

US EPA ARCHIVE DOCUMENT

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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

rules promulgated thereunder, at which an opportunity is provided for the presentation of oral and written views within reasonable time limits as determined by the presiding officer. Views expressed at a "public meeting" shall be limited to the topic or topics specified by this Code for such meeting. "Public meeting" shall mean a "public hearing" when held pursuant to requirements of the Code of Federal Regulations or the Oklahoma Pollutant Discharge Elimination System Act,³ and shall be synonymous with "formal public meeting" and "informal public meeting" as used within the context of this Code and rules promulgated thereunder. A "public meeting" shall not be a quasi-judicial proceeding;

14. "State environmental agency" includes the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Oklahoma Conservation Commission,
- e. Department of Wildlife Conservation,
- f. Department of Mines,
- g. Department of Public Safety,
- h. Department of Labor,
- i. Department of Environmental Quality, and
- j. Department of Civil Emergency Management; and

15. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof.

Added by Laws 1993, c. 145, § 13, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 4, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

² Title 75, § 250 et seq.

³ Title 27A, § 2-6-201 et seq.

ARTICLE II. ENVIRONMENTAL QUALITY BOARD AND COUNCILS

PART 1. ENVIRONMENTAL QUALITY BOARD

§ 2-2-101. Environmental Quality Board—Creation—Eligibility—Composition—Terms—Appointments—Meetings—Travel expenses—Powers and duties—Promulgation of rules

A. There is hereby created the Environmental Quality Board to represent the interests of the State of Oklahoma which shall consist of thirteen (13) members appointed by the Governor with the advice and consent of the Senate.

B. To be eligible for appointment to the Board a person shall:

1. Be a citizen of the United States;
2. Be a resident of this state;
3. Be a qualified elector of this state; and
4. Not have been convicted of a felony pursuant to the laws of this state, the laws of any other state or the laws of the United States.

C. The Board shall be composed of:

1. One member who shall be a certified or registered environmental professional. Such member shall be an environmental professional experienced in matters of pollution control, who shall not be an employee of any unit of government;
2. One member who shall be selected from industry in general. Such member shall be employed as a manufacturing executive carrying on a manufacturing business within the state;
3. One member who shall be selected from the hazardous waste industry within the state;
4. One member who shall be selected from the solid waste industry within this state;
5. One member who shall be well versed in recreational, irrigational, municipal or residential water usage;

6. One member who shall be selected from the petroleum industries being regulated by the Department of Environmental Quality;

7. One member who shall be selected from the agriculture industries regulated by the Department of Environmental Quality;

8. One member who shall be selected from the conservation districts of the state;

9. Three members who shall be citizen members of any statewide nonprofit environmental organization;

10. One member who shall be a member of the local governing body of a city or town; and

11. One member who shall be from a rural water district organized pursuant to the laws of this state.

D. The length of initial appointments shall be as follows:

1. Two members' terms shall expire on January 31, 1995;

2. Two members' terms shall expire on January 31, 1996;

3. Three members' terms shall expire on January 31, 1997;

4. Three members' terms shall expire on January 31, 1998; and

5. Three members' terms shall expire on January 31, 1999.

Thereafter, the term of office of a member of the Board shall be for five (5) years and until a successor is appointed and qualified.

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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

5. The Laboratory Services Advisory Council.

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

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

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

- a. the Governor shall appoint three members as follows:
 - (1) one member representing the field of engineering,
 - (2) one member representing a statewide nonprofit environmental organization, and
 - (3) one member representing the general public,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing an industry located in this state,
 - (2) one member representing an oil field-related industry, 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 a political subdivision of the state who shall be a member of the local governmental body of a city or town,
 - (2) one member representing a rural water district organized pursuant to the laws of this state, and
 - (3) one member representing the field of agriculture.

2. The jurisdictional areas of the Water Quality Management Advisory Council shall include Article VI of this chapter,¹ water quality and protection and related activities and such other areas as designated by the Board.

