either on a full-time, part-time, fee or contractual basis, as in his judgment and discretion shall be deemed necessary, expedient, convenient or appropriate to the performance or carrying out of any of the purposes, objectives, responsibilities or statutory provisions relating to the Department of Environmental Quality, or to assist the Executive Director in the performance of his official duties and functions;

3. Establish internal policies and procedures for the proper and efficient administration of the Department; and

4. Exercise all incidental powers which are necessary and proper to implement the purposes of the Department pursuant to this Code.¹

D. The Executive Director shall not be an owner, stockholder, employee or officer of, nor have any other business relationship with or receive compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department of Environmental Quality and, with regard to the exercise of powers and duties associated with the Oklahoma Pollutant Discharge Elimination System Act,² shall meet all requirements of Section 304 of the Clean Water Act³ and applicable federal regulations promulgated thereunder by the United States Environmental Protection Agency regarding conflict of interest.

E. 1. In addition to the powers and duties specified in subsection D of this section, the Executive Director shall have the power and duty to:

- a. issue, deny, modify, amend, renew, refuse to renew, suspend, reinstate or revoke licenses or permits pursuant to the provisions of this Code, and rules promulgated by the Board, and
- b. issue final orders and assess administrative penalties according to the Administrative Procedures Act,⁴ this Code and rules promulgated by the Board.

2. The powers and duties specified in paragraph 1 of this subsection shall be exercised exclusively by the Executive Director and may not be delegated to other employees of the Department except as specifically provided in this Code:

3. In the event of the Executive Director's temporary absence, the Executive Director may delegate the exercise of such powers and duties to an acting director during the Executive Director's absence subject to an organizational structure approved by the Board. In the event of a vacancy in the position of Executive Director, the Board may designate an interim or acting Executive Director who is authorized to

exercise such powers and duties until a permanent Executive Director is employed.

4. Any designee exercising such powers and duties of the Executive Director as authorized or on a temporary, acting or interim basis shall meet the requirements of subsection D of this section for the Executive Director.

5. All references in this Code to the Department with respect to the exercise of the powers and duties specified in paragraph 1 of this subsection shall mean the exercise of such powers and duties by the Executive Director or his authorized designee.

Added by Laws 1992, c. 398, § 8, eff. Jan. 1, 1993. Renumbered from Title 27A, § 8 and amended by Laws 1993, c. 145, §§ 20, 359, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 5, eff. July 1, 1994; Laws 1995, c. 285, § 1, eff. July 1, 1995.

¹ Title 27A, § 2-1-101 et seq.

² Title 27A, § 2-6-201 et seq.

³ 33 U.S.C.A. § 1314.

⁴ Title 75, § 250 et seq.

§ 2-3-202. Powers and duties of Department

A. Within its jurisdictional areas of responsibility, the Department, acting through the Executive Director, or persons authorized by law, rule or designated by the Executive Director to perform such acts, shall have the power and duty to:

1. Access any premises at any reasonable time upon presentation of identification for purposes of administering this Code,¹ and the right to apply to and obtain from a judge of the district court, an administrative or other warrant as necessary to enforce such access;

2. Determine and assess administrative penalties, take or request civil action, request criminal prosecution or take other administrative or civil action as specifically authorized by this Code or other law against any person or entity who has violated any of the provisions of this Code, rules promulgated thereunder, or any permit, license or order issued pursuant thereto;

3. Investigate or cause to be investigated alleged violations of this Code, rules promulgated thereunder, or permits, licenses or orders issued pursuant thereto;

4. Conduct investigations, inquiries and inspections, including but not limited to, the review of records and the collection of samples for laboratory analyses;

5. Conduct hearings and issue subpoenas according to the Administrative Procedures Act,² this Code and rules promulgated by the Board, and file contempt proceedings against any person disobeying or refusing to comply with such subpoena;

6. Advise, consult, cooperate and enter into agreements with agencies of the state, municipalities and counties, industries, other states and the federal government, and other persons;

7. Enter into agreements for, accept, administer and use, disburse and administer grants of money,

such programs and functions. Provided, as otherwise authorized by law, the Department may transfer monies between subaccounts to meet cash flow needs of the Department so long as the monies are transferred back to the appropriate subaccount to be expended on the appropriate programs and functions.

