July 12, 2005

Paul Sieminski, Chief (6PD-G)
RCRA Grants and Authorization Section
U.S. Environmental Protection Agency
1445 Ross Ave, Suite 1200
Dallas, TX 75202-2733

Re: Authorization Application for RCRA Cluster XIII

Dear Mr. Sieminski:

The Oklahoma Department of Environmental Quality (DEQ) is hereby submitting its Authorization Application for RCRA Cluster XIII. After discussing with Alima Patterson, and in an effort to reduce paper usage, we are submitting this application electronically via the enclosed CD.

We hope you will find this environmentally friendly format acceptable. If you have any questions or need additional information, please contact Jon Roberts of my staff at (405) 702-5184.

Sincerely,

Scott Thompson, Director
Land Protection Divison

Enclosures

STATE AUTHORIZATION

Cluster XIII [SPA 24]

July 2002 – June 2003

ADDENDUM TO PROGRAM DESCRIPTION
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT PROGRAM
RCRA CLUSTER XIII

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ADDENDUM TO PROGRAM DESCRIPTION
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Part I: Organization and Management of the State Program [40 CFR 271.5 and 271.6]

A. Introduction

With this revision authorization application, the State of Oklahoma, through the Oklahoma Department of Environmental Quality ("DEQ"), is seeking authorization to implement RCRA Cluster XIII. The State hazardous waste management program ("State Program") now has in place the statutory authority and regulations for all required components through RCRA Cluster XIII. These statutory and regulatory provisions were developed to ensure the State Program is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program ("RCRA Subtitle C").

The DEQ received final authorization for the base RCRA program in January 1985. Since then, DEQ has received final authorization for non-HSWA Clusters I through VI, HSWA Clusters I and II, and RCRA Clusters I through XII.

No major changes have taken place in the State Program since the Addendum to the Program Description for RCRA Cluster XII was submitted to the U.S. Environmental Protection Agency on March 1, 2005.

In accordance with 40 CFR 271.6(a), Part II of this Addendum describes the scope of Cluster XIII as it is implemented in Oklahoma and Appendix A contains the RCRA Revision Checklists applicable to Cluster XIII.

B. State Agency Authorities, Regulations, and Organization [§ 271.5(a)(5) and 271.6(b)]

1. Authorities

Oklahoma statutes provide authority for a single agency, the DEQ, to administer the provisions of the State Program. Furthermore, these statues ensure there is ample opportunity for members of the public to be involved in rulemaking and permitting activities. The following Oklahoma statutes fully implement the State Program:

- Appendix B: Oklahoma Environmental Quality Act (27A O.S. § 1-1-101, *et seq.*, as amended through 2004);
- Appendix C: portions of the Oklahoma Environmental Quality Code affecting the State Program (27A O.S. §§ 2-1-101 through 2-3-507, as amended through 2004);
- Appendix D: Oklahoma Hazardous Waste Management Act (27A O.S., § 2-7-101, *et seq.*, as amended through 2004);
- Appendix E: Oklahoma Uniform Environmental Permitting Act (27A O.S. § 2-14-101, *et seq.*, as amended through 2004);
- Appendix F: Administrative Procedures Act (75 O.S. § 250, *et seq.*, as amended through 2004);
- Appendix G: Oklahoma Open Meeting Act (25 O.S. § 301, *et seq.*, as amended through 2004);
- Appendix H: Environmental Crimes Act (21 O.S. § 1230.1, *et seq.*, as amended through 2004); and
- Appendix I: Oklahoma Open Records Act (51 O.S. § 24A.1, *et seq.*, as amended through 2004).

The OHWMA provides the DEQ with the authority to administer the State Program, including the statutory and regulatory provisions necessary to administer the provisions of RCRA Cluster XIII, and

designates the DEQ as the State agency to cooperate and share information with the EPA for purpose of hazardous waste regulation.

The Oklahoma Environmental Quality Code, at 27A O.S. §2-2-101, establishes an Environmental Quality Board ("Board") as the rulemaking body for the DEQ, specifically charged with the responsibility of promulgating rules to implement the duties and responsibilities of the DEQ. The Board consists of 13 members appointed by the Governor with the advice and consent of the Senate.

The Oklahoma Environmental Quality Code, at 27A O.S. §2-2-201, also establishes a Hazardous Waste Management Advisory Council ("Council") with the authority to recommend rules to the Board on behalf of the DEQ.

Permanent rules to implement the State Program are promulgated by the Board with the advice of the Council; however, emergency rules may be promulgated by the Board without Council input.

The Council may not recommend rules to the Board unless all applicable requirements of the Oklahoma Administrative Procedures Act have been followed, including but not limited to public notice, rule impact statement, and rulemaking hearings.

Board and Council meetings are public forums conducted in accordance with the Oklahoma Open Meeting Act.

The Environmental Quality Act, at 27A O.S. § 1-3-101(E), grants the Oklahoma Corporation Commission ("OCC") authority to regulate certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain wastes generated by pipelines, bulk fuel sales terminals and certain tank farms, as well as underground storage tanks. To clarify areas of environmental jurisdiction, the DEQ and the OCC developed a *DEQ/OCC Jurisdictional Guidance Document* to identify respective areas of

jurisdiction. Appendix J contains the current *DEQ/OCC Jurisdictional Guidance Document*. The revisions to the State Program necessary to administer RCRA Cluster XIII will not affect the jurisdictional authorities of the DEQ or OCC.

2. Regulations

Appendix K contains the Hazardous Waste Management regulations found at Title 252, Chapter 205 of the Oklahoma Administrative Code ("OAC 252:205"), effective June 15, 2005. The Federal RCRA Subtitle C program found in Title 40 of the Code of Federal Regulations ("40 CFR") is implemented in Oklahoma through OAC 252:205. In accordance with the *Guidelines for State Adoption of Federal Regulations by Reference*, OAC 252:205-3-1 through 252:205-3-6 incorporates by reference the following provisions of 40 CFR as amended through July 2004:

- the provisions of Part 124 of 40 CFR ("40 CFR 124") that are required by 40 CFR 271.14, with the addition of 40 CFR 124.19 (a) through (c), 124.19(e), 124.31, 124.32, and 124.33;
- 40 CFR Parts 260-266 [with the exception of 260.21, 261.4(b)(18), 262 Subparts E and H, 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), 264.1080(g), 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)];
- 40 CFR Part 268 [with the exception of 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g)];
- 40 CFR Part 270 [with the exception of 270.14(b)(18)];
- 40 CFR Part 273; and
- 40 CFR Part 279.

The Board adopted these amendments on March 4, 2005 and they became effective June 15, 2005. Pursuant to 27A O.S. § 2-2-104, the DEQ's incorporation of Federal regulations does not operate to incorporate prospectively future changes to the incorporated sections of 40 CFR.

No other Oklahoma laws or regulations reduce the scope of coverage or otherwise affect the requirements of these incorporated-by-reference provisions. Thus, OAC 252:205-3-1 through 252:205-3-6 ensures the State Program is equivalent to, and no less stringent than, the Federal RCRA Subtitle C program in effect through July 2004.

3. Organization

In accordance with the Environmental Quality Act at 27A O.S. § 2-3-201, the executive officer of the DEQ is the Executive Director who is appointed by the Board. The Executive Director is granted those powers and duties necessary to fully implement a State Program that is equivalent to the Federal RCRA Subtitle C program. Those responsibilities have not changed significantly since the March 1, 2005 Addendum to the Program Description for RCRA Cluster XII.

Among those powers is the authority to establish those divisions and such other programs and offices as are necessary to implement and administer the programs and functions within the jurisdiction of the DEQ. Accordingly, pursuant to 27A O.S. § 2-7-104, the Executive Director has created the Land Protection Division ("LPD") to be responsible for implementing the State Program. The LPD is staffed with personnel that have the technical background and expertise to effectively implement the provisions of RCRA Cluster XIII.

Many of the personnel currently employed in the State Program have several years of experience with RCRA Subtitle C. Both experienced and new personnel participate in a variety of training programs to

increase their expertise and skills. A training curriculum designed specifically for new employees within the State Program has been in use for several years.

Appendix L contains the organizational chart for the LPD as of May 18, 2005.

Table I shows staffing requirements for the State Program based on the EPA/State Grant and itemized personnel costs for State Fiscal Year 2004 ("SFY 2004"), which runs from July 1, 2003 through June 30, 2004.

Table II is the State Program budget for SFY 2004, showing funding amounts based on the personnel requirements set out in the EPA/State Grant, as well as projected budgets for SFY 2005 and 2006.

Table I. Staffing Requirements SFY 2004 (actual)

Leave	Hours	Man Year	Salary	Fringe	Onsite	Offsite	Title
362.50	2,096.00	1.08	25,986.66	8,573.82	1		Administrative assistant
15.15	73.15	0.04	1,488.55	388.85	2		Administrative Program Office
43.49	830.24	0.33	7,494.40	1,527.49	6		Administrative Technician
99.45	721.70	0.27	13,198.85	4,284.50	1		Customer Service Representative
31.22	337.22	0.17	9,225.25	2,216.48	1		Deputy General Counsel
7.14	73.64	0.04	2,811.76	669.07	1		Division Director (Gary Collins)
149.11	814.11	0.39	31,796.59	8,176.38	1		Division Director (Scott Thompson)
286.36	1,627.36	0.76	32,475.98	8,428.60	1		Engineer Intern
287.44	1,819.94	0.86	49,931.29	13,856.93	2		Engineering Manager
13.47	77.47	0.06	1,331.63	351.49	1		Env Chem Lab Specialist
297.07	2,498.07	1.08	59,582.39	16,294.33	2		Env. Attorney III
689.13	4,050.38	1.94	76,260.44	22,848.39	12		Env. Chemical Lab Scientist
368.37	1,918.12	0.88	55,686.44	13,786.43	8		Env. Programs Manager
14.83	127.33	0.07	3,118.65	916.74		5	Env. Programs Manager
3,444.90	23,001.90	10.50	387,981.72	117,727.51	37		Env. Programs Specialist
505.27	2,570.02	2.40	55,722.20	15,445.30		38	Env . Programs Specialist
54.30	282.30	0.12	5,871.37	1,526.31	1		Epidemiologist
261.55	1,107.80	0.52	20,983.43	7,154.14	1		Info Systems Network Admin
56.98	498.98	0.23	4,491.97	1,762.37	1		Lab Technician
820.88	4,755.63	2.25	114,782.16	33,341.47	5		Professional engineer
18.55	127.55	0.05	1,876.58	543.75	1		Public Information Officer
652.82	2,583.82	1.27	34,033.50	11,345.56	2		Secretary
0.00	55.00	0.01	336.77	25.76	1		Student Assistant
0.00	2,349.00	0.28	16,578.83	1,268.27	9		Temporary
6.20	32.70	0.02	398.26	104.79		2	Temporary
8,486.19	54,429.44	25.62	1,013,445.69	292,564.72	97	45	

Table II. State Program Budget SFY 2004 & Projections

	FY 2004 RCRA	FY2005 RCRA Actual-2-28-05	FY2005 Remaining Projection	Total FY 2005	FY2006 RCRA
Salaries	1,014,224.33	579,792.19	289,896.10	869,688.29	889,646
Fringe	298,550.78	188,473.68	94,236.84	282,710.52	352,587
Workers Comp	6,922.12	2,678.71	1,339.36	4,018.07	7,000
Travel	45,616.04				35,479
Supplies-Other	94,715.49	44,694.65	61,443.86	106,138.51	7,080
Contractual	5,104.75				130,000
Indirect	227,433.99	98,912.19	49,456.09	148,368.28	250,346
Total	1,692,567.50	914,551.42	496,372.24	1,410,923.66	1,672,138.00
Federal Validated	1,269,425.63				
State Validated	423,141.88				
Total	1,692,567.51				

Indirect Charges		%	Salary	Fringe	W/C	
FY 2004	Onsite	17.32	994,928.50	286,471.12	6,922.12	223,137.33
	Offsite	12.83	19,295.83	6,039.83		3,250.57
FY 2005	Onsite	16.49	564,352.96	183,021.34	2,678.71	96,231.80
	Offsite	13.53	15,439.23	5,452.34		2,680.39
FY 2006	Onsite	20.04	889,646.00	352,587.00	7,000.00	250,346.29
	Offsite	16.25				
FY2004			1,014,224.33	292,510.95	6,922.12	1,313,657.40
FY2005			579,792.19	188,473.68	2,678.71	770,944.58
FY2006						

LPD personnel who implement the State Program include Environmental Program Specialists of the Hazardous Waste Compliance Section ("HWCS") and engineers and hydrologists in the Hazardous Waste Permitting and Corrective Action Section ("HWPS"). Personnel of the HWCS are responsible for inspection of RCRA facilities and development of enforcement actions, while personnel of the HWPS are involved in RCRA permitting, corrective action, and facility management activities throughout the state.

With respect to assignment of personnel necessary to implement RCRA Cluster XIII, many factors will be taken into consideration, such as: (1) other Program Plan commitments; (2) other State Program commitments; (3) the nature of the work being performed; and (4) the specific skills of the personnel. For example, if a project requires specialized knowledge of hazardous waste combustion, the DEQ technical staff utilizes personnel with advanced knowledge in this area and other work assignments are adjusted accordingly. No additional personnel will be required to implement the provisions of RCRA Cluster XIII. The state matching funds are required to be spent within the hazardous waste program. There are no restrictions or limitations that would prohibit these funds from being spent on RCRA requirements.

C. State Procedures (§ 271.6(c))

The Oklahoma Environmental Permitting Act is designed to provide uniform procedures for permits and other authorizations issued by the DEQ. Appendix M contains the DEQ's Rules of Practice and Procedure (OAC 252:4) to specify the practices and procedures of the Board, the Councils, and the DEQ. This includes those rules necessary to implement the Oklahoma Environmental Permitting Act.

The most recent amendment to OAC 252:4 was passed by the Board on March 4, 2005, with an effective date of June 15, 2005. Nothing in OAC 252:4 in any way restricts the LPD from fulfilling its

responsibilities under the OHWMA, the Memorandum of Agreement ("MOA"), or the Performance Partnership Agreement ("PPA") entered into by the DEQ and EPA.

Appeal procedures for RCRA hazardous waste permits issued by the DEQ are specified in 40 CFR 124.19 (a) through (c) and (e), which the DEQ incorporates by reference.

The DEQ and EPA have agreed to a joint permitting process (see section V.D of the MOA) for the joint processing and enforcement of permits for those provisions of HSWA promulgated after June 30, 1996; however, as the DEQ receives authorization for provisions of the HSWA promulgated after June 30, 1996, EPA will suspend issuance of Federal permits in the State for those provisions.