D. 1. All members of the Hazardous Waste Management Advisory Council shall be knowledgeable of hazardous waste and of the environment. 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,
 - (2) one member representing a statewide nonprofit environmental organization, and
 - (3) one member representing a political subdivision of the state who shall be a member of the local governing body of a city or town.
- b. the President Pro Tempore of the Senate shall appoint three members as follows:
 - (1) one member representing a political subdivision of the state who shall be a member of the local governmental body of a city or town,
 - (2) one member representing the general public, and
 - (3) one member representing industry generating hazardous waste, and
- c. the Speaker of the House of Representatives shall appoint three members as follows:
 - (1) one member representing the field of engineering,
 - (2) one member representing the hazardous waste industry, and
 - (3) one member representing the field of geology.

2. The jurisdictional areas of the Hazardous Waste Management Advisory Council shall include Article VII of this chapter,² the Oklahoma Hazardous Waste Reduction Program, and such other areas as designated by the Board.

E. 1. All members of the Solid Waste Management Advisory Council shall be knowledgeable of solid waste and of the environment. The Council shall be composed as follows:

- a. the Governor shall appoint three members as follows:
 - (1) one member representing a statewide nonprofit environmental organization,
 - (2) one member shall be a county commissioner, and
 - (3) one member representing the general public,
- b. the President Pro Tempore of the Senate shall appoint three members as follows:

- (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,³ 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 a medical 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 standards. 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 remain in effect as the Air Quality Advisory Council and carry on 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 office or until such offices are vacated. Future ap-

pointments to the Council shall be made according to the provisions of this section.

2. The Council shall consist of nine (9) members who shall be residents of this state and appointed by the Governor with the advice and consent of the Senate.

3. Members of the Council shall have the qualifications as follows:

- a. one member shall be selected from the engineering profession, and, as such, shall be a professional engineer and experienced in matters of air pollution equipment and control, who shall not be an employee of any unit of government,
- b. one member shall be selected from industry in general, and, as such, shall be employed as a manufacturing executive carrying on a manufacturing business within this state,
- c. one member shall be selected from a faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of air pollution control and evaluation,
- d. one member shall be selected from the transportation industry,
- e. one member shall be selected from the petroleum industry, and, as such, shall be employed by a petroleum company carrying on a petroleum refining business within the state, and, as such, shall be trained and experienced in matters of scientific knowledge of causes as well as effects of air pollution,
- f. one member shall be selected from agriculture, and, as such, shall be engaged in or employed by a basic agricultural business or the processing of agricultural products,
- g. one member shall be selected from the political subdivisions of the state, and, as such, shall be a member of the local government body of a city or town,
- h. one member, whose first term shall expire on June 15, 1998, shall be selected from the general public, and
- i. one member, whose first term shall expire on June 15, 1999, shall be selected from the electric utilities industry, and as such, shall be knowledgeable in matters of air pollution and control.

4. Each member shall be appointed to serve a term of office of seven (7) years, except that the term of those first appointed shall expire as follows:

One at the end of one (1) year after date of appointment;

One at the end of two (2) years after date of appointment;

One at the end of three (3) years after date of appointment;

One at the end of four (4) years after date of appointment;

One at the end of five (5) years after date of appointment;

One at the end of six (6) years after date of appointment; and

One at the end of seven (7) years after date of appointment;

The terms of all members shall be deemed to have expired on June 15th of the year of expiration, and shall continue until successors have been duly appointed and qualified. If a vacancy occurs, the Governor shall appoint a person for the remaining portion of the unexpired term created by the vacancy. Five members of the Council shall constitute a quorum.

5. The Council shall hold at least two regular meetings each calendar year at a place and time to be fixed by the Council. The Council shall select one of its members to serve as chair and another of its members to serve as vice-chair at the first regular meeting in each calendar year to serve as the chair and vice-chair for the ensuing year. Special meetings may be called, and any meeting may be canceled, by the chair, or by three members of the Council by delivery of written notice to each member of the Council.

6. The jurisdictional areas of the Air Quality Council shall include Article V of this chapter⁷ and such other areas as designated by the Board.