C. All revolving fund monies belonging to, deposited in or payable to the State Department of Health or the Oklahoma Water Resources Board for the purpose of administering a program or function over which the Department of Environmental Quality has jurisdiction, are hereby transferred to the appropriate funds of the Department of Environmental Quality. All other monies belonging to, deposited in or payable to any other revolving fund under the jurisdiction of the Department are hereby transferred.

Added by Laws 1993, c. 145, § 23, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

§ 2-3-402. Schedules of fees

A. The Board shall establish schedules of fees to be charged for applications for, or the issuance of, new, modified or renewed permits, licenses, certificates and other authorizations and for such other environmental services as are involved in the regulation of environmental functions and programs authorized by the provisions of this Code.¹ Such fees shall be subject to the following limitations:

1. The Board shall follow the procedures required by the Administrative Procedures Act² for promulgation of rules in establishing or amending any such schedule of fees;

2. The Board shall base its schedule of fees for each environmental function or program upon the reasonable costs of operating such environmental functions or programs, including, but not limited to, the costs of administration, personnel, office space, equipment, training, travel, inspection and review rendered in connection with each such function or program;

3. The Board shall promulgate rules establishing fee schedules for services, functions and programs within the advisory jurisdiction of a Council created by this Code only upon receipt of fee schedule recommendations from such Council;

4. Any facility exempt from the requirement to obtain a permit based on date of construction or start-up may be assessed an annual permit renewal fee equivalent; and

5. The Department shall expend monies received from permit, license and certification programs, including but not limited to application, review, inspection, monitoring and operating fees, only on the direct or indirect costs of the specific programs from which such monies originate.

B. The Board shall establish a schedule of fees to be charged for services including, but not limited to, searches, compilations, certifications or reproduction of maps and publications; transcripts, blueprints, com-

puter data, electronic recordings or documents. Such fees shall be based on the actual cost to the Department for the provision of such services.

C. The Board shall promulgate a schedule of fees for the provision of services to validate reports from facilities required to report, but not merely to notify, under the Oklahoma Hazardous Materials Planning and Notification Act.³

D. The Board's authority to establish fee schedules by rule shall extend to all programs administered by the Department, regardless of whether the statutes creating such programs are codified in Title 27A of the Oklahoma Statutes.

Added by Laws 1993, c. 145, § 24, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

² Title 75, § 250 et seq.

³ Title 27A, § 4-2-101 et seq.

§ 2-3-403. Environmental Trust Revolving Fund

There is hereby created in the State Treasury a revolving fund for the Department of Environmental Quality to be designated the "Environmental Trust Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies collected pursuant to the provisions of Section 354 of Title 17 of the Oklahoma Statutes for deposit in the Environmental Trust Revolving Fund and monies received in the form of gifts, grants, reimbursements, and from any other source specified for the purposes specified by this section. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Environmental Quality for matching federal funds available for environmental remediation and cleanup. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

Added by Laws 1993, c. 324, § 35, eff. July 1, 1993.

PART 5. GENERAL REGULATION AND ENFORCEMENT

§ 2-3-501. Sampling, investigating, inquiring and inspecting conditions relating to pollution or damage to natural resource—Power to enter—Record and reports—Administrative warrants

A. Any duly authorized representative of the Department shall have the power to enter at reasonable times upon any private or public property for the purpose of sampling, inspecting and investigating conditions relating to pollution, damage to natural resources or the possible pollution of any air, land or waters of the state or the environment or relating to any other environmental or permitting responsibility authorized by law.