The division of responsibility between the State and EPA for administration of respective provisions of RCRA is described in detail in the MOA. While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified in the PPA and on facilities for which the DEQ requests EPA's assistance.

D. Forms Used to Implement the State Program [§ 271.6(d)]

The primary forms utilized by the LPD to implement the State Program include the following:

- RCRA Site Identification Form (EPA Form 8700-12, revised March 2005);
- RCRA Hazardous Waste Part A Permit Application and Site Identification (EPA Form 8700-23, revised March 2005);
- Hazardous Waste Permit Application Review Checklist, revised February 2001; and
- Hazardous Waste Inspection Forms dated March 2002.

These, as well as additional forms used by the LPD to implement the State Program may be found on DEQ's webpage at http://www.deq.state.ok.us/lpdnew/forms/indexhazforms.html.

DEQ does not have a state hazardous waste manifest form, but requires the use of the Uniform Hazardous Waste Manifest (EPA Form 8700-22, 8700-22A) unless use of another form is authorized by 40 CFR 262.21.

E. Compliance Tracking and Enforcement [§ 271.6(e)]

1. Compliance Tracking

The HWCS continues to achieve and maintain a high rate of compliance within the regulated universe by establishing a comprehensive inspection program and taking timely and effective enforcement actions against violations.

The PPA specifies the annual goals for inspections to be performed by the DEQ within the various categories of hazardous waste handlers.

The DEQ identifies violations of RCRA hazardous waste requirements by three primary means: inspections, periodic record reviews (e.g. manifests and state disposal plans), and complaints (as verified by subsequent investigation or inspection). The DEQ utilizes numerous inspection forms and checklists to identify violations found during inspections of hazardous waste facilities. These forms may be found on DEQ's webpage at http://www.deq.state.ok.us/lpdnew/forms/indexhazforms.html.

2. Enforcement

The DEQ diligently attempts to adhere to the time frames for enforcement actions specified in the EPA Enforcement Response Policy ("ERP") effective February 15, 2004 and the multi-year EPA/DEQ Enforcement Memorandum of Understanding ("MOU"). In those circumstances in which DEQ determines it cannot meet a specified time frame, it makes every effort to notify the EPA of the reason for the delay in advance of the deadline, as specified in the ERP and MOU, and identifies an alternate time frame.

HWCS staff use EPA's December 1987 Violation Classification Guidance document to assist with determining the seriousness of violations found, as well as the ERP to designate violators as significant non-compliers ("SNC") or secondary violators ("SV"). Penalties are calculated based on DEQ's Hazardous Waste Penalty Guidance dated October 2002.

Each inspection, whether or not a violation is identified, is recorded by entry into EPA's RCRAInfo system. Violations are documented by the issuance of a Notice to Comply ("NTC") for SVs, and a Notice of Violation ("NOV") followed by an Administrative Compliance Order ("ACO") for SNCs. When an NTC, NOV, or ACO is issued, compliance is tracked through resolution via RCRAInfo and a computerized docket system of the DEQ's Office of General Counsel. Compliance is verified by requiring the violator to submit appropriate documentation to demonstrate compliance, by a follow-up inspection, or a combination of submittal of appropriate documentation and a follow-up inspection.

Both the Environmental Quality Code at 27A O.S. § 2-3-504 and the OHWMA at 27A O.S. § 2-7-129 authorize the DEQ to bring actions in district court for injunctions and civil penalties. Fines of up to $25,000.00 per day per violation are authorized in administrative, civil and criminal actions (27A O.S. §§ 2-7-126 and 2-7-130).

The DEQ is also authorized to refer violations to state district attorneys for criminal prosecution (27A O.S. § 2-7-131). The most serious violations, if committed knowingly and willfully, may be prosecuted as felonies under Oklahoma's Environmental Crimes Act, which provides for prison terms of up to ten years and fines up to $100,000.00. To investigate potential criminal activities, the DEQ has an Environmental Crimes Investigation Team ("ECIT"), chaired by the General Counsel of the DEQ. The ECIT includes one

or more assigned attorneys, one or more assigned Environmental Program Specialists, the HWCS Manager, and other compliance and enforcement managers as needed.

F. State Manifest Tracking System [§ 271.6(f)]

As noted in Part I.D. of this Addendum, DEQ does not have a state hazardous waste manifest form, but requires the use of the Uniform Hazardous Waste Manifest. In accordance with the PPA, copies of all manifests for international shipments are provided to EPA.

G. Estimated Regulated Activities (§§ 271.6 (g) and (h))

Based on the information in RCRAInfo as of June 1, 2005, Oklahoma's hazardous waste generator and transporter universe is comprised of the following:

- 158 large quantity generators,
- 586 small quantity generators;
- 1,948 conditionally exempt generators; and
- 95 transporters.

Oklahoma's hazardous waste treatment, storage, and disposal ("TSD") facility universe is comprised of the following:

- two on-site and two off-site treatment facilities;
- four on-site and two off-site disposal facilities; and
- seven on-site and four off-site storage facilities.

Treatment facilities that were also storage facilities were only counted in that category. Virtually all of the treatment and disposal facilities also had storage capability.

Based on the 2001 Biennial Report data, the most recent compiled data, the following quantities of hazardous waste were managed in Oklahoma:

- 887,643 tons of hazardous waste were generated;
- 966,699 tons of hazardous waste were managed;
- 35,426 tons of hazardous waste were shipped to off-site TSDs;
- 72,638 tons were received by Oklahoma TSDs;
- 25,303 tons of hazardous waste were shipped to an out-of-state TSD; and
- 60,801 tons of hazardous waste were received by Oklahoma TSDs from out-of-state.

Part II: Scope, Structure, Coverage & Processes [§271.6(a)]

To provide a more detailed discussion of the scope of the program revisions being applied for, the following narrative discussion corresponds to the format of the Reviewer's Checklist for the Program Description included in SPA 24 of the EPA State Authorization Manual:

A. Rule Title: Zinc Fertilizers Made From Recycled Hazardous Secondary Materials
Checklist Title: Zinc Fertilizer Rule
Reference: 67 FR 48393 - 48415
Promulgation Date: July 24, 2002
Effective Date: July 24, 2002 for all revisions except for the amendment to 40 CFR 266.20(b); the effective date for this provision is January 24, 2003
Cluster: RCRA Cluster XIII
Provision Type: HSWA/ Non-HSWA
Summary: This final rule establishes a more consistent regulatory framework for the practice of making zinc fertilizer products from recycled hazardous secondary materials. More specifically, it establishes conditions for excluding hazardous secondary materials used to make zinc fertilizers from the regulatory definition of solid waste. The rule also establishes new product specifications for contaminants in zinc fertilizers made from those secondary materials.

The Oklahoma Environmental Quality Code and the OHWMA at 27A O.S. §§ 2-2-104 and 2-7-106, authorize the DEQ to develop rules to implement a State Program that is equivalent to the Federal RCRA Subtitle C program. This Federal rule amended 40 CFR 261.4, 266.20, and 268.40. On February 27, 2004, the Board passed revisions to OAC 252:205-3-1 through 3-6 to adopt these Federal rules by reference. The revisions to OAC 252:205 became effective on June 11, 2004 and ensure the State Program is equivalent to the Federal RCRA Subtitle C program.

No increase in funding or personnel will be required when DEQ receives authorization for these provisions, nor will these revisions affect the size of Oklahoma's regulated community.

B. Rule Title: Land Disposal Restrictions: National Treatment Variance To Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries
Checklist Title: Treatment Variance for Radioactively Contaminated Batteries
Reference: 67 FR 62618 – 62624
Promulgation Date: October 7, 2002
Effective Date: November 21, 2002
Cluster: RCRA Cluster XIII
Provision Type: HSWA
Summary: The October 7, 2002 rule grants a national treatability variance from the Land Disposal Restrictions treatment standards for radioactively contaminated cadmium-, mercury-, and silver-

containing batteries by designating new treatment subcategories for these wastes. The current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate because any recovered metals would likely contain residual radioactive contamination and not be usable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation is designated as the required treatment prior to land disposal for the new waste subcategories.

The Oklahoma Environmental Quality Code and the OHWMA at 27A O.S. §§ 2-2-104 and 2-7-106, authorize the DEQ to develop rules to implement a State Program that is equivalent to the Federal RCRA Subtitle C program. This Federal rule amended the Table contained in 40 CFR 268.40. On February 27, 2004, the Board passed revisions to OAC 252:205-3-1 through 3-6 to adopt this Federal rule by reference. The revisions to OAC 252:205 became effective on June 11, 2004 and ensure the State Program is equivalent to the Federal RCRA Subtitle C program.

No increase in funding or personnel will be required when DEQ receives authorization for this provision. Very few, if any, facilities in Oklahoma generate the batteries that are the subject of this rule, thus there will be no effect on the size of Oklahoma's regulated community.

C. Rule Title: NESHAP: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors-Corrections

Checklist Title: Hazardous Air Pollutant Standards for Combustors- Corrections 2
Reference: 67 FR 77687 - 77692
Promulgation Date: December 19, 2002
Effective Date: December 19, 2002
Cluster: RCRA Cluster XIII
Provision Type: HSWA

Summary: On September 30, 1999, EPA promulgated regulations to control emissions of hazardous air pollutants from incinerators, cement kilns and lightweight aggregate kilns that burn hazardous wastes. EPA subsequently promulgated three rules that revised these regulations: a Direct Final Rule published on July 3, 2001, an Interim Standards Rule published on February 13, 2002, and a Final Amendments Rule published on February 14, 2002. In this action, EPA corrected technical errors in those regulations.

The Oklahoma Environmental Quality Code and the OHWMA at 27A O.S. §§ 2-2-104 and 2-7-106, authorize the DEQ to develop rules to implement a State Program that is equivalent to the Federal RCRA Subtitle C program. This Federal rule amended 40 CFR 270.19, 270.22, 270.62, and 270.66. On February 27, 2004, the Board passed revisions to OAC 252:205-3-1 through 3-6 to adopt these Federal rules by reference. The revisions to OAC 252:205 became effective on June 11, 2004 and ensure the State Program is equivalent to the Federal RCRA Subtitle C program.

No increase in funding or personnel will be required when DEQ receives authorization for this provision. Because these revisions are corrections of technical errors, there will be no effect on the size of Oklahoma's regulated community.

APPENDIX A

RCRA REVISION CHECKLIST 200
Zinc Fertilizer Rule
67 FR 48393 – 48415
July 24, 2002
(RCRA Cluster XIII, HSWA/ Non-HSWA)

Name of State: Oklahoma

State Statutory Authority: Oklahoma Hazardous Waste Management Act, 27A O.S. §2-7-101 *et seq.*

Title of Regulations: Hazardous Waste Management Regulations, Title 252 of the Oklahoma Administrative Code, Chapter 205 (OAC 252:205), Effective Date: June 11, 2004

Date Checklist Completed:

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
PART 261 – IDENTIFICATION AND LISTING OF HAZARDOUS WASTE						
SUBPART A -- GENERAL						
EXCLUSIONS						
add new paragraphs (a)(20) and (21) to read as follows:	261.4	OAC 252:205-3-2(c), which incorporates 40 CFR Part 261 by reference	X			
Hazardous secondary materials used to make zinc fertilizers, provided these conditions are satisfied:	261.4(a)(20)	Ibid.	X			
Materials must not be accumulated speculatively, as defined in §261.1 (c)(8).	261.4(a)(20)(i)	Ibid.	X			
Generators and intermediate handlers must:	261.4(a)(20)(ii)	Ibid.	X			
Submit a one-time notice to Regional Administrator or State Director, containing facility name, address and EPA ID number; providing a description of material; and identifying when the manufacturer will manage these wastes under paragraph (a)(20).	261.4(a)(20)(ii)(A)	Ibid.	X			

RCRA REVISION CHECKLIST 200: Zinc Fertilizer Rule
(Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
Store material in tanks, containers, or buildings that prevent releases into environment. Buildings must be made of non-earthen materials and have a floor, walls and a roof. Tanks must be structurally sound and, if outdoors, must have roofs or covers. Containers must be kept closed except when adding or removing material, and must be in sound condition. Containers stored outdoors must be managed within storage areas that:	261.4(a)(20)(ii)(B)	Ibid.	X			
have containment structures or systems to contain leaks, spills and accumulated precipitation; and	261.4(a)(20)(ii)(B)(1)	Ibid.	X			
provide for drainage and removal of leaks, spills and accumulated precipitation; and	261.4(a)(20)(ii)(B)(2)	Ibid.	X			
prevent run-on into the containment system.	261.4(a)(20)(ii)(B)(3)	Ibid.	X			
With each off-site shipment, provide written notice to the receiving facility that the material is subject to paragraph (a)(20).	261.4(a)(20)(ii)(C)	Ibid.	X			
Maintain at generator's or intermediate handler's facility for no less than three years records of all shipments. These records must contain:	261.4(a)(20)(ii)(D)	Ibid.	X			

RCRA REVISION CHECKLIST 200: Zinc Fertilizer Rule
(Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
Name of transporter and date of shipment;	261.4(a)(20)(ii)(D)(1)	Ibid.	X			
Name and address of receiving facility, and documentation confirming shipment receipt; and	261.4(a)(20)(ii)(D)(2)	Ibid.	X			
Type and quantity of material in each shipment.	261.4(a)(20)(ii)(D)(3)	Ibid.	X			
Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:	261.4(a)(20)(iii)	Ibid.	X			
Store materials in accordance with requirements for generators and intermediate handlers, as in paragraph (a)(20)(ii)(B).	261.4(a)(20)(iii)(A)	Ibid.	X			
Submit a one-time notification to the Regional Administrator or State Director that, specifies the name, address and EPA ID number of the manufacturer, and identifies when the manufacturer will manage these materials under paragraph (a)(20).	261.4(a)(20)(iii)(B)	Ibid.	X			
Maintain records for a minimum of three years of all shipments received; must identify name and address of generating facility, name of transporter and date materials were received, quantity received, and a describe the process that generated the material.	261.4(a)(20)(iii)(C)	Ibid.	X			