1. In addition to other powers and duties assigned to each Council pursuant to this Code,⁸ each Council shall, within its jurisdictional area:

1. Have authority to recommend to the Board rules on behalf of the Department. The Department shall not have standing to recommend to the Board permanent rules or changes to such rules within the jurisdiction of a Council which have not previously been submitted to the appropriate Council for action;

2. Before recommending any permanent rules to the Board, give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act;⁹

3. Have the authority to make written recommendations to the Board which have been concurred upon by at least a majority of the membership of the Council;

4. Have the authority to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction, and to:

- a. pass nonbinding resolutions expressing the sense of the Council, and

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- 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, § 2-11-101 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

state agencies in complying with state statutes and rules governing environmental areas;

3. The Office of Local Government Assistance which shall be responsible for advising and providing to licensees, permittees and those persons associated with and representing local political subdivisions desiring a license or permit, the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Code. The Office of Local Government Assistance shall intercede with other divisions or offices of the Department to assist municipalities in complying with state statutes and rules governing environmental areas;

4. The Office of Citizen Assistance which shall be responsible for advising and providing assistance to persons desiring information concerning the Department's rules, laws, procedures, licenses or permits, and forms used to comply with the Oklahoma Environmental Quality Code; and

5. The Office of Administrative Hearings which shall have primary responsibility for conducting individual proceedings including, but not limited to, maintenance of records, giving required notices, docketing and scheduling, and for conducting, upon request, administrative rulemaking hearings. The Office of Administrative Hearings shall be maintained separate and apart from any legal division or office of General Counsel of the Department.

G. 1. The Department shall prepare and submit an annual report assessing the status of the Department's programs to the Board, the Governor, the President Pro Tempore of the State Senate, and the Speaker of the Oklahoma House of Representatives by January 1 of each year. The annual status report shall include: the number of environmental inspections made within the various regulatory areas under the Department's jurisdiction; the number of permit applications submitted within the various regulatory areas under the Department's jurisdiction; the number of permits issued within the various regulatory areas under the Department's jurisdiction; the number and type of complaints filed with the Department; the number of resolved and unresolved Department complaints; a list of any permits and complaints which failed to be either completed or resolved within the Department's established time frames and an explanation of why the Department was unable to meet said time frames; the number and kinds of services provided corporations, businesses, cities, towns, schools, citizen groups and individuals by the Offices of Business Assistance, Local Government Assistance, and Citizen Assistance; a summary of the Department's environmental education efforts; the number and type of administrative hearings held and their outcomes; a detailed description of any promulgated and pending emergency or permanent rules requested by the Department and the current status of pending rules within the rulemaking process; the number of notices of violations issued by the Department within the various regulatory areas under its jurisdiction; the

amount of penalties collected by the Department within the various regulatory areas under its jurisdiction; and any other information which the Department believes is pertinent.

2. Beginning January 1, 1995, and on or before January 1 of every year thereafter, the Department shall prepare an Oklahoma Environmental Quality Report which outlines the Department's two-year needs for providing environmental services within its jurisdictional areas. The report shall reflect any new federal mandates, such mandates' estimated costs, and any state statutory or constitutional changes recommended by the Department within its jurisdictional areas. The Oklahoma Environmental Quality Report shall be reviewed, amended, and approved by the Board. The Department shall transmit an approved copy of the Oklahoma Environmental Quality Report to the Governor, President Pro Tempore of the State Senate, and Speaker of the House of Representatives.

3. The Executive Director shall establish such divisions and such other programs and offices as the Executive Director may determine necessary to implement and administer programs and functions within the jurisdiction of the Department pursuant to the Oklahoma Environmental Quality Code.

H. 1. The Department may contract with the other state environmental agencies or the local conservation districts to provide environmental services to the maximum extent possible. Such contracts may include duties related to providing information to the public regarding state environmental services, resources, permitting requirements and procedures based upon the ability, education and training of state environmental agency or local conservation district employees.

2. The Department, in conjunction with the state environmental agencies, may develop a program for the purpose of training state environmental agency or local conservation district employees to provide any needed environmental services.

3. Environmental services to be provided by other state environmental agencies or by local conservation districts shall not include the investigation of complaints regarding, or inspections of, permitted sites or facilities, unless otherwise authorized by law.

4. In order to promote efficiency in state government and maximize services to rural citizens, the Department of Environmental Quality and the Oklahoma State Department of Health may contract between the agencies to provide services as may be needed. In performing any services pursuant to such a contract, the Oklahoma Department of Health shall be deemed to be a state environmental agency for purposes of fulfilling environmental program and function duties and responsibilities specified by such contracts between the Oklahoma Department of Health and the Department of Environmental Quality.