B. The Department may require the establishment and maintenance of records and reports relating to any activity regulated by the Department. Copies of such records shall be submitted to the Department on

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therein stated. A certified copy thereof shall have like force and effect.

H. 1. The administrative hearings provided for in this section shall be conducted as individual proceedings in accordance with, and a record thereof maintained pursuant to, Article II of the Administrative Procedures Act,² this Code and rules promulgated thereunder. When a hearing is timely requested by a respondent pursuant to this section, the Department shall promptly conduct such hearing.

2. Such hearing shall be conducted by an Administrative Law Judge or by the Executive Director. When an Administrative Law Judge holds the hearing, such Judge shall prepare a proposed order and shall:

- a. serve it on the parties, by regular mail, and may offer an opportunity for parties to file exceptions to the proposed order before a final order is entered in the event the Executive Director does not review the record, and
- b. present the proposed order, the exceptions, if any, and the record of the matter to the Executive Director, or
- c. present the proposed order and the record of the matter to the Executive Director for review and entry of a final order for any default, failure to appear at the hearing or if the parties by written stipulation waive compliance with subparagraph a of this paragraph.

3. For administrative proceedings conducted by an Administrative Law Judge pursuant to this section, the Executive Director may adopt, amend or reject any findings or conclusions of the Administrative Law Judge or exceptions of any party and issue a final order accordingly, or may in his discretion remand the proceeding for additional argument or the introduction of additional evidence at a hearing held for the purpose. A final order shall not be issued by the Executive Director until after:

- a. the opportunity for exceptions has lapsed without receiving exceptions, or after exceptions, briefs and oral arguments, if any, are made, or
- b. review of the record by the Executive Director.

4. Any order issued by the Department shall become final upon service.

I. Any party aggrieved by a final order may petition the Department for rehearing, reopening or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order, including the Attorney General on behalf of the state, may, pursuant to the Administrative Procedures Act,³ petition for a judicial review thereof.

J. If the Attorney General seeks redress on behalf of the state, as provided for in subsection I of this

section, the Executive Director is empowered to appoint a special counsel for such proceedings.

K. 1. Unless specified otherwise in this Code, any penalty assessed or proposed in an order shall not exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance.

2. The determination of the amount of an administrative penalty shall include, but not be limited to, the consideration of such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the respondent from the violation, the history of such violations and respondent's degree of culpability and good faith compliance efforts. For purposes of this section, each day, or part of a day, upon which such violation occurs shall constitute a separate violation.

L. Notwithstanding the provisions of subsections A and B of this section, the Department may, within three (3) years of discovery, apply for the assessment of an administrative penalty for any violation of this Code, or rules promulgated thereunder or permits or licenses issued pursuant thereto.

M. Any order issued pursuant to this section may require that corrective action be taken. If corrective action must be taken on adjoining property, the owner of such adjoining property shall not give up any right to recover damages from the responsible party by allowing corrective action to occur.

Added by Laws 1993, c. 145, § 26, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 6, eff. July 1, 1994.

¹ Title 27A, § 2-1-101 et seq.

² Title 75, § 308a et seq.

³ Title 75, § 250 et seq.

§ 2-3-503. Notice of complaint—Opportunity to provide written information pertinent to complaint

If the Department undertakes an enforcement action as a result of a complaint, the Department shall notify the complainant of the enforcement action by mail and offer the complainant an opportunity to provide written information pertinent to the complaint within fourteen (14) calendar days after the date of the mailing.

Added by Laws 1993, c. 145, § 27, eff. July 1, 1993.

§ 2-3-504. Violation of Code, order, permit or license or rule—Penalties and remedies

A. Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, this Code¹ or who violates any order, permit or license issued by the Department or rule promulgated by the Board pursuant to this Code:

1. Shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than Two Hundred Dollars (\$200.00) for each violation and not more than Ten Thousand Dollars (\$10,000.00) for each violation or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment;

this Code shall in any way impair or affect a person's right to recover damages for pollution.