RCRA REVISION CHECKLIST 200: Zinc Fertilizer Rule
(Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
Submit to the Regional Administrator or State Director an annual report identifying the total quantities of all materials used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the process(s) which generated them.	261.4(a)(20)(iii)(D)	Ibid.	X			
Nothing in this section preempts, overrides or otherwise negates the provision in §262.11.	261.4(a)(20)(iv)	Ibid.	X			
Interim status and permitted storage units that have only stored zinc-bearing hazardous wastes prior to the submission of the one-time notice described in (a)(20)(ii)(A), and that afterward will be used only to store these excluded materials, are not subject to the closure requirements of 40 CFR Parts 264 and 265.	261.4(a)(20)(v)	Ibid.	X			
Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section, provided that:	261.4(a)(21)	Ibid.	X			
The fertilizers meet the following contaminant limits:	261.4(a)(21)(i)	Ibid.	X			

RCRA REVISION CHECKLIST 200: Zinc Fertilizer Rule
(Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
For metal contaminants: The Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm): Arsenic - .3 Cadmium - 1.4 Chromium - .6 Lead – 2.8 Mercury - .3	261.4(a)(21)(i)(A)	Ibid.	X			
For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).	261.4(a)(21)(i)(B)	Ibid.	X			
The manufacturer analyzes fertilizer to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must be performed whenever there are changes to manufacturing processes or ingredients that could significantly affect amounts of contaminants in product. The manufacturer may use any reliable analytical method. It is manufacturer's responsibility to ensure that sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.	261.4(a)(21)(ii)	Ibid.	X			

RCRA REVISION CHECKLIST 200: Zinc Fertilizer Rule
(Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
The manufacturer maintains for no less than three years records of all sampling and analyses performed to determine compliance with the requirements of (a)(21)(ii). Such records must at a minimum include:	261.4(a)(21)(iii)	Ibid.	X			
Dates and times product samples were taken, and dates samples were analyzed;	261.4(a)(21)(iii)(A)	Ibid.	X			
Names and qualifications of person(s) taking samples;	261.4(a)(21)(iii)(B)	Ibid.	X			
Description of methods and equipment used to take the samples;	261.4(a)(21)(iii)(C)	Ibid.	X			
Name and address of the laboratory where analyses were performed;	261.4(a)(21)(iii)(D)	Ibid.	X			
Description of analytical methods used, and	261.4(a)(21)(iii)(E)	Ibid.	X			
All laboratory analytical results used to determine compliance with the contaminant limits specified in paragraph (a)(21).	261.4(a)(21)(iii)(F)	Ibid.	X			
PART 266 – STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES						
SUBPART C -- RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL						
APPLICABILITY						
remove the last two sentences of paragraph (b), and add a new paragraph (d) to read as follows:	266.20	OAC 252:205-3-2(h) which incorporates 40 CFR Part 266 by reference.	X			
Fertilizers that contain recyclable materials are not subject to regulation provided that:	266.20(d)	Ibid.	X			

RCRA REVISION CHECKLIST 200: Zinc Fertilizer Rule
(Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
They are zinc fertilizers excluded from the definition of solid waste according to §261.4(a)(21); or	266.20(d)(1)	Ibid.	X			
They meet applicable treatment standards in subpart D of Part 268 of this chapter for each hazardous waste that they contain.	266.20(d)(2)	Ibid.	X			
PART 268 – LAND DISPOSAL RESTRICTIONS						
SUBPART D – TREATMENT STANDARDS						
APPLICABILITY OF TREATMENT STANDARDS						
Section 268.40 is amended by removing and reserving paragraph (i)	268.40	OAC 252:205-3-2(i) which incporporates 40 CFR Part 268 by reference.	X			

RCRA REVISION CHECKLIST 201
Treatment Variance for Radioactively Contaminated Batteries
67 FR 62618 – 62624
October 7, 2002
(RCRA Cluster XIII, HSWA)

Name of State: Oklahoma

State Statutory Authority: Oklahoma Hazardous Waste Management Act, 27A O.S. §2-7-101, *et seq.*

Title of Regulations: Hazardous Waste Management Regulations, Title 252 of the Oklahoma Administrative Code, Chapter 205 (OAC 252:205), Effective Date: June 11, 2004

Date Checklist Completed:

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
PART 268 – LAND DISPOSAL RESTRICTIONS						
SUBPART D – TREATMENT STANDARDS						
APPLICABILITY OF TREATMENT STANDARDS						
amend the Table by adding the following entries to the end of entries D006, D009, and D011:	268.40/Table	OAC 252:205-3-2(i) which incorporates 40 CFR Part 268 by reference.	X			

TREATMENT STANDARDS FOR HAZARDOUS WASTES
[NOTE: NA means not applicable]

Waste code	Waste description and treatment/ Regulatory subcategory	Regulated hazardous constituent		Wastewaters: Concentration in mg/L,[3] or technology code[4]	Nonwastewaters: Concentration in mg/kg[5] unless noted as "mg/L TCLP", or technology code[4]
		Common name	CAS[2] No.		
*	* * *	*	*	*	*
D006[9]…..	* * * * *	Cadmium…….	7740-43-9	NA	Macroencapsulation in accordance with 40 CFR 268.45.
	Radioactively contaminated cadmium containing batteries. (**Note:** This subcategory consists of nonwastewaters only)				
*	* * *	*	*	*	*
D009[9]…..	* * * * *	Mercury……	7439-97-6	NA	Macroencapsulation in accordance with 40 CFR 268.45.
	Radioactively contaminated mercury containing batteries. (**Note:** This subcategory consists of nonwastewaters only)				
*	* * *	*	*	*	*

RCRA REVISION CHECKLIST 201: Treatment Variance for Radioactively Contaminated Batteries (Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
D011[9]….. * * * * * Silver…….…. 7440-22-4 NA Radioactively contaminated silver containing batteries. (**Note:** This subcategory consists of nonwastewaters only)					Macroencapsulation in accordance with 40 CFR 268.45.	
* * * * * * *						

RCRA REVISION CHECKLIST 202
Hazardous Air Pollutant Standards for Combustors- Corrections 2
67 FR 77687 - 77692
December 19, 2002
(RCRA Cluster XIII, HSWA)

Name of State: Oklahoma

State Statutory Authority: Oklahoma Hazardous Waste Management Act, 27A O.S. §2-7-101, *et seq.*

Title of Regulations: Hazardous Waste Management Regulations, Title 252 of the Oklahoma Administrative Code, Chapter 205 (OAC 252:205), Effective Date: June 11, 2004

Date Checklist Completed:

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
PART 270 – EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM						
SUBPART B – PERMIT APPLICATION						
SPECIFIC PART B INFORMATION REQUIREMENTS FOR INCINERATORS						
Amend by revising paragraph (e) to read as follows: When an owner or operator demonstrates compliance with the air emission standards in part 63, subpart EEE, the requirements of this section do not apply, except those the Director determines necessary to comply with §§ 264.345(a) and 264.345(c) if you elect to comply with § 270.235(a)(1)(i). The Director may apply the provisions on a case-by-case basis for information collection in accordance with §§ 270.10(k) and 270.32(b)(2).	270.19(e)	OAC 252:205-3-2(j) which incorporates 40 CFR Part 270 by reference.	X			

RCRA REVISION CHECKLIST 202: Hazardous Air Pollutant Standards for Combustors– Corrections 2 (Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
SPECIFIC PART B INFORMATION REQUIREMENTS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE						
Amend by revising the introductory text to read as follows: When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, the requirements of this section do not apply, except those the Director determines necessary to comply with §§ 266.102(e)(1) and 266.102(e)(2)(iii) if you elect to comply with § 270.235(a)(1)(i). The Director may apply the provisions on a case-by-case basis for information collection in accordance with §§ 270.10(k) and 270.32(b)(2).	270.22 intro	Ibid.	X			

RCRA REVISION CHECKLIST 202: Hazardous Air Pollutant Standards for Combustors– Corrections 2 (Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
SUBPART F – SPECIAL FORMS OF PERMITS						
HAZARDOUS WASTE INCINERATOR PERMITS						
Section 270.62 is amended by revising the introductory text to read as follows: When an owner or operator demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, the requirements of this section do not apply, except those provisions the Director determines necessary to comply with §§ 264.345(a) and 264.345(c) of this chapter if you elect to comply with § 270.235(a)(1)(i). The Director may apply the provisions on a case-by-case basis, for information collection in accordance with §§ 270.10(k) and 270.32(b)(2).	270.62 intro	Ibid.	X			

RCRA REVISION CHECKLIST 202: Hazardous Air Pollutant Standards for Combustors– Corrections 2 (Cont'd)

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV-ALENT	LESS STRIN-GENT	MORE STRIN-GENT	BROADER IN SCOPE
PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE.						
Amend by revising the introductory text to read as Follows: When an owner or operator of a cement or lightweight aggregate kiln demonstrates compliance with the air emission standards and limitations in part 63, subpart EEE, the requirements of this section do not apply, except those provisions the Director determines necessary to comply with §§ 266.102(e)(1) and 266.102(e)(2)(iii) of this chapter if you elect to comply with § 270.235(a)(1)(i). The Director may apply the provisions on a case-by-case basis for information collection in accordance with §§ 270.10(k) and 270.32(b)(2).	270.66 intro	Ibid.	X			

APPENDIX B

§27A-1-1-101. Short title.

Chapter 1 of this title shall be known and may be cited as the "Oklahoma Environmental Quality Act".

[1]Added by Laws 1992, c. 398, § 1, emerg. eff. June 12, 1992. Amended by Laws 1993, c. 145, § 1, eff. July 1, 1993. Renumbered from § 1 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[2]

§27A-1-1-102. Purpose of act.

The purpose of the Oklahoma Environmental Quality Act is to provide for the administration of environmental functions which will:

1. Provide that environmental regulatory concerns of industry and the public shall be addressed in an expedient manner;
2. Improve the manner in which citizen complaints are tracked and resolved;
3. Better utilize state financial resources for environmental regulatory services; and
4. Coordinate environmental activities of state environmental agencies.

[3]Added by Laws 1992, c. 398, § 2, emerg. eff. June 12, 1992. Amended by Laws 1993, c. 145, § 2, eff. July 1, 1993. Renumbered from § 2 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[4]

§27A-1-1-201. Definitions.

As used in the Oklahoma Environmental Quality Act:

1. “Clean Water Act” means the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;
2. “Discharge” includes but is not limited to a discharge of a pollutant, and means any addition of any pollutant to waters of the state from any point source;
3. “Environment” includes the air, land, wildlife, and waters of the state;
4. “Federal Safe Drinking Water Act” means the federal law at 42 U.S.C., Section 300 et seq., as amended;
5. “Groundwater protection agencies” include the:
    a. Oklahoma Water Resources Board,
    b. Oklahoma Corporation Commission,
    c. State Department of Agriculture,
    d. Department of Environmental Quality,
    e. Conservation Commission, and
    f. Department of Mines;
6. “Nonpoint source” means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined and includes but is not limited to agricultural storm water runoff and return flows from irrigated agriculture;
7. “N.P.D.E.S.” or “National Pollutant Discharge Elimination System” means the system for the issuance of permits under the Federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;
8. “Point source” means any discernible, confined and discrete conveyance or outlet including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure container, rolling stock or vessel or other floating craft from which pollutants are or may be discharged into waters of the state. The term “point source” shall not include agricultural storm water runoff and return flows from irrigated agriculture;

9. "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste;

10. "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;

11. "Source" means any and all points of origin of any wastes, pollutants or contaminants whether publicly or privately owned or operated;

12. "State agencies with limited environmental responsibilities" means:

a. the Department of Public Safety,
b. the Department of Labor, and
c. the Department of Civil Emergency Management;

13. "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, and
g. Department of Environmental Quality;

14. "Storm water" means rain water runoff, snow melt runoff, and surface runoff and drainage;

15. "Total maximum daily load" means the sum of individual wasteload allocations (W.L.A.) for point sources, safety, reserves, and loads from nonpoint sources and natural backgrounds;

16. "Waste" means any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate or tend to pollute or contaminate, any air, land or waters of the state;

17. "Wastewater" includes any substance, including sewage, that contains any discharge from the bodies of human beings or animals, or pollutants or contaminating chemicals or other contaminating wastes from domestic, municipal, commercial, industrial, agricultural, manufacturing or other forms of industry;

18. "Wastewater treatment" means any method, technique or process used to remove pollutants from wastewater or sludge to the extent that the wastewater or sludge may be reused, discharged into waters of the state or otherwise disposed and includes, but is not limited to, the utilization of mechanized works, surface impoundments and lagoons, aeration, evaporation, best management practices (BMPs), buffer strips, crop removal or trapping, constructed wetlands, digesters or other devices or methods. "Treatment" also means any method, technique or process used in the purification of drinking water;

19. "Wastewater treatment system" means treatment works and all related pipelines or conduits, pumping stations and force mains, and all other appurtenances and devices used for

collecting, treating, conducting or discharging wastewater;

20. "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. Provided, waste treatment systems, including treatment ponds or lagoons designed to meet federal and state requirements other than cooling ponds as defined in the Clean Water Act or rules promulgated thereto and prior converted cropland are not waters of the state; and

21. "Wellhead protection area" means the surface and subsurface area surrounding a water well or wellfield supplying a public water system that defines the extent of the area from which water is supplied to such water well or wellfield.

[5]Added by Laws 1993, c. 145, § 3, eff. July 1, 1993. Amended by Laws 1999, c. 413, § 1, eff. Nov. 1, 1999; Laws 2003, c. 118, § 1, emerg. eff. April 22, 2003.

[6]

§27A-1-1-202. State environmental agencies - Powers, duties and responsibilities.

A. Each state environmental agency shall:

1. Be responsible for fully implementing and enforcing the laws and rules within its jurisdictional areas of environmental responsibility;

2. Utilize and enforce the Oklahoma Water Quality Standards established by the Oklahoma Water Resources Board;

3. Seek to strengthen relationships between state, regional, local and federal environmental planning, development and management programs;

4. Specifically facilitate cooperation across jurisdictional lines of authority with other state environmental agencies regarding programs to resolve environmental concerns;

5. Cooperate with all state environmental agencies, other state agencies and local or federal governmental entities to protect, foster, and promote the general welfare, and the environment and natural resources of this state;

6. Have the authority to engage in environmental and natural resource information dissemination and education activities within their respective areas of environmental jurisdiction; and

7. Participate in every hearing conducted by the Oklahoma Water Resources Board for the consideration, adoption or amendment of the classification of waters of the state and standards of purity and quality thereof, and shall have the opportunity to present written comment to the members of the Oklahoma Water Resources Board at the same time staff recommendations are submitted to those members for Board review and consideration.

B. 1. In addition to the requirements of subsection A of this section, each state environmental agency shall have promulgated by July 1, 2001, a Water Quality Standards Implementation Plan for its jurisdictional areas of environmental responsibility in compliance with the Administrative Procedures Act and pursuant to the provisions of this section. Each agency shall review its plan at least every three (3) years thereafter to determine whether revisions to the plan are necessary.