5. The Department of Environmental Quality may contract as needed with the City-County Health De-

Department 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:

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 act¹ and the Oklahoma Environmental Quality Act² 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

to public health and the environment associated with the use or release or both of such substances, pollutants or contaminants. The term "pollution prevention" shall not include or in any way be construed to promote or require substitution of one hazardous waste for another, treatment, increased pollution control, off-site recycling, or incineration.

Added by Laws 1994, c. 134, § 2, eff. Sept. 1, 1994.

¹ Title 27A, § 2-3-105 et seq.

² Title 27A, § 1-1-101 et seq.

³ Title 27A, § 2-1-101 et seq.

⁴ So in enrolled bill: there is no paragraph 2.

§ 2-3-107. Pollution Prevention Program—Duties—Authority—Award and recognition program—Confidentiality—Funding

A. It shall be the duty of the Pollution Prevention Program within the Department of Environmental Quality to create a cooperative partnership among the business community, municipalities, agencies of the state, the environmental community and the Department of Environmental Quality and all other state environmental agencies in which technical assistance, outreach, and education activities are coordinated and conducted to achieve pollution prevention, waste minimization and source reduction.

B. The Pollution Prevention Program is hereby authorized to and may:

1. Encourage and assist facilities using toxic or hazardous substances to engage in comprehensive pollution prevention planning and develop measurable performance goals;

2. Offer and provide technical assistance, including audits, to the users and generators of toxic or hazardous substances; provided, however, the Program shall not duplicate services readily available in the private sector;

3. Promote pollution prevention as the preferred means for achieving compliance with the laws of this state and shall further encourage all agencies and political subdivisions of the State of Oklahoma to strongly pursue pollution prevention goals;

4. Promote research in toxics use reduction in order to spur public and private investment in pollution prevention;

5. Develop and provide curriculum and training on pollution prevention for students and faculty of educational institutions, users and generators of toxic or hazardous substances and agencies of the State of Oklahoma and its political subdivisions;

6. Sponsor and conduct conferences and workshops on pollution prevention for specific classes of business or industry; and

7. Compile, organize and make information available for distribution on pollution prevention.

C. The Pollution Prevention Program may develop an award and a recognition program for the purpose of promoting pollution prevention activities among businesses and governmental entities.

D. 1. The Pollution Prevention Program shall not make available to the Department of Environmental Quality information the Program obtains in the course of providing technical assistance to a user or generator of toxic or hazardous waste, unless:

- a. the user or generator agrees that such information may be available to the Department.
- b. the information is public record information.
- c. the information pertains to an imminent threat to public health or safety, or to the environment, or
- d. disclosure to the Department is required by law.

2. The Program shall notify users or generators requesting technical assistance of these provisions.

3. Any technical assistance or information obtained by the Program shall not result in any regulatory inspections or other enforcement actions unless there is a reasonable cause to believe there exists a clear and imminent threat to the public health or safety or to the environment.

E. Positions created pursuant to this article compensated with federal funds shall be contingent upon the procurement of federal funds and shall be terminated when federal support of those positions is discontinued.

Added by Laws 1994, c. 134, § 3, eff. Sept. 1, 1994.

§ 2-3-108. State environmental regulatory agencies—Encouragement of pollution prevention practices

Each state environmental regulatory agency required by law to regulate any industry which generates hazardous substances, pollutants or contaminants may develop a program and promulgate rules for the purpose of encouraging entities regulated by such agency to implement pollution prevention practices and activities.

Added by Laws 1994, c. 134, § 4, eff. Sept. 1, 1994.

PART 2. EXECUTIVE DIRECTOR

§ 2-3-201. Executive Director—Appointment—Qualifications—Power, duties and responsibilities

A. The Environmental Quality Board shall appoint the Executive Director of the Department of Environmental Quality. The Executive Director shall serve at the pleasure of the Board.

B. The Executive Director shall have experience in industry, conservation, environmental sciences or such other areas as may be required by the Environmental Quality Board.