B. Nothing in this Code shall be construed to preclude the disposition of any matter by stipulation, agreed settlement, consent order or default.

C. Unless otherwise specified, the violations, remedies and penalties contained in this Code are in addition to those in the Environmental Crimes Act² and other Oklahoma law. The specific enforcement provisions of other articles of this Code shall control over the provisions of this part³ when inconsistent.

D. The provisions of this part shall extend to all programs administered by the Department regardless of whether the statutes creating such program are codified in Title 27A of the Oklahoma Statutes.

Added by Laws 1993, c. 145, § 30, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

² Title 21, § 1230.1 et seq.

³ Title 27A, § 2-3-501 et seq.

§ 2-3-507. Compliance schedules

Political subdivisions may, when compliance with environmental standards would create excessive debt, enter into compliance schedules with the Department of Environmental Quality to prioritize compliance based on their greatest environmental or other public health and safety needs. Excessive debt is indicated when the work needed for compliance would require a capital cost or user charge significantly beyond the per-household cost for similar sized communities within the state. Penalties shall not be assessed if a political subdivision complies with the schedule authorized by the Department.

Added by Laws 1997, c. 53, § 1, emerg. eff. April 8, 1997.

ARTICLE IV. LABORATORY SERVICES AND CERTIFICATION

PART 1. DEFINITIONS

§ 2-4-101. Definitions

As used in this article:¹

1. "Department" means the Department of Environmental Quality;

2. "Laboratory" means a facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or performs any other analyses related to environmental quality evaluations;

3. "Parameter" means the characteristics of a laboratory sample determined by an analytic laboratory testing procedure;

4. "Program" means the State Environmental Laboratory Certification Program;

5. "Certificate" means that document issued by the Department showing those parameters for which a laboratory has received certification;

6. "Performance evaluation sample" means a sample submitted to a laboratory by the Department or other designated agent for the purpose of assessing the ability of the laboratory to correctly analyze samples using the approved method;

7. "Acceptable results" means a result within limits determined on the basis of statistical procedures as prescribed by the Department; and

8. "Evaluation" means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal qualifications, equipment, facilities and analytical technique of a laboratory for measuring or establishing specific parameters.

Added by Laws 1993, c. 145, § 31, eff. July 1, 1993.

¹ Title 27A, § 2-4-101 et seq.

PART 2. LABORATORY SERVICES

§ 2-4-201. Services and analyses—Rules—Fee schedule—Contracts

A. The Department is authorized to acquire, operate and maintain laboratories to analyze samples:

1. From pollution studies;

2. To obtain factual data to support any order, permit, function or program of the Department;

3. To provide accurate information on wastewater flows and discharges or the chemical, physical or biological characteristics of wastewater;

4. To check the operations of treatment or disposal systems or works to determine whether they meet plans and specifications approved by the Department;

5. To provide laboratory service for individuals, cities, towns, counties, state institutions and other state and federal agencies;

6. From studies and investigations of any waste or pollutant entering treatment systems or waters of the state or any media in which the presence of a contaminant or pollutant is suspected; and

7. To provide such services and perform such other analyses as is necessary to implement and enforce the programs and functions under the jurisdiction of the Department pursuant to this Code.¹

B. The Board shall promulgate rules for laboratory services under this Code. The Board shall follow the procedures required by the Administrative Procedures Act² for promulgation of such rules.

C. 1. The Board, pursuant to Section 24 of this act³ and the Administrative Procedures Act, shall promulgate as a rule a fee schedule based on actual cost of analyses and the costs of the provision of laboratory services. The schedule shall include fees for specific parameters and procedures.

2. Fees charged pursuant to this section shall be paid into the Department of Environmental Quality Revolving Fund and shall only be used by the Department in administering the Department's environmental laboratory pursuant to Section 24 of this act.