2. Upon the request of any state environmental agency, the Oklahoma Water Resources Board shall provide consulting assistance to such agency in developing a Water Quality Standards Implementation Plan as required by this subsection.

3. Each Water Quality Standards Implementation Plan shall:

a. describe, generally, the processes, procedures and methodologies the state environmental agency will utilize to ensure that programs within its jurisdictional areas of environmental responsibility will comply with anti-degradation standards and lead to:
   (1) maintenance of water quality where beneficial uses are supported,
   (2) removal of threats to water quality where beneficial uses are in danger of not being supported, and
   (3) restoration of water quality where beneficial uses are not being supported,

b. include the procedures to be utilized in the application of use support assessment protocols to make impairment determinations,

c. list and describe programs affecting water quality,

d. include technical information and procedures to be utilized in implementing the Water Quality Standards Implementation Plan,

e. describe the method by which the Water Quality Standards Implementation Plan will be integrated into the water quality management activities within the jurisdictional areas of environmental responsibility of the state environmental agency,

f. detail the manner in which the agency will comply with mandated statewide requirements affecting water quality developed by other state environmental agencies including, but not limited to, total maximum daily load development, water discharge permit activities and nonpoint source pollution prevention programs,

g. include a brief summary of the written comments and testimony received pursuant to all public meetings held or sponsored by the state environmental agency for the purpose of providing the public and other state environmental agencies an opportunity to comment on the plan, and

h. describe objective methods and means to evaluate the effectiveness of activities conducted pursuant to the Water Quality Standards Implementation Plan to achieve Water Quality Standards.

C. 1. There is hereby created a State Water Quality Standards Implementation Advisory Committee. The Committee shall consist of a designated representative of each of the state environmental agencies and the Secretary of the Environment. The Water Resources Board representative shall serve as chair of the Committee.

2. Prior to the publication of the notice of rulemaking intent for a Water Quality Standards Implementation Plan or amendment thereof, the environmental agency developing the plan shall submit the draft plan to the Water Quality Standards Implementation Advisory Committee for review. The Committee shall evaluate the extent to which the agency's Water Quality Standards Implementation Plan meets the requirements set out in this section and, to the extent necessary to achieve compliance with these requirements, shall provide detailed, written recommendations of provisions which should be incorporated into the agency's plan. A copy of such written recommendations shall also be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

D. 1. Each state environmental agency with groundwater protection authority pursuant to Article III of the Oklahoma Environmental Quality Act shall be the groundwater protection

agency for activities within its jurisdictional areas of environmental responsibility.

2. The Department of Environmental Quality shall cooperate with other state environmental agencies, as appropriate and necessary, in the protection of such unassigned activities.

3. Groundwater regulatory agencies shall develop groundwater protection practices to prevent groundwater contamination from activities within their respective jurisdictional areas of environmental responsibility.

4. Each groundwater protection agency shall promulgate such rules, and issue such permits, policies, directives or any other appropriate requirements, as necessary, to implement the requirements of this subsection.

5. Groundwater protection agencies shall take such action as may be necessary to assure that activities within their respective jurisdictional areas of environmental responsibility protect groundwater quality to support the uses of the state's water quality.

6. In addition, each groundwater protection agency with enforcement authority is hereby authorized to:

a. engage the voluntary cooperation of all persons in the maintenance and protection of groundwater, and to advise, consult and cooperate with all persons, all agencies of the state, universities and colleges, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this subsection, and to this end and for the purposes of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, receive and spend funds as appropriated by the Legislature, and from such agencies and other officers and persons on behalf of the state,

b. encourage the formulation and execution of plans to maintain and protect groundwater by cooperative groups or associations of municipal corporations, industries, industrial users and other users of groundwaters of the state, who, jointly or severally, are or may be impacting on the maintenance and protection of groundwater,

c. encourage, participate in or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to the maintenance and protection of groundwater, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this subsection, and to make reports and recommendations with respect thereto,

d. conduct groundwater sampling, data collection, analyses and evaluations with sufficient frequency to ascertain the characteristics and quality of groundwater and the sufficiency of the groundwater protection programs established pursuant to this subsection, and

e. develop a public education and promotion program to aid and assist in publicizing the need of, and securing support for, the maintenance and protection of groundwater.

E. Each state environmental agency and each state agency with limited environmental responsibilities shall participate in the information management system developed by the Department of Environmental Quality, pursuant to Section 6 of this act, with such information as the Department shall reasonably request.

F. In each even-numbered year, in cooperation with other state environmental agencies participating in the monitoring of water resources, the Oklahoma Water Resources Board shall provide a report on the status of water quality monitoring to the Legislature for review.
[7]Added by Laws 1993, c. 145, § 4, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 1, eff. July 1, 1993; Laws 1999, c. 413, § 2, eff. Nov. 1, 1999.
[8]
§27A-1-1-203. State environmental agencies - Establishment of rules for issuance or denial of permits or licenses and complaint resolution.

A. Each state environmental agency and each state agency with limited environmental responsibilities, within its areas of environmental jurisdiction, shall promulgate, by rule, time periods for issuance or denial of permits and licenses that are required by law. Any such matter requiring an individual proceeding shall be resolved in accordance with the rules of the agency and any applicable statutes. The rules shall provide that such time periods shall only be extended by agreement with the licensee or permittee or if circumstances outside the agency's control prevent that agency from meeting its time periods. If the agency fails to issue or deny a permit or license within the required time periods because of circumstances outside of the agency's control, the agency shall state in writing the reasons such licensing or permitting is not ready for issuance or denial.

B. 1. Each state environmental agency and each state agency with limited environmental responsibilities shall promulgate rules establishing time periods for complaint resolution as required by law.

2. Complaints received by any state environmental agency or state agency with limited environmental responsibilities concerning a site or facility permitted by or which clearly falls within the jurisdiction of another state environmental agency or state agency with limited environmental responsibilities shall be immediately referred to the appropriate agency for investigation and resolution. Such investigation shall be made by the appropriate division and employees of the appropriate agency.
[9]Added by Laws 1992, c. 398, § 11, emerg. eff. June 12, 1992. Amended by Laws 1993, c. 145, § 5, eff. July 1, 1993. Renumbered from § 11 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993; Laws 1999, c. 413, § 15, eff. Nov. 1, 1999.
[10]
§27A-1-1-204. State environmental agencies - Complaint investigation and response process - Rules - False complaints.

A. Each state environmental agency and each state agency with limited environmental responsibilities shall develop, implement and utilize a complaint investigation and response process that will ensure all state environmental agencies with authority to investigate, mitigate and resolve complaints, respond to complaints in a timely manner by initiating appropriate action and informing the complainant regarding potential actions that may occur. Complainants shall also be notified, in writing:

1. Of the resolution of the complaint; and

2. Of the complainant's options for further resolution of the complaint if such complainant objects or disagrees with the actions or decision of the agency.

B. Rules to implement such system shall be promulgated by each state environmental agency.

C. 1. It shall be unlawful for any person to knowingly and willfully file a false complaint with a state environmental agency or to knowingly and willfully misrepresent material

information to a state environmental agency or a state agency with limited environmental responsibilities relating to a complaint.

2. Any person filing such false complaint or misrepresenting such material information shall be deemed guilty of a misdemeanor and may be reported to local law enforcement for criminal investigation and, upon conviction thereof, shall be punished by a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00) or by imprisonment in the county jail for a term of not more than sixty (60) days or both such fine and imprisonment.

[11]Added by Laws 1992, c. 398, § 5, emerg. eff. June 12, 1992. Amended by Laws 1993, c. 145, § 6, eff. July 1, 1993. Renumbered from § 5 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1996, c. 158, § 1, eff. Nov. 1, 1996; Laws 1999, c. 413, § 16, eff. Nov. 1, 1999.

[12]

§27A-1-1-205. State environmental agencies - Transferred and assigned programs and functions - Unexpired or unrevoked licenses, permits, certifications or registrations - Existing rights, obligations and remedies - Existing orders, claims or causes of action.

A. With regard to all programs and functions transferred and assigned among the state environmental agencies pursuant to Section 1-3-101 of this title, all agency rules, including fee schedules for state and county, relating to such programs and functions are hereby transferred to the receiving agency for the purpose of maintaining and operating such programs and functions. Such rules shall remain in effect only until June 30, 1994, at which time such transferred rules will terminate unless earlier superseded by rules promulgated by the receiving agency. By February 1, 1994, each agency receiving programs or functions shall have adopted new permanent rules to implement the programs and functions within the jurisdiction of the agency pursuant to Section 1-3-101 of this title.

B. Unexpired or unrevoked licenses, permits, certifications or registrations issued prior to July 1, 1993, shall remain valid for stated terms and conditions until otherwise provided by law. Such licenses, permits or registrations shall be subject to the laws and rules of the state agency to which jurisdiction over such licenses, permits or registrations are transferred pursuant to the Oklahoma Environmental Quality Act.

C. All rights, obligations and remedies arising out of laws, rules, agreements and causes of action are also transferred to such agency.

D. Nothing in the Oklahoma Environmental Quality Act shall operate to bar or negate any existing order, claim or cause of action transferred or available to any state environmental agency or its respective predecessor, nor shall it operate to affect enforcement action undertaken by any program, division or service prior to such transfer to any state environmental agency. Violations of provisions of law now contained in this title, and violations of rules, permits or final orders which occurred prior to the transfer of jurisdiction and authority to any state environmental agency shall be subject to penalties available and existing at the time of violation.

E. Any application pending on June 30, 1993, before the Oklahoma Water Resources Board or the State Department of Health for a permit or license over which the Department has jurisdiction is hereby transferred to the Department and shall be subject to the Oklahoma Environmental Quality Code.

F. All permit applications filed with the Oklahoma Water Resources Board on or before June 30, 1993, for which no permit has been issued by the Oklahoma Water Resources Board for the land application of industrial waste, sludge or wastewater shall be subject to the requirements of this Code.

[13]Added by Laws 1992, c. 398, § 12, eff. July 1, 1993. Amended by Laws 1993, c. 145, § 9, eff. July 1, 1993. Renumbered from § 12 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 8, eff. July 1, 1993.
[14]
§27A-1-1-206. Economic impact and environmental benefit statements.

A. Each state environmental agency in promulgation of permanent rules within its areas of environmental jurisdiction, prior to the submittal to public comment and review of any rule that is more stringent than corresponding federal requirements, unless such stringency is specifically authorized by state statute, shall duly determine the economic impact and the environmental benefit of such rule on the people of the State of Oklahoma including those entities that will be subject to the rule. Such determination shall be in written form.

B. Such economic impact and environmental benefit statement of a proposed permanent rule shall be issued prior to or within fifteen (15) days after the date of publication of the notice of the proposed permanent rule adoption. The statement may be modified after any hearing or comment period afforded pursuant to Article I of the Administrative Procedures Act.

C. The economic impact and environmental benefit statement shall be submitted to the Governor pursuant to Section 303.1 of Title 75 of the Oklahoma Statutes and to the Legislature pursuant to Section 308 of Title 75 of the Oklahoma Statutes. Such reports submitted to the Governor and to the Legislature shall include a brief summary of any public comments made concerning the statement and any response by the agency to the public comments demonstrating a reasoned evaluation of the relative impacts and benefits of the more stringent regulation.
[15]Added by Laws 1994, c. 96, § 1, eff. Sept. 1, 1994.
[16]
§27A-1-2-101. Secretary of Environment or successor cabinet position - Powers, duties and responsibilities.

A. The Secretary of Environment or successor cabinet position having authority over the Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. Powers and duties for environmental areas designated to such position by the Governor;

2. The recipient of federal funds disbursed pursuant to the Federal Water Pollution Control Act, provided the Oklahoma Water Resources Board is authorized to be the recipient of federal funds to administer the State Revolving Fund Program. The federal funds received by the Secretary of Environment shall be disbursed to each state environmental agency and state agency with limited environmental responsibilities based upon its statutory duties and responsibilities relating to environmental areas as determined by the Secretary of Environment in consultation with the Secretary of Agriculture. Such funds shall be distributed to the appropriate state environmental agency or state agency with limited environmental responsibilities within thirty (30) days of its receipt by the Secretary or as otherwise provided by grant or contract terms without any assessment of administrative fees or costs. Disbursement of other federal environmental funds shall not be subject to this section. The Secretary of Environment shall make an annual written report no later than November 1 to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chair of each environmental committee of both the House of Representatives and Senate detailing the disbursement of federal funds;

3. Coordinate pollution control and complaint management activities of the state carried on by all state agencies to avoid duplication of effort including but not limited to the

development of a common data base for water quality information with a uniform format for use by all state agencies and the public; and

4. Act on behalf of the public as trustee for natural resources under the federal Oil Pollution Act of 1990, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the federal Water Pollution Control Act and any other federal laws providing that a trustee for the natural resources is to be designated. The Secretary is authorized to make claims against federal funds, receive federal payments, establish and manage a revolving fund in relation to duties as the natural resources trustee consistent with the federal enabling acts and to coordinate, monitor and gather information from and enter into agreements with the appropriate state environmental agencies or state agencies with limited environmental responsibilities in carrying out the duties and functions of the trustee for the natural resources of this state.

B. 1. The Secretary of the Environment or successor cabinet position having authority over the Department of Environmental Quality shall develop and implement, by January 1, 2000, public participation procedures for the development and/or modification of:

a. the federally required list of impaired waters (303(d) report),
b. the federally required water quality assessment (305(b) report),
c. the federally required nonpoint source state assessment (319 report), and
d. the continuing planning process document.

2. The procedures shall provide for the documents to be submitted for formal public review with a published notice consistent with the Administrative Procedures Act, providing for a thirty-day comment period and the preparation of a responsiveness summary by the applicable state environmental agency.

3. Information from current research shall be considered when made available to the agency.

[17]Added by Laws 1993, c. 145, § 10, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 3, emerg. eff. June 7, 1993; Laws 1999, c. 413, § 3, eff. Nov. 1, 1999; Laws 2003, c. 381, § 1, eff. July 1, 2003; Laws 2004, c. 381, § 2, emerg. eff. June 3, 2004.

[18]

§27A-1-2-102. Coordination of monitoring of lakes - Identification of eutrophic lakes - Discharge of wastewater into eutrophic lake - Penalties - Order of suspension and forfeiture.

A. The Office of the Secretary of the Environment shall coordinate monitoring lakes in the State of Oklahoma and identify those lakes which it determines to be eutrophic as defined by Oklahoma's Water Quality Standards.