C. The Executive Director shall provide for the administration of the Department and shall:

1. Be the executive officer and supervise the activities of the Department of Environmental Quality;

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,

personnel and property from the federal government or any department or agency thereof, or from any state or state agency, or from any other source, to promote and carry on in this state any program relating to environmental services or pollution control;

8. Require the establishment and maintenance of records and reports, and the installation, use, and maintenance of monitoring equipment or methods, and the provision of such information to the Department upon request;

9. Establish a system of training for all personnel who render review and inspection services in order to assure uniform statewide application of law and rules;

10. Enforce the provisions of this Code and rules promulgated thereunder and orders, permits and licenses issued pursuant thereto;

11. Charge and receive fees pursuant to fee schedules promulgated by the Board;

12. Register persons, property and activities as required by this Code or rules promulgated by the Board;

13. Conduct studies, research and planning of programs and functions, pursuant to the authority granted by this Code;

14. Collect and disseminate information and engage in environmental education activities relating to the provisions of this Code;

15. Provide a toll-free hot line for environmental complaints;

16. Enter into interagency agreements;

17. Sell films, educational materials and other items produced by the Department and sell, exchange or otherwise dispose of obsolete personal property belonging to the Department unless otherwise required by terms of federal grants;

18. Provide administrative and support services to the Board and the Councils as necessary to assist them in the performance of their duties; and

19. Exercise all incidental powers which are necessary and proper to implement and administer the purposes of this Code.

B. 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, § 21, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

² Title 75, § 250 et seq.

PART 3. PERMITS

§ 2-3-301. Renewal of license—Renewal fee—Penalty fee—Promulgation of rules

The holder of any license issued under the provisions of this Code¹ which is renewable by payment of a fee shall be entitled to thirty (30) days after the expiration date thereof in which to renew the same, without penalty, and if he fails to pay the renewal fee

within such thirty-day period, he shall, unless otherwise provided in this Code, be required to pay the renewal fee plus a penalty fee in an amount as promulgated by rule. Such penalty fee shall not exceed the amount of the renewal fee. In the case of any renewal fee which shall exceed Ten Thousand Dollars (\$10,000.00), the penalty fee shall be one and one-half percent (1.5%) per month of the outstanding balance of the renewal fee. The Board may promulgate rules which prohibit the renewal of any license which has expired by more than ninety (90) days.

Added by Laws 1993, c. 145, § 22, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

§ 2-3-302. Applications for permits or other authorizations

A. For permits or other authorizations required pursuant to the Oklahoma Environmental Quality Code,¹ applicants shall file applications in the form and manner established by the Department of Environmental Quality. The Department shall review such applications as filed and subsequently amended or supplemented. Any permit issued or authorization granted may include conditions.

B. Permits and other authorizations required pursuant to the Oklahoma Environmental Code may contain provisions requiring that operations shall be in compliance with municipal and other local government ordinances, rules and requirements. A determination or certification that the operations under the requested permit or authorization conform or comply with such ordinances, rules or requirements, the enforcement of which are not within the jurisdiction or authority of the Department, shall not be considered by the Department in their review and approval or denial of a permit or authorization.

Added by Laws 1993, c. 145, § 61, eff. July 1, 1993. Renumbered from Title 27A, § 2-3-106 and amended by Laws 1994, c. 353, §§ 10, 45, eff. July 1, 1994. Amended by Laws 1999, c. 351, § 4, emerg. eff. June 8, 1999.

¹ Title 27A, § 2-1-101 et seq.

PART 4. FUNDS AND GENERAL FEES

§ 2-3-401. Department of Environmental Quality Revolving Fund—Subaccounts—Transfer of revolving fund monies

A. There is hereby created in the State Treasury a revolving fund for the Department of Environmental Quality to be designated the "Department of Environmental Quality Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department from appropriations, administrative penalties, fees, charges, gifts and monies from any other source that are not designated for deposit to any other fund authorized by this Code.¹ All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department for the purpose of implementing and enforcing this Code. Expenditures from said fund shall be made upon

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warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. Individual subaccounts shall be established in the Department of Environmental Quality Revolving Fund as necessary to maintain the tracking of monies collected and to support the programs and functions within the jurisdiction of the Department. Each subaccount shall consist of all monies collected pursuant to the program or function for which such subaccount has been established and all monies collected for such programs and functions shall be expended only and solely in furtherance of the statutory objectives of 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, computer 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 request. Any authorized representative of the Department shall be allowed access and may examine such reports or records.