B. No person may discharge wastewaters from a point source within or outside of this state which will foreseeably enter a lake in this state which has been identified as eutrophic by the Oklahoma's Water Quality Standards without subjecting such wastewaters to the best available technology as identified in the federal Clean Water Act for nitrogen and phosphorous. The Office of the Secretary of the Environment shall coordinate the monitoring of all lakes it identifies as eutrophic and notify by certified mail any person who discharges wastewater which enters such lakes in violation of this section of the provisions of this section and shall order such person to immediately cease and desist from any further violation of this section.

C. Any person who violates the provisions of subsection B of this section shall be guilty of a misdemeanor punishable by a penalty of not more than One Hundred Dollars ($100.00) per day for each day on which a violation occurs. The Attorney General is authorized to prosecute violations of this section. Venue and jurisdiction shall be proper in a county which contains all

or part of a eutrophic lake which is the subject of a discharge in violation of this section.

D. 1. In addition to the penalty provided in subsection C of this section if a person continues to violate subsection B of this section after having received notification from the Secretary of the Environment to cease and desist, such person shall be guilty of a misdemeanor punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) per day.

2. If the owner of a facility which discharges wastewater in violation of this subsection is a corporation authorized to do business in this state, the court may enter an order directing the suspension of any authorization to do business in this state and of the charter or other instrument of organization, under which the corporation may be organized and the forfeiture of all corporate or other rights inuring thereunder. The order of suspension and forfeiture shall have the same effect on the rights, privileges and liabilities of the corporation and its officers and directors as a suspension and forfeiture ordered pursuant to Section 1212 of Title 68 of the Oklahoma Statutes for failure to pay franchise tax. Additionally, all officers and directors of a corporation found to be in violation of this subsection shall be personally liable for any fine imposed pursuant to this subsection.

[19]Added by Laws 1998, c. 232, § 25, eff. July 1, 1998.

[20]

§27A-1-3-101. State environmental agencies - Jurisdictional areas of environmental responsibilities.

A. The provisions of this section specify the jurisdictional areas of responsibility for each state environmental agency and state agencies with limited environmental responsibility. The jurisdictional areas of environmental responsibility specified in this section shall be in addition to those otherwise provided by law and assigned to the specific state environmental agency; provided that any rule, interagency agreement or executive order enacted or entered into prior to the effective date of this section which conflicts with the assignment of jurisdictional environmental responsibilities specified by this section is hereby superseded. The provisions of this subsection shall not nullify any financial obligation arising from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

B. Department of Environmental Quality. The Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial, commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration, manufacturing and other sources, facilities and activities, except as provided in subsections D and E of this section;

2. All nonpoint source discharges and pollution except as provided in subsections D, E and F of this section;

3. Technical lead agency for point source, nonpoint source and storm water pollution control programs funded under Section 106 of the federal Clean Water Act, for areas within the Department's jurisdiction as provided in this subsection;

4. Surface water and groundwater quality and protection and water quality certifications;

5. Waterworks and wastewater works operator certification;

6. Public and private water supplies;

7. Underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, except for Class II injection wells, Class V injection wells utilized in

the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission, and those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act regulated by the Commission;

8. Air quality under the federal Clean Air Act and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma Statutes;

9. Hazardous waste and solid waste, including industrial, commercial and municipal waste;

10. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986;

11. Radioactive waste and all regulatory activities for the use of atomic energy and sources of radiation except for the use of sources of radiation by diagnostic x-ray facilities;

12. Water, waste, and wastewater treatment systems including, but not limited to, septic tanks or other public or private waste disposal systems;

13. Emergency response as specified by law;

14. Environmental laboratory services and laboratory certification;

15. Hazardous substances other than branding, package and labeling requirements;

16. Freshwater wellhead protection;

17. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department;

18. Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents;

19. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency;

20. Development and maintenance of a computerized information system relating to water quality pursuant to Section 1-4-107 of this title; and

21. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility.

C. Oklahoma Water Resources Board. The Oklahoma Water Resources Board shall have the following jurisdictional areas of environmental responsibility:

1. Water quantity including, but not limited to, water rights, surface water and underground water, planning, and interstate stream compacts;

2. Weather modification;

3. Dam safety;

4. Flood plain management;

5. State water/wastewater loans and grants revolving fund and other related financial aid programs;

6. Administration of the federal State Revolving Fund Program including, but not limited to, making application for and receiving capitalization grant awards, wastewater prioritization for funding, technical project reviews, environmental review process, and financial review and administration;

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the

federal Clean Water Act or other applicable sections of the federal Clean Water Act or other subsequent state and federal clean lakes programs; administration of a state program for assessing, monitoring, studying and restoring Oklahoma lakes with administration to include, but not be limited to, receipt and expenditure of funds from federal, state and private sources for clean lakes and implementation of a volunteer monitoring program to assess and monitor state water resources, provided such funds from federal Clean Water Act sources are administered and disbursed by the Office of the Secretary of Environment;

9. Statewide water quality standards and their accompanying use support assessment protocols, anti-degradation policy and implementation, and policies generally affecting Oklahoma Water Quality Standards application and implementation including but not limited to mixing zones, low flows and variances or any modification or change thereof pursuant to Section 1085.30 of Title 82 of the Oklahoma Statutes;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Board;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility;

12. Development of classifications and identification of permitted uses of groundwater, in recognized water rights, and associated groundwater recharge areas;

13. Establishment and implementation of a statewide beneficial use monitoring program for waters of the state in coordination with the other state environmental agencies;

14. Coordination with other state environmental agencies and other public entities of water resource investigations conducted by the federal United States Geological Survey for water quality and quantity monitoring in the state; and

15. Development and submission of a report concerning the status of water quality monitoring in this state pursuant to Section 1-1-202 of this title.

D. Oklahoma Department of Agriculture, Food, and Forestry. 1. The Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in paragraph 2 of this subsection:

a. point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
b. pesticide control,
c. forestry and nurseries,
d. fertilizer,
e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals,
f. dairy waste and wastewater associated with milk production facilities,
g. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,
h. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,
i. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility, and
j. storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.

2. In addition to the jurisdictional areas of environmental responsibility specified in

subsection B of this section, the Department of Environmental Quality shall have environmental jurisdiction over:

a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,

(2) slaughterhouses, but not including feedlots at these facilities, and

(3) aquaculture and fish hatcheries,

including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at these facilities, and

b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

E. Corporation Commission. 1. The Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

a. the conservation of oil and gas,

b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,

c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,

d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,

e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,

f. underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, of Class II injection wells, Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Commission, and those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,

g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,

h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in

the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:

(1) natural gas liquids extraction plant,
(2) refinery,
(3) reclaiming facility other than for those specified within subparagraph e of this subsection,
(4) mineral brine processing plant, and
(5) petrochemical manufacturing plant,

i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:

(1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
(2) other oil and gas extraction facilities and activities,

j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities,

k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata,

l. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission,

m. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents, and

n. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

2. The exclusive jurisdiction, power and authority of the Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission-regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities insofar as Department-regulated facilities and activities are concerned.

4. For purposes of the federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the federal Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Commission for such discharge.

5. The Commission shall have jurisdiction over:

a. underground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline

operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality,

b. aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; provided, that any point source discharge of a pollutant to waters of the United States during site remediation or the off-site disposal of contaminated soil, media, or debris shall be regulated by the Department of Environmental Quality, and

c. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund, the Oklahoma Petroleum Storage Tank Release Indemnity Program, and the Oklahoma Leaking Underground Storage Tank Trust Fund.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,

b. manufacturing of equipment and products related to oil and gas,

c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, and

d. other facilities, activities and sources not subject to the jurisdiction of the Commission or the Oklahoma Department of Agriculture, Food, and Forestry as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the federal Clean Air Act as amended.

F. Oklahoma Conservation Commission. The Oklahoma Conservation Commission shall have the following jurisdictional areas of environmental responsibility:

1. Soil conservation, erosion control and nonpoint source management except as otherwise provided by law;

2. Monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. In carrying out this area of responsibility, the Oklahoma Conservation Commission shall serve as the technical lead agency

for nonpoint source categories as defined in Section 319 of the federal Clean Water Act or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal storm water or as otherwise provided by state law;

3. Wetlands strategy;

4. Abandoned mine reclamation;

5. Cost-share program for land use activities;

6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;

7. Complaint data management;

8. Coordination of environmental and natural resources education;

9. Federal upstream flood control program;

10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission;

11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility; and

12. Utilization of Oklahoma Water Quality Standards and Implementation documents.

G. Department of Mines. The Department of Mines shall have the following jurisdictional areas of environmental responsibility:

1. Mining regulation;

2. Mining reclamation of active mines;

3. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission; and

4. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of responsibility.

H. Department of Wildlife Conservation. The Department of Wildlife Conservation shall have the following jurisdictional areas of environmental responsibilities:

1. Investigating wildlife kills;

2. Wildlife protection and seeking wildlife damage claims; and

3. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

I. Department of Public Safety. The Department of Public Safety shall have the following jurisdictional areas of environmental responsibilities:

1. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and

2. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act.

J. Department of Labor. The Department of Labor shall have the following jurisdictional areas of environmental responsibility:

1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;

2. Asbestos monitoring in public and private buildings; and

3. Indoor air quality as regulated under the authority of the Oklahoma Occupational Health and Safety Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency.

Such programs shall be a function of the Department's occupational safety and health jurisdiction.

K. Oklahoma Department of Emergency Management. The Oklahoma Department of Emergency Management shall have the following jurisdictional areas of environmental responsibilities:

1. Coordination of all emergency resources and activities relating to threats to citizens' lives and property pursuant to the Oklahoma Emergency Resources Management Act of 1967;

2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 and develop such other emergency operations plans that will enable the state to prepare for, respond to, recover from and mitigate potential environmental emergencies and disasters pursuant to the Oklahoma Hazardous Materials Planning and Notification Act;

3. Administer and conduct periodic exercises of emergency operations plans provided for in this subsection pursuant to the Oklahoma Emergency Resources Management Act of 1967;

4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders pursuant to the Oklahoma Emergency Resources Management Act of 1967; and

5. Maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

[21]Added by Laws 1992, c. 398, § 6, eff. July 1, 1993. Amended by Laws 1993, c. 145, § 11, eff. July 1, 1993. Renumbered from § 6 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 6, eff. July 1, 1993; Laws 1994, c. 140, § 24, eff. Sept. 1, 1994; Laws 1997, c. 217, § 1, eff. July 1, 1997; Laws 1999, c. 413, § 4, eff. Nov. 1, 1999; Laws 2000, c. 364, § 1, emerg. eff. June 6, 2000; Laws 2002, c. 397, § 1, eff. Nov. 1, 2002; Laws 2004, c. 100, § 2, eff. July 1, 2004; Laws 2004, c. 430, § 11, emerg. eff. June 4, 2004.

[22]

§27A-1-3-102. Repealed by Laws 1994, c. 192, § 3, eff. July 1, 1996.

§27A-1-3-103. Renumbered as Title 2, § 18.2 by Laws 2004, c. 100, § 4, eff. July 1, 2004.

§27A-1-4-107. Maintenance of computerized water quality data.

A. The Department of Environmental Quality shall maintain a computerized information system of water quality data, including but not limited to the results of surface water and groundwater quality monitoring in a manner that is accessible to the state environmental agencies and to the public.

B. 1. Each state environmental agency shall submit the results of any water quality monitoring performed by the agency in readable electronic format as determined by the Department pursuant to recommendations of the State Water Quality Standards Implementation Advisory Committee.

2. All submitted data shall be in a format consistent with the applicable federal program.

3. If any state environmental agency is unable to submit the data, such fact shall be reported to the Secretary of the Environment.

[23]Added by Laws 1999, c. 413, § 6, eff. Nov. 1, 1999.

[24]

APPENDIX C

§27A-2-1-101. Short title - Subsequent enactments.
A. Chapter 2 of this title 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.
[1]Added by Laws 1993, c. 145, , § 12, eff. July 1, 1993.
[2]
§27A-2-1-102. Definitions.
As used in the Oklahoma Environmental Quality Code:
1. "Administrative hearing" means an individual proceeding, held by the Department when authorized by the provisions of this Code and conducted pursuant to the Administrative Procedures Act, this Code and rules promulgated thereunder, for a purpose specified by this Code. "Administrative hearing" includes "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, 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.

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

[4]

§27A-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 term of office of a member of the Board shall be for five (5) years and until a successor is appointed and qualified.
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.
3. In making 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.
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. Except as provided in this subsection, rules within the jurisdiction of a Council provided for by this act 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.
[5]Added by Laws 1992, c. 398, § 7, eff. Jan. 1, 1993. Amended by Laws 1993, c. 145, § 14, eff. July 1, 1993. Renumbered from § 7 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 55, eff. July 1, 1993; Laws 2001, c. 110, § 1, emerg. eff. April 18, 2001.
[6]
§27A-2-2-102. Renumbered as § 2-10-308 of this title by Laws 1994, c. 353, § 41, eff. July 1, 1994.
§27A-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.
[7]Added by Laws 1993, c. 324, § 2, emerg. eff. June 7, 1993.
[8]
§27A-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.
[9]Added by Laws 1994, c. 353, § 3, eff. July 1, 1994.
[10]
§27A-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, 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, 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, the Oklahoma Waste Tire Recycling Act 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 chapter 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 chapter 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 appointments 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 chapter and such other areas as designated by the Board.

I. In addition to other powers and duties assigned to each Council pursuant to this Code, 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;

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

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. The Councils are authorized to utilize the conference rooms of the Department of Environmental Quality and obtain administrative assistance from the Department, as required.
[11]Added by Laws 1992, c. 398, § 10, eff. Jan. 1, 1993. Amended by Laws 1993, c. 145, § 15, eff. July 1, 1993. Renumbered from § 10 of this title by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1995, c. 80, § 1, eff. July 1, 1995.
[12]
§27A-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. 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, hazardous 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 Code 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. Land protection programs which shall be responsible for hazardous waste, solid waste, radiation, and municipal, industrial, commercial and other waste within its jurisdictional areas of environmental responsibility pursuant to Section 1-3-101 of this title; 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 complaints program 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; and

2. The customer assistance program which shall be responsible for advising and providing to licensees, permittees and those persons representing businesses or 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 customer assistance program shall coordinate with other programs of the Department to assist businesses and municipalities in complying with state statutes and rules governing environmental areas.

The customer assistance program shall also 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.

G. The Department shall be responsible for holding administrative hearings as defined in Section 2-1-102 of this title and shall provide support services related to them, including, but not limited to, giving required notices, maintaining the docket, scheduling hearings, and maintaining legal records.

H. 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 customer assistance programs; 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 annual needs for providing environmental services within its jurisdictional areas. The report shall reflect any new federal mandates 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.

I. 1. The Department may contract with other governmental entities to provide environmental services. 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 employees.

2. The Department, in conjunction with the state environmental agencies, may develop a program for the purpose of training government employees to provide any needed environmental services; provided, that the investigation of complaints regarding, or inspections of, permitted sites or facilities shall not be performed by employees of other agencies, unless otherwise authorized by law.

[13]Added by Laws 1992, c. 398, § 9, eff. Jan. 1, 1993. Amended by Laws 1993, c. 145, § 16, eff. July 1, 1993. Renumbered from § 9 of this title by Laws 1993, c. 145, § 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; Laws 2002, c. 139, § 1, emerg. eff. April 29, 2002.

[14]

§27A-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 customer assistance program, in addition to responsibilities specified by Section 2-3-101 of this title and assigned to such Division 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 statewide distribution of the telephone number of the customer assistance program; and

5. Maintain copies of all current rules of the Department.

[15]Added by Laws 1993, c. 145, § 17, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 4, eff. July 1, 1994; Laws 2002, c. 139, § 2, emerg. eff. April 29, 2002.

[16]

§27A-2-3-103. Administrative Law Judges - Duties - Qualifications - Proceedings.

A. The Department shall employ one or more Administrative Law Judges to conduct individual proceedings, and perform such other duties as are assigned to them by the Executive Director which are not inconsistent with their statutory duties.

B. Each Administrative Law Judge shall:

1. Have a general knowledge of the contaminants, pollutants, wastes and other materials which are regulated by the Oklahoma Environmental Quality Code;

2. Have a working knowledge of the laws and rules under this Code;

3. Be currently licensed to practice law by the Supreme Court of this state; and

4. 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.

C. Individual proceedings shall be conducted in compliance with Article II of the Administrative Procedures Act, this Code and rules promulgated thereunder.
[17]Added by Laws 1993, c. 145, § 18, eff. July 1, 1993. Amended by Laws 2002, c. 139, § 3, emerg. eff. April 29, 2002.
[18]
§27A-2-3-104. Complaints program.
A. The complaints program shall, in addition to the responsibilities specified by Section 2-3-101 of this title, 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 complaints program shall maintain a roster of certified mediators which will be available to the public.
C. The complaints program shall document the outcome of mediations to determine compliance with mediated agreements and for documentation of program success.
[19]Added by Laws 1993, c. 145, § 19, eff. July 1, 1993. Amended by Laws 2002, c. 139, § 4, emerg. eff. April 29, 2002.
[20]
§27A-2-3-105. Pollution Prevention Program - Creation.
A Pollution Prevention Program within the Department of Environmental Quality is hereby authorized.
[21]Added by Laws 1994, c. 134, § 1, eff. Sept. 1, 1994.
[22]
§27A-2-3-106. Pollution prevention, defined.
As used in this act and the Oklahoma Environmental Quality Act and the Oklahoma Environmental Quality Code, unless otherwise specified:
1. "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.
[23]Added by Laws 1994, c. 134, § 2, eff. Sept. 1, 1994.
[24]
§27A-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.
[25]Added by Laws 1994, c. 134, § 3, eff. Sept. 1, 1994.
[26]
§27A-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.
[27]Added by Laws 1994, c. 134, § 4, eff. Sept. 1, 1994.

[28]
§27A-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.
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, shall meet all requirements of Section 304 of the Clean Water Act 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, 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.
[29]Added by Laws 1992, c. 398, § 8, eff. Jan. 1, 1993. Amended by Laws 1993, c. 145, § 20, eff. July 1, 1993. Renumbered from § 8 of this title by Laws 1993, c. 145, § 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.
[30]
§27A-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, 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, 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.
[31]Added by Laws 1993, c. 145, § 21, eff. July 1, 1993.
[32]
§27A-2-3-301. Renewal of license - Renewal fee - Penalty fee - Promulgation of rules.
The holder of any license issued under the provisions of this Code 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.
[33]Added by Laws 1993, c. 145, § 22, eff. July 1, 1993.
[34]
§27A-2-3-302. Applications for permits or other authorizations.
A. For permits or other authorizations required pursuant to the Oklahoma Environmental Quality Code, 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.
[35]Added by Laws 1993, c. 145, § 61, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 10, eff. July 1, 1994. Renumbered from § 2-6-106 of this title by Laws 1994, c. 353, § 45, eff. July 1, 1994; Laws 1999, c. 381, § 4, emerg. eff. June 8, 1999.
[36]
§27A-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. 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 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.

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

[38]

§27A-2-3-402. Schedule 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. Such fees shall be subject to the following limitations:

1. The Board shall follow the procedures required by the Administrative Procedures Act 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.
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.
[39]Added by Laws 1993, c. 145, § 24, eff. July 1, 1993.
[40]
§27A-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.
[41]Added by Laws 1993, c. 324, § 35, eff. July 1, 1993.
[42]
§27A-2-3-501. Sampling, inspecting and investigating conditions relating to pollution or damage to natural resource - Power to enter – Federal Superfund sites - Record and reports - Administrative warrants.
A. Any duly authorized representative of the Department of Environmental Quality 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. If the property to be entered has been identified on the federal National Priority List as a Superfund site or otherwise identified for an action under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C., Section 9601 et seq.) and the Department of Environmental Quality has been designated by the United States Environmental Protection Agency as lead agency for CERCLA activities at the site, any duly authorized representative of the Department shall have the power, in addition to the powers listed in subsection A of this section, to enter for purposes of conducting those CERCLA activities or to prevent unreasonable interference with such activities or remedies. The Department may seek administrative or judicial remedies for any person’s refusal to allow, or interference with, entry for this purpose.

C. 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.
D. 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 Code 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.
E. 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.
[43]Added by Laws 1972, c. 242, § 9. Amended by Laws 1993, c. 145, § 25, eff. July 1, 1993. Renumbered from § 926.9 of Title 82 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 9, eff. July 1, 1993; Laws 1995, c. 285, § 22, eff. July 1, 1995; Laws 2004, c. 141, § 1, eff. Nov. 1, 2004; Laws 2005, c. 1, § 23, emerg. eff. March 15, 2005.
NOTE: Laws 2004, c. 111, § 1 repealed by Laws 2005, c. 1, § 24, emerg. eff. March 15, 2005.
[44]
§27A-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 Code 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 noncompliance 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, any 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, 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, 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.

[45]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. 381, § 5, emerg. eff. June 8, 1999.

[46]

§27A-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.

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

[48]

§27A-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. 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.

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

[50]

§27A-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, 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.

[51]Added by Laws 1993, c. 145, § 29, eff. July 1, 1993.

[52]

§27A-2-3-506. Violations, remedies and penalties cumulative.

A. It is the purpose of this Code 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 Act and other Oklahoma law. The specific enforcement provisions of other articles of this Code shall control over the provisions of this part 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.
[53]Added by Laws 1993, c. 145, § 30, eff. July 1, 1993.
[54]
§27A-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.
[55]Added by Laws 1997, c. 53, § 1, emerg. eff. April 8, 1997.
[56]

APPENDIX D

§27A-2-7-101. Short title.

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

[1]Laws 1976, c. 251, § 1. Renumbered from § 2751 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1992, c. 403, § 4, eff. Sept. 1, 1992; Laws 1993, c. 145, § 84, eff. July 1, 1993. Renumbered from Title 63, § 1-2001 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[2]

§27A-2-7-102. Hazardous waste - Regulation and control by this act.

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

[3]Laws 1990, c. 196, § 8, emerg. eff. May 10, 1990; Laws 1992, c. 403, § 5, eff. Sept. 1, 1992; Laws 1993, c. 145, § 85, eff. July 1, 1993. Renumbered from Title 63, § 1-2001.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[4]

§27A-2-7-103. Definitions.

As used in the Oklahoma Hazardous Waste Management Act:

1. "Affected property owners" means all real property owners within one (1) mile of the outer perimeter of a proposed hazardous waste site;

2. "Affiliated person" means:

   a. any officer, director or partner of the applicant,

   b. any person employed by the applicant as a general or key manager who directs the operations of the site or facility which is the subject of the application, and

   c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity;

3. "Council" means the Hazardous Waste Management Advisory Council;

4. "Demonstrated pattern of prohibited conduct" means a series of conduct of the same or like character in violation of state or federal environmental laws which, as a result of the applicant's or affiliated person's reckless disregard thereof, actually endangers, or reasonably has the potential to endanger, human health or the environment;

5. "Disclosure statement" means a written statement by the applicant which contains:

   a. the full name, business address, and social security number of the applicant, and all affiliated persons,

   b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant, and a description of the on-going organizational relationships as they may impact operations within the state,

   c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental facility regulation,

   d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any affiliated person which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal in the ten (10) years immediately preceding the filing of the application relating to the

generation, transportation, storage, treatment, recycling or disposal of "hazardous waste" as defined by the Oklahoma Hazardous Waste Management Act or by the United States Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the United States Environmental Protection Agency, and

e. a listing of any federal environmental agency and any state environmental agency outside this state that has or has had regulatory responsibility over the applicant;

6. "Disposal" means the final disposition of hazardous waste;

7. "Disposal site" means the location where any final disposition of hazardous waste occurs. Disposal sites include but are not limited to injection wells and surface disposal sites;

8. "Guarantor" means any person other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to the Oklahoma Hazardous Waste Management Act;

9. "Hazardous waste" means waste materials and byproducts, either solid or liquid or containerized gas, which are:

a. to be discarded by the generator or recycled,

b. toxic to human, animal, aquatic or plant life, and

c. generated in such quantity that they cannot be safely disposed of in properly operated, state-approved solid waste landfills or waste, sewage or wastewater treatment facilities.

The term "hazardous waste" may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludges, tank bottoms containing heavy metallic ions, toxic organic chemicals, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste. The term "hazardous waste" shall not include domestic sewage;

10. "Hazardous waste facility" means and includes storage and treatment facilities and disposal sites;

11. "History of noncompliance" means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation or demonstrate a pattern of prohibited conduct which could reasonably be expected to result in endangerment to human health or the environment if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record;

12. "Multi-user on-site treatment facility" means a treatment facility for hazardous waste generated by the co-owners of the facility and which meets the criteria specified by the Oklahoma Hazardous Waste Management Act;

13. "Off-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste not generated by the owner of the facility;

14. "On-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste generated by the owner of the facility;

15. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or

any other legal entity however organized;

16. "Qualified interest group" means any organization with twenty-five or more members who must be legal residents of the State of Oklahoma, that expresses an interest in the outcome of a construction permit application;

17. "Recycling" means the reuse, processing, treating, neutralizing or rerefining of hazardous waste into a product which is being reused or which has been sold for beneficial use. Hazardous waste which is intended for fuel is not deemed to be recycled until it is actually burned;

18. "Regeneration" or "regenerated" means the regeneration of spent activated carbon to render it reusable, and any treatment, storage or disposal associated therewith;

19. "Site" or "proposed site" means the surface area of a disposal site, or other hazardous waste facility, as applied for in the application for a permit for the facility;

20. "Storage facility" means any location where the temporary holding of hazardous waste occurs, including any tank, pit, lagoon, pond, or other specific place or area;

21. "Treatment" means the detoxification, neutralization, incineration or biodegradation of hazardous waste in order to remove or reduce its harmful properties or characteristics; and

22. "Treatment facility" means any location where treating or recycling of hazardous waste occurs.

[5]Laws 1976, c. 251, § 2; Laws 1978, c. 260, § 1, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 1, eff. July 1, 1981. Renumbered from § 2752 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1987, c. 51, § 1, emerg. eff. April 29, 1987; Laws 1988, c. 54, § 1, eff. Nov. 1, 1988; Laws 1990, c. 296, § 1, operative July 1, 1990; Laws 1991, c. 173, § 1; Laws 1992, c. 201, § 1, eff. July 1, 1992; Laws 1992, c. 403, § 6, eff. Sept. 1, 1992; Laws 1993, c. 145, § 86, eff. July 1, 1993. Renumbered from Title 63, § 1-2002 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[6]

§27A-2-7-104. Hazardous waste management program - Personnel.

A hazardous waste management program responsible for the regulation and management of hazardous waste shall be maintained within the Department. The hazardous waste management program shall consist of a director, who shall be hired by the Executive Director, and additional employees as the Executive Director deems are necessary and duly qualified to carry out the provisions of the Oklahoma Hazardous Waste Management Act. As a prerequisite for employment as the director of the hazardous waste management program, the applicant shall have expertise and at least two (2) years' experience in waste management. The director and all employees of the hazardous waste management program shall be subject to the Merit System of Personnel Administration.

[7]Laws 1976, c. 251, § 3; Laws 1978, c. 260, § 2, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 2, eff. July 1, 1981. Renumbered from Title 63, § 2753 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1991, c. 173, § 2; Laws 1992, c. 403, § 7, eff. Sept. 1, 1992; Laws 1993, c. 145, § 87, eff. July 1, 1993. Renumbered from Title 63, § 1-2003 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[8]

§27A-2-7-105. Powers and duties of Department of Environmental Quality.