C. The Department may apply to and obtain from a judge of the district court, an order authorizing an administrative warrant to enforce access to premises for sampling, investigation, inquiry and inspection under the provisions of this Code¹ and the rules promulgated by the Board. Failure to obey an administrative warrant of the district court may be punished by the district court as a contempt of court.

D. The Executive Director may appoint commissioned peace officers, certified by the Council on Law Enforcement Education and Training, to investigate environmental crimes. Peace officers who become employed under this section who have service credit in the Oklahoma Law Enforcement Retirement System may, within thirty (30) days after becoming employed, elect to continue membership in the Oklahoma Law Enforcement Retirement System; otherwise they shall be eligible to enroll only in the Oklahoma Public Employees Retirement System.

Added by Laws 1972, c. 242, § 9. Renumbered from Title 82, § 926.9 and amended by Laws 1993, c. 145, §§ 25, 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 9, eff. July 1, 1993; Laws 1995, c. 235, § 22, eff. July 1, 1995.

¹ Title 27A, § 2-1-101 et seq.

§ 2-3-502. Notice of Code violation—Administrative remedies, compliance—Penalties, corrective action

A. If upon inspection or investigation, or whenever the Department determines that there are reasonable grounds to believe that any person is in violation of this Code¹ or any rule promulgated thereunder or of any order, permit or license issued pursuant thereto, the Department may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct such violation immediately or within a set time period or both and that the failure to do so will result in the issuance of a compliance order.

B. In addition to any other remedies provided by law, the Department may, after service of the notice of violation, issue a proposed compliance order to such person. A proposed compliance order shall become a

final order unless, no later than fifteen (15) days after the order is served, any respondent named therein requests an administrative enforcement hearing.

1. The proposed compliance order may, pursuant to subsection K of this section:

- a. assess an administrative penalty for past violations of this Code, rules promulgated thereunder, or the terms and conditions of permits or licenses issued pursuant thereto, and
- b. propose the assessment of an administrative penalty for each day the respondent fails to comply with the compliance order.

2. Such proposed order may specify compliance requirements and schedules, or mandate corrective action, or both.

C. Failure to comply with a final compliance order, in part or in whole, may result in the issuance of an assessment order assessing an administrative penalty as authorized by law, or a supplementary order imposing additional requirements, or both. Any proposed order issued pursuant to this subsection shall become final unless, no later than seven (7) days after its service, any respondent named therein requests an administrative enforcement hearing.

D. Notwithstanding the provisions of subsection A and B of this section, the Executive Director, after notice and opportunity for an administrative hearing, may revoke, modify or suspend the holder's permit or license in part or in whole for cause, including but not limited to the holder's:

1. Flagrant or consistent violations of this Code, of rules promulgated thereunder or of final orders, permits or licenses issued pursuant thereto;

2. Reckless disregard for the protection of the public and the environment as demonstrated by non-compliance with environmental laws and rules resulting in endangerment of human health or the environment; or

3. Actions causing, continuing, or contributing to the release or threatened release of pollutants or contaminants to the environment.

E. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or welfare or the environment, the Executive Director may without notice or hearing issue an order, effective upon issuance, reciting the existence of such an emergency and requiring that such action be taken as deemed necessary to meet the emergency. Any person to whom such an order is directed shall comply therewith immediately but may request an administrative enforcement hearing thereon within fifteen (15) days after the order is served. Such hearing shall be held by the Department within ten (10) days after receipt of the request. On the basis of the hearing record, the Executive Director shall sustain or modify such order.

F. Except as otherwise expressly provided by law, notice of violation, order, or other instrument issued by or pursuant to authority of the Department may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail return-receipt requested directed to such person at his last-known post office address as shown by the files or records of the Department. Proof of service shall be made as in the case of service of a summons or by publication in a civil action. Such proof of service shall be filed in the Office of Administrative Hearings.

G. Every certificate or affidavit of service made and filed shall be prima facie evidence of the facts 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 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 ex-

ceptions, 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.

N. Inspections, investigations, administrative enforcement hearings and other administrative actions or proceedings pursuant to the Code shall not be the basis for delaying judicial proceedings between private parties involving the same subject matter.

Added by Laws 1993, c. 145, § 26, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 6, eff. July 1, 1994; Laws 1999, c. 351, § 5, emerg. eff. June 8, 1999.

¹ Title 27A, § 2-1-101 et seq.