The Department shall have the power and duty to:

1. Issue permits for the construction and operation and for the post-closure, maintenance and monitoring of hazardous waste facilities;

2. Provide the owner or operator of a hazardous waste facility a list of all materials which the Department deems acceptable for treatment, recycling, storage, and disposal at the facility;

3. Make periodic inspections of hazardous waste facilities and recycling, transporting, and generating facilities to determine the extent of compliance with the Oklahoma Hazardous Waste Management Act and rules promulgated thereunder, and orders, permits and licenses issued pursuant thereto;

4. Develop, maintain, and monitor public records of the source and amount of hazardous waste generated in Oklahoma and the methods used to dispose of, recycle, or treat said waste or material;

5. Require and prescribe manifest forms to all persons generating and transporting hazardous waste off-site for storage, recycling, treatment, or disposal;

6. Require and approve or disapprove disposal plans from all persons generating hazardous waste or shipping hazardous waste within, from, or into Oklahoma indicating the amount of hazardous waste generated, the handling, storage, treatment, and disposal methods, and the hazardous waste facilities used. The disposal plans shall be kept current by the persons generating or shipping hazardous waste and the Department shall be advised within five (5) working days of any changes in the disposal plans;

7. Require reports from all persons generating hazardous waste, indicating the amount generated, the treatment and disposal methods, and the treatment, disposal, and recycling sites used. Such reports are to be made on at least a quarterly basis;

8. Require periodic reports or manifest certifications regarding such programs and efforts to reduce the volume or quantity and toxicity of such hazardous waste as may be required by or pursuant to authority of the Oklahoma Hazardous Waste Management Act;

9. Require reports from all operators of hazardous waste facilities who receive hazardous waste for treatment or storage or disposal, listing the amount, transporter, and generator of all hazardous waste received. Such reports are to be made on at least a monthly or quarterly basis, as designated by the Department;

10. Approve or disapprove methods of disposal of hazardous waste, and may prohibit certain specific disposal practices including, but not limited to, any type of land disposal of any form of such waste. Land disposal includes, but is not limited to, landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves;

11. Inform persons generating hazardous waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans;

12. Develop a system to provide information on recyclable wastes to potential users of such materials. Such information shall not include any information which the Department deems confidential or private in nature;

13. Cooperate and share information with the U.S. Environmental Protection Agency;

14. Prepare an emergency response plan for spills of hazardous waste and for spills of hazardous materials;

15. Make information obtained by the Department regarding hazardous waste facilities and sites available to the public in substantially the same manner, and to the same degree, as would be the case if the hazardous waste program in this state were being carried out by the U.S. Environmental Protection Agency;

16. Develop rules with respect to any existing surface impoundment or landfill or class of surface impoundments or landfills from which the Department determines hazardous waste may

migrate into groundwater, impose such requirements, including but not limited to double liners and leachate detection and collection systems, as may be necessary to protect human health and the environment;

17. Prohibit or restrict the use of any specific disposal methods or practices for specific hazardous waste material, substances or classes, as may be necessary to protect human health and the environment;

18. Identify areas within the state which are unsuitable for specific hazardous waste disposal methods, and deny permits for such disposal methods in such areas;

19. Issue a one-year research development and demonstration permit for any treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated. Permits may be renewed no more than three times. No renewal may exceed one (1) year;

20. Waive or modify general permit application and issuance requirements for research and development permits, except for financial responsibility and public participation requirements;

21. Terminate experimental activity if necessary to protect human health and the environment;

22. Require oil recycling facilities using hazardous waste to have a hazardous waste facility permit;

23. Issue permits containing any conditions necessary to protect human health and the environment;

24. Issue permits for the storage of hazardous waste in underground tanks;

25. Require groundwater monitoring for any landfill, surface impoundment, land treatment site or pile;

26. Determine and enforce penalties for violations of the Oklahoma Hazardous Waste Management Act and rules promulgated thereunder;

27. Evaluate the benefit of rules governing labeling practices for any containers used for the disposal, storage, or transportation of hazardous waste which accurately identify such waste, and govern the use of appropriate containers for such waste not otherwise regulated by the federal government;

28. Monitor research and development regarding methods of the handling, storage, use, processing, and disposal of hazardous waste;

29. Cooperate with existing technical reference centers on hazardous waste disposal, recycling practices, and related information for public and private use;

30. Monitor research in the technical and managerial aspects of management and use of hazardous waste and recycling and recovery of resources from hazardous wastes;

31. Determine existing rates of production of hazardous waste;

32. Promote recycling and recovery of resources from hazardous wastes;

33. Encourage the reduction or exchange, or both, of hazardous waste; and

34. Cooperate with an existing information clearinghouse, to develop records of recyclable waste. Every generator of hazardous waste shall supply the Department with information for the clearinghouse. Each generator shall not be required to supply any more information than is required by the manifests. The Department shall make this information available to persons who desire to recycle the wastes. The information shall be made available in such a way that the trade secrets of the producer are protected.

[9]Added by Laws 1976, c. 251, § 4. Amended by Laws 1978, c. 260, § 3, emerg. eff. May 10,

1978; Laws 1981, c. 322, § 4, eff. July 1, 1981. Renumbered from Title 63, § 2754 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1986, c. 180, § 1, emerg. eff. May 15, 1986; Laws 1990, c. 296, § 2, operative July 1, 1990; Laws 1991, c. 173, § 3; Laws 1992, c. 403, § 9, eff. Sept. 1, 1992; Laws 1993, c. 145, § 88, eff. July 1, 1993. Renumbered from Title 63, § 1-2004 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 17, eff. July 1, 1994.

[10]

§27A-2-7-106. Rules and regulations - Hearings - Consultation and advice.

The Council, with at least five members concurring, shall submit recommended rules to the Board concerning the listing and characterization of hazardous waste, the construction and operation of hazardous waste facilities, specific disposal practices for specified wastes, the transportation and storage of hazardous waste, and the recycling, storage and transportation of recyclable materials. The Council shall consult with and advise the Department on matters relating to hazardous waste management.

[11]Laws 1981, c. 322, § 5, eff. July 1, 1981; Laws 1992, c. 403, § 10, eff. Sept. 1, 1992; Laws 1993, c. 145, § 89, eff. July 1, 1993. Renumbered from Title 63, § 1-2004.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[12]

§27A-2-7-107. Rules - Regulation of radioactive waste - Federal preemption.

A. In addition to other powers and duties specified by law, the Board shall promulgate rules to:

1. Prohibit the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required or which is operating under interim status;

2. Prohibit or restrict the storage of hazardous waste for which land disposal is prohibited, except to the extent that such storage is solely for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal;

3. Prohibit or restrict the use of waste or used oil or other material used for dust suppression or road treatment, which is contaminated or mixed with dioxin or any other waste identified or listed by rules of the Board as a hazardous waste except a waste identified solely on the basis of ignitability;

4. Require such monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment;

5. Regulate the production, burning, distribution, and marketing of fuel containing hazardous waste, and the commercial collection, storage, transportation, marketing, management, burning and disposal of used oil as may be necessary to protect human health and the environment including, but not limited to, labeling and recordkeeping requirements;

6. Control the listed or identified hazardous wastes which discharge through a sewer system to a publicly owned treatment works for the protection of human health and the environment;

7. Provide in accordance with Sections 3005(c) and 3005(e) of the Resource Conservation and Recovery Act for the automatic termination of interim status for hazardous waste units failing to comply with applicable requirements for the submission of part B permit applications and certification of groundwater monitoring and financial responsibility compliance;

8. Require from applicants for and owners and operators of hazardous waste facilities evidence of financial responsibility for corrective action as may be required or ordered under the

authority of the Oklahoma Hazardous Waste Management Act;

9. Require that generators of hazardous waste establish and implement programs to reduce the volume or quantity and toxicity of such waste to the extent economically practicable; and

10. Specify levels or methods of treatment which substantially diminish the toxicity of the waste or likelihood of its migration so as to minimize threats to human health and the environment.

B. The hazardous waste component of mixed waste and radioactive waste shall be regulated as hazardous waste. The radioactive waste component shall be regulated as radioactive waste. Both the hazardous waste requirements and the radioactive waste requirements shall apply if physical separation of the two components is not accomplished. If a conflict exists between the two requirements, the requirement most protective of human health and the environment shall take precedence.

C. Rules pertaining to standards for the transportation of hazardous waste and recyclable materials shall not be more stringent than those of the U.S. Department of Transportation, unless a waiver of preemption is granted pursuant to federal statutes and rules promulgated thereunder. [13]Added by Laws 1986, c. 180, § 2, emerg. eff. May 15, 1986. Amended by Laws 1988, c. 42, § 1, emerg. eff. March 21, 1988; Laws 1990, c. 196, § 3, emerg. eff. May 10, 1990; Laws 1992, c. 403, § 11, eff. Sept. 1, 1992; Laws 1993, c. 145, § 90, eff. July 1, 1993. Renumbered from Title 63, § 1-2004.2 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 19, eff. July 1, 1994.

[14]

§27A-2-7-108. Hazardous waste facilities - Permit for storage, treatment or disposal - Operation of recycling facilities not required to be permitted.

A. Except as otherwise provided by subsection B of this section or any rules of the Environmental Quality Board with respect to short-term storage, no person shall store, treat or dispose of hazardous waste materials or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of hazardous waste or storing recyclable materials, who does not possess a valid and appropriate hazardous waste facility permit. The provisions of this subsection shall not include remediation activities under an order of the Department of Environmental Quality which would not require a federal hazardous waste permit from the Environmental Protection Agency if conducted pursuant to a federal order.

B. 1. Any person who owned or operated a hazardous waste facility which was operating or under construction on November 19, 1980, and who has submitted notice and permit application to the U.S. Environmental Protection Agency or to the Department, and whose facility complies with the rules of the Board, may continue operation until such time as the permit application is determined.

2. The Board may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Oklahoma Hazardous Waste Management Act.

3. The provisions for the allowance of continued operation on an interim basis under paragraphs 1 and 2 of this subsection shall not apply in the case of a facility for which a permit, under the Oklahoma Hazardous Waste Management Act, has been previously denied or for which authority to operate has been terminated.

C. Facilities engaged in recycling which are not required to be permitted pursuant to the provisions of the Oklahoma Hazardous Waste Management Act shall operate in an environmentally acceptable manner and in accordance with the rules regarding the manifest, transportation and treatment, storage and disposal standards, and generators in the event a hazardous waste is generated therefrom.

[15]Added by Laws 1981, c. 322, § 10, eff. July 1, 1981. Amended by Laws 1990, c. 196, § 6, emerg. eff. May 10, 1990; Laws 1990, c. 296, § 3, operative July 1, 1990; Laws 1991, c. 173, § 8; Laws 1992, c. 403, § 25, eff. Sept. 1, 1992; Laws 1993, c. 145, § 91, eff. July 1, 1993. Renumbered from Title 63, § 1-2009.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 20, eff. July 1, 1994; Laws 1999, c. 284, § 3, emerg. eff. May 27, 1999.

[16]

§27A-2-7-109. Limitation on persons eligible for issuance, renewal or transfer of permit - Disclosure of information - Applicability.

A. In order to protect the public health and safety and the environment of this state, the Department, pursuant to the Oklahoma Hazardous Waste Management Act, shall not issue, renew, or transfer a permit for a hazardous waste facility for treatment, storage, recycling or disposal to any person who:

1. Is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any state or federal agency relating to the generation, storage, transportation, treatment, recycling or disposal of "hazardous waste", as such term is defined by the Oklahoma Hazardous Waste Management Act, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act;

2. Has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of noncompliance with environmental laws and rules resulting in endangerment of human health or the environment; or

3. Has as an affiliated person any person who is described by paragraph 1 or 2 of this subsection.

B. 1. Except as provided in paragraph 2 of this subsection, all applicants for the issuance, renewal or transfer of any hazardous waste permit, license, certification or operational authority issued by the Department shall file a disclosure statement with their applications.

2. If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other relevant information as the Department may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

C. The Department is authorized to revoke, or to refuse to issue, to renew, or to transfer a permit for a hazardous waste facility for treatment, storage, recycling or disposal to any person who:

1. Is not, due solely to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court of record secured by the Department issued pursuant to the provisions of the Oklahoma Hazardous Waste Management Act;

2. Is not, due solely to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court of record

secured by any state or federal agency, as determined by that agency, relating to the generation, storage, transportation, treatment, recycling or disposal of any "hazardous waste", as such term is defined by the Oklahoma Hazardous Waste Management Act, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act;

3. Has evidenced a history of a reckless disregard for the protection of the public health and safety or the environment through a history of noncompliance with state or federal environmental laws, including without limitation the rules of the Department or the United States Environmental Protection Agency regarding the generation, storage, transportation, treatment, recycling or disposal of any "hazardous waste", as such term is defined by the Oklahoma Hazardous Waste Management Act, or by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act; or

4. Has as an affiliated person any person who is described by paragraphs 1, 2 or 3 of this subsection.

D. 1. An application for a permit for a hazardous waste facility for treatment, storage, recycling or disposal or a renewal thereof shall be signed under oath by the applicant.

2. The Department may refuse to renew, or may suspend or revoke, a permit issued pursuant to the Oklahoma Hazardous Waste Management Act for a hazardous waste facility for treatment, storage, recycling or disposal to any person who has failed to disclose or states falsely any information required pursuant to the provisions of this section. Any person who willfully fails to disclose or states falsely any such information, upon conviction, shall be guilty of a felony and may be punished by imprisonment for not more than five (5) years or fined not more than One Hundred Thousand Dollars ($100,000.00) or both such fine and imprisonment.

E. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

F. The Board shall promulgate rules pursuant to the Administrative Procedures Act as may be necessary and appropriate to implement the provisions of this section.

G. The provisions of this section shall apply to:

1. Any pending or future application for a permit for land disposal or treatment of hazardous waste, except treatment at a facility accepting hazardous waste exclusively for the purpose of conducting research and design tests; and

2. Any application for a permit for hazardous waste treatment, storage, recycling or disposal which is initially submitted to the Department after July 31, 1992, or which has not been determined by the Department to be technically complete by December 31, 1993, regardless of the initial submittal date.

[17]Added by Laws 1992, c. 201, § 3, eff. July 1, 1992. Amended by Laws 1993, c. 145, § 92, eff. July 1, 1993. Renumbered from Title 63, § 1-2004.3 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 18, eff. July 1, 1994.

[18]

§27A-2-7-110. Liquid hazardous waste - Certain disposal prohibited - Exceptions.

A. The Department shall not issue a permit for the treatment, disposal or temporary storage of any liquid hazardous waste in a surface impoundment which is not generated by the owners of the surface impoundment.

B. Except as otherwise specifically provided by law, the disposal of any liquid hazardous waste in a landfill or in a surface impoundment is prohibited.

C. The provisions of this section shall not prohibit:

1. The practice of soil farming of hazardous waste authorized by the provisions of the Oklahoma Hazardous Waste Management Act;

2. The construction and operation of surface impoundments solely for the collection of rainfall runoff; or

3. The construction of impoundments solely for the emergency retention of spills of substances which are or may become hazardous waste;

provided all liquids and associated solids are removed for proper treatment or disposal in accordance with the rules promulgated by the Board pursuant to the Oklahoma Hazardous Waste Management Act.

[19]Added by Laws 1986, c. 180, § 4, emerg. eff. May 15, 1986. Amended by Laws 1992, c. 403, § 20, eff. Sept. 1, 1992; Laws 1993, c. 145, § 93, eff. July 1, 1993. Renumbered from Title 63, § 1-2006.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 19, eff. July 1, 1994.

[20]

§27A-2-7-111. Prohibited disposal - Hazardous waste facility for on-site or off-site treatment, recycling, storage or disposal.

A. The practice of plowing hazardous waste into the soil surface for the purpose of disposal is hereby prohibited except pursuant to a plan approved by the Department of Environmental Quality for biodegradable or inert material. In addition, the site used for such disposal shall not be subject to flooding or extensive erosion. The administrative permit hearing provisions of Sections 2-7-113, 2-7-113.1 and 2-14-304 of this title shall not apply to soil farming operations conducted on the generator's plant site or nearby property under the control of the generator.