² See Title 75, § 250.1 for composition of articles.

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, the Oklahoma Environmental Quality Code or who violates any order, permit or license issued by the Department of Environmental Quality or rule promulgated by the Environmental Quality Board pursuant to this Code:¹

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;

2. May be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation;

3. May be assessed an administrative penalty pursuant to Section 2-3-502 of this title not to exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance; or

4. May be subject to injunctive relief granted by a district court. A district court may grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Code or any rule promulgated thereunder or order, license or permit issued pursuant to this Code.

B. Nothing in this part shall preclude the Department from seeking penalties in district court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of this Code.

C. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.

D. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

E. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this Code or any rule promulgated thereunder, or order, license or permit issued pursuant thereto.

F. 1. Any action for injunctive relief to redress or restrain a violation by any person of this Code or of any rule promulgated thereunder, or order, license, or permit issued pursuant thereto or for recovery of any administrative or civil penalty assessed pursuant to this Code may be brought by:

- a. the district attorney of the appropriate district court of the State of Oklahoma,
- b. the Attorney General on behalf of the State of Oklahoma, or
- c. the Department on behalf of the State of Oklahoma.

2. The court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

3. In any judicial action in which the Department seeks injunctive relief and alleges by verified petition that:

- a. the defendant's actions or omissions constitute a violation of the Code or a rule, order, license or permit, and
- b. the actions or omissions present an imminent and substantial endangerment to health or the environment if allowed to continue during the pendency of the action.

the Department shall be entitled to obtain a temporary order or injunction to prohibit such acts or omissions to the extent they present an imminent and substantial endangerment to health or the environment. Such temporary order or injunction shall remain in effect during the pendency of the judicial action until superseded or until such time as the court finds that the criteria of subparagraphs a and b of this paragraph no longer exist. If a temporary order or injunction has been issued without prior hearing, the court shall schedule a hearing within twenty (20) days after issuance of the temporary order to determine whether the temporary order should be lifted and a preliminary injunction should issue. The Department shall bear the burden of proof at such hearing.

4. It shall be the duty of the Attorney General and district attorney to bring such actions, if requested by the Executive Director of the Department.

G. Except as otherwise provided by law, administrative and civil penalties shall be paid into the Department of Environmental Quality Revolving Fund.

H. In determining the amount of a civil penalty the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.

I. In addition to or in lieu of any administrative enforcement proceedings available to the Department, the Department may take or request civil action or request criminal prosecution, or both, as provided by law for any violation of this Code, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

Added by Laws 1993, c. 145, § 28, eff. July 1, 1993. Amended by Laws 1998, c. 186, § 1, eff. Nov. 1, 1998.

¹ Title 27A, § 2-1-101 et seq.

§ 2-3-505. Fraud or misrepresentation—Additional penalties

In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification in, or omits material data from, any application for a permit, license, certificate or other authorization, or any notice, analyses or report required by this Code,¹ rules promulgated thereunder or any permit, license, certificate or other authorization issued pursuant thereto, or knowingly misrepresents or omits material data in such report to any person relying on such report or who alters any sample or knowingly renders inaccurate any monitoring device or method required to be maintained by such Code, rules, permits, licenses, certificates or authorization, or with regard to owners and employees of laboratories certified by the Department, misrepresents or omits material data from any report or analyses submitted to any person relying on such data because of the laboratory's certification shall, upon conviction, be guilty of a misdemeanor and may be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each such violation. Added by Laws 1993, c. 145, § 29, eff. July 1, 1993.

¹ Title 27A, § 2-1-101 et seq.

§ 2-3-506. Violations, remedies and penalties cumulative

A. It is the purpose of this Code¹ to provide additional and cumulative remedies to prevent, abate and control pollution. Nothing contained in this Code shall be construed to abridge or alter rights of action or remedies under the common law or statutory law, criminal or civil; nor shall any provision of this Code, or any act done by virtue thereof, be construed as estopping the state, or any municipality or person in the exercise of their rights under the common law to suppress nuisances or to abate pollution. Nothing in 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. "Acceptable results" means a result within limits determined on the basis of statistical procedures as prescribed by the Department;

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

3. "Certification" means the same as laboratory accreditation and includes primary accreditation and reciprocity accreditation;

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

5. "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;

6. "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; and