B. A hazardous waste facility for on-site treatment, recycling or storage shall not be sited in or over a principal groundwater resource or recharge area as determined in writing by the Oklahoma Geological Survey, except pursuant to a plan approved by the Department. The plan shall contain such design criteria and groundwater monitoring provisions as deemed necessary by the Department to protect the quality of said principal groundwater resource or recharge area. The plan shall also provide for the establishment and maintenance of a bond or other financial assurance in a form and amount acceptable to the Department, specifically for the purpose of assuring both immediate response and containment and comprehensive remediation as directed by the Department in the event of a release to soil or water of any hazardous waste or hazardous waste constituent.

C. 1. Except as provided in paragraph 3 of this subsection, a hazardous waste facility for off-site treatment, recycling or storage or for on-site or off-site disposal shall not be sited in or over a principal groundwater resource or recharge area as determined in writing by the Oklahoma Geological Survey.

2. a. Except as provided in subparagraph b of this paragraph, a facility for off-site treatment, storage, recycling or disposal of hazardous waste shall not be sited in any other area of the state without the prior written approval of an emergency and release response plan by the affected property owners as such term is defined in Section 2-7-103 of this title. Such plan shall provide for the minimization of hazards to the health and property of such affected property owners from emergency situations or from sudden or nonsudden releases of hazardous waste or constituents thereof.

After the applicant has made a reasonable effort to negotiate said plan with the affected property owners and has acquired the written approval of a majority of the affected property owners, the applicant may certify to the Department that such reasonable effort has been made and that a minority of the affected property owners would not consent. The Department may then issue the permit if it meets all other requirements.

The Department is expressly authorized to review the reasons of the affected property owners for nonapproval of the plan. If nonapproval is not based solely upon minimization of environmental hazards to the health and property of the affected property owners, the Department shall exclude those affected property owners from a calculation of a majority of affected property owners. The Department shall have the final authority to issue or not to issue any permit to any treatment, storage, or disposal facility.

b. Existing industrial facilities not currently receiving hazardous waste which propose to begin receiving hazardous waste from off-site, including facilities at which the hazardous waste is to be utilized as fuel in a recycling unit and all other existing industrial facilities, shall submit an emergency and release response plan as part of the permit application. The plan shall be subject to public review and comment as part of the permit application pursuant to Section 2-7-113 of this title or the Oklahoma Uniform Environmental Permitting Act prior to final approval or disapproval by the Department. Upon submittal of the proposed plan to the Department, the applicant shall be required to mail a copy of said plan to the affected property owners and shall promptly thereafter certify to the Department that such mailing has been made. If a permit is issued, the permittee shall send the final plan by first-class mail to the last-known address of all affected property owners.

c. An emergency and release response plan for a new or existing facility, located or to be located within the city limits or within the emergency response area of any incorporated city or town, which proposes to begin receiving hazardous waste from off-site shall not be approved by the Department until at least sixty (60) days after the city or town has been served with a copy of the plan by the applicant. During said sixty-day period the city or town shall have the opportunity to review the plan and comment to the Department upon the ability of the city to comply with any item in the plan requiring the participation of or assistance by the city or town or any departments or agencies thereof.

3. The Department may grant a variance to an off-site hazardous waste treatment, recycling or storage facility to allow the siting of such facility over a principal groundwater resource or recharge area as determined in paragraph 1 of this subsection, upon the following conditions:

a. the request for variance, and a detailed rationale, shall be included in the permit application,

b. the Department shall receive and consider comments on the appropriateness of the proposed variance at any formal public meeting or administrative permit hearing conducted on the draft permit or proposed permit pursuant to the

provisions of Section 2-7-113 of this title or the Oklahoma Uniform Environmental Permitting Act,

c. the applicant shall bear the burden of establishing clearly and convincingly to the Department that the design, construction and operation of the proposed facility will be such that the risk of a release of hazardous waste or hazardous waste constituents directly or indirectly to groundwater is minimal, and

d. the permit application shall provide for the establishment and maintenance of a bond or other financial assurance as described and for the purposes specified in subsection B of this section.

D. The provisions of this section shall apply to:

1. Applications for future proposed sites;

2. Pending applications for new hazardous waste permits; and

3. Applications for permits to modify existing facilities which have either a permit or interim status when the proposed modification involves the opportunity for an administrative permit hearing.

E. The provisions of paragraphs 1 and 2 of subsection C of this section shall not apply to applications to increase existing storage, treatment, recycling or disposal capacity or to modify existing disposal sites for treatment or disposal. Such modification of existing disposal sites shall include upgrading said facilities to use the best available waste destruction technology such as incineration, detoxification, recycling or neutralization technology.

[21]Added by Laws 1976, c. 251, § 16. Amended by Laws 1978, c. 260, § 15, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 16, eff. July 1, 1981. Renumbered from Title 63, § 2765 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1987, c. 51, § 2, emerg. eff. April 29, 1987; Laws 1988, c. 42, § 2, emerg. eff. March 21, 1988; Laws 1991, c. 336, § 2, eff. July 1, 1991; Laws 1992, c. 403, § 32, eff. Sept. 1, 1992; Laws 1993, c. 145, § 94, eff. July 1, 1993. Renumbered from Title 63, § 1-2014 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 29, eff. July 1, 1993; Laws 1994, c. 373, § 13, eff. July 1, 1994; Laws 1995, c. 285, § 3, eff. July 1, 1995.

NOTE: Laws 1981, c. 277, § 5 and Laws 1981, c. 322, § 16 repealed by Laws 1993, c. 10, § 16, emerg. eff. March 21, 1993.

[22]

§27A-2-7-112. Hazardous waste facility construction to be supervised.

The design, testing and construction of a hazardous waste facility shall be conducted under the supervision of a professional engineer, registered in Oklahoma, with training and experience in suitable disciplines.

[23]Laws 1976, c. 251, § 8; Laws 1978, c. 260, § 7, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 8, eff. July 1, 1981. Renumbered from Title 63, § 2758 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1992, c. 403, § 21, eff. Sept. 1, 1992; Laws 1993, c. 145, § 95, eff. July 1, 1993. Renumbered from Title 63, § 1-2007 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[24]

§27A-2-7-113.1. Issuance of permits - Suitability of facility - Administrative procedures.

A. The Department of Environmental Quality shall issue permits for hazardous waste facilities. A permit shall be issued only upon proper application and determination by the Department that the proposed site and facility are physically and technically suitable.

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

C. In accordance with the provisions of Section 2-14-304 of this title, an administrative permit hearing shall be available on a proposed permit which is based on a Tier III hazardous waste permit application for a new permit or for the modification of an existing permit involving a fifty percent (50%) or more increase in permitted capacity for storage, treatment or disposal including but not limited to incineration.

D. The Department may, upon determining that public health or safety requires emergency action, issue a temporary permit for treatment or storage of hazardous waste or recyclable material for a period not to exceed ninety (90) days without the prior notices and opportunity to request a public meeting or the administrative permit hearing required by this section or the Oklahoma Uniform Environmental Permitting Act. Any person aggrieved by such permit may seek judicial review.

[25]Added by Laws 1994, c. 373, § 27, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 4, eff. July 1, 1996.

[26]

§27A-2-7-113. Repealed by Laws 1994, c. 373, § 31, eff. July 1, 1996.

§27A-2-7-114. New hazardous waste facilities within eight miles of corporate limits - Exemptions.

A. Except as provided in subsections B and C of this section, no permit shall be issued for the off-site disposal of hazardous waste or for the off-site treatment of hazardous waste by incinerator at a new hazardous waste facility proposed to be located within eight (8) miles of the corporate limits of an incorporated city or town. For the purposes of this section the corporate limits of an incorporated city or town shall be the corporate limits in effect on January 1 of the year the application is filed, and a new hazardous waste facility means a hazardous waste facility that was not in operation and actively treating hazardous waste by incineration or disposing of hazardous waste during the year preceding August 30, 1991. Addition of new treatment, storage or disposal units to an existing hazardous waste facility does not constitute a new facility.

B. This section shall not apply to any facility accepting hazardous waste exclusively for the purpose of conducting treatment research and design tests.

C. This section shall not apply to a proposed site located on property owned or operated by a person who also owns or operates a hazardous waste facility on contiguous property on which a hazardous waste facility was operating pursuant to a valid permit on August 30, 1991.

[27]Added by Laws 1991, c. 173, § 13. Amended by Laws 1992, c. 403, § 35, eff. Sept. 1, 1992; Laws 1993, c. 145, § 97, eff. July 1, 1993. Renumbered from Title 63, § 1-2014.3 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 20, eff. July 1, 1994.

[28]

§27A-2-7-115. New hazardous waste facility permits - Suitability of roads and bridges, upgrading - Notice, grievance procedure.

A. Regarding a permit application for a new hazardous waste facility, the board of county commissioners of the county in which the waste facility is located and the board of county commissioners of any county contiguous to the waste facility, whose roads and bridges are to be used to provide access to the proposed waste facility, shall review the county road classification plans as described in Section 654 of Title 69 of the Oklahoma Statutes and substantiate whether the county roads and bridges to be used to and from such hazardous waste facility in their respective counties may be used without any substantial detriment to said roads and bridges as

provided in Section 14-113 of Title 47 of the Oklahoma Statutes. If any board of county commissioners finds that substantial detriment to the roads and bridges in its county would occur, such board shall determine reasonable measures necessary to upgrade the roads and bridges and allow the applicant for a hazardous waste facility to upgrade or pay for the upgrading of such roads and bridges if the applicant receives a permit.

B. The Department shall not issue a permit for any new hazardous waste facility unless:

1. Each board of county commissioners, as appropriate pursuant to subsection A of this section, has substantiated by resolution that the county roads and bridges as they exist can be used without any substantial detriment to said roads and bridges as provided by the restrictions imposed by Section 14-113 of Title 47 of the Oklahoma Statutes; or

2. The applicant has agreed to upgrade or pay for the upgrading of the roads and bridges to the reasonable measures determined by the appropriate board of county commissioners or to the design standards established by the Oklahoma Department of Transportation for industrial access roads.

The Department shall not authorize the operation of the facility until the necessary upgrades to the roads and bridges have been made.

C. The Department shall notify the applicable boards of county commissioners by certified mail, return receipt requested, of the proposed waste site. Said boards of county commissioners shall have forty-five (45) days from receipt of such notice to review the county road classification plan and respond to the Department. The finding of each board of county commissioners shall be sent to the Department by certified mail, return receipt requested. Failure to respond within such forty-five-day response period shall constitute a finding that the roads and bridges can be used without substantial detriment and preclude the board of county commissioners failing to respond from raising the suitability of use of roads and bridges of the county as set out in subsections A and B of this section at a later date.

D. Any applicant for a permit aggrieved by the action of the board of county commissioners pursuant to this section shall have the right of review by trial de novo in the district court of the county wherein the board of county commissioners took such action.

E. This section shall apply to any permit application submitted to the Department on or after May 30, 1985, and to any permit application submitted before May 30, 1985, for which a permit has not been issued.

[29]Added by Laws 1985, c. 113, § 5, emerg. eff. May 30, 1985. Amended by Laws 1992, c. 403, § 14, eff. Sept. 1, 1992; Laws 1993, c. 145, § 98, eff. July 1, 1993. Renumbered from Title 63, § 1-2005.3 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 21, eff. July 1, 1994.

[30]

§27A-2-7-116. Permits - Application - Liability insurance - Bond - Financial responsibility - Operation of facility - Insolvency - Liability of guarantors.

A. Except for emergency permits issued in accordance with Section 2-7-113 or 2-7-113.1 of this title, no permit shall be issued except upon proper application, proof of sufficient liability insurance and financial responsibility, formal public meeting, if requested, and such other requirements as provided by the Oklahoma Hazardous Waste Management Act and the Environmental Quality Code.

B. Liability insurance shall be provided by the applicant and shall apply to sudden and nonsudden bodily injury or property damage on, below or above the surface, as required by the rules of the Board. Additional insurance shall be required as deemed necessary by the

Department to protect the property rights of owners or leaseholders of underground resources such as oil, gas, water or other mineral substances. Such insurance shall be maintained for the period of operation of the facility and shall provide coverage for damages resulting from operation of the facility during operation and after closing. In lieu of liability insurance required by this or any other section of the Oklahoma Hazardous Waste Management Act, an equivalent amount of cash, securities or alternate financial assurance of a type and in an amount acceptable to the Department, may be substituted; provided, that such deposit shall be maintained for a period of five (5) years after the date of last operation of the facility.

C. Prior to the issuance of any permit, the applicant shall post a bond or acceptable alternate financial assurance guaranteeing proper closure and guaranteeing the performance of the maintenance and monitoring functions set out in Section 2-7-124 of this title.

D. The Department shall require additional insurance and security by the permittee upon an application for expansion of the facility. Such increase in insurance and security shall be in a sufficient amount to provide adequate coverage for damages resulting from such expansion during operation of the facility and after closing.

E. Prior to the issuance of any permit, the applicant shall, upon request of the Department, produce evidence of the applicant's financial status indicating that the applicant is financially able to operate and maintain a hazardous waste facility as required by the Oklahoma Hazardous Waste Management Act. If the applicant is not financially able to operate and maintain a hazardous waste facility, as required by the Oklahoma Hazardous Waste Management Act, a permit shall be denied.

F. The operation of a hazardous waste facility shall be under the supervision of a person meeting qualifications set by the Board appropriate to the type of facility.

G. The Department is authorized and shall require the construction of monitoring wells, pond liners, fencing, signs or other equipment deemed necessary by the Department to ensure the suitable operation of the facility.

H. 1. In any case where the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or if jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility is required pursuant to the Oklahoma Hazardous Waste Management Act may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action taken pursuant to this section, such guarantor shall be entitled to claim all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

2. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility for the owner or operator pursuant to the Oklahoma Hazardous Waste Management Act. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

[31]Added by Laws 1976, c. 251, § 9. Amended by Laws 1978, c. 260, § 8, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 9, eff. July 1, 1981. Renumbered from Title 63, § 2759 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1986, c. 140, § 1, emerg. eff. April 21, 1986; Laws 1990, c. 196, § 5, emerg. eff. May 10, 1990; Laws 1992, c. 403, § 22, eff. Sept. 1, 1992; Laws 1993, c. 145, § 99, eff. July 1, 1993. Renumbered from Title 63, § 1-2008 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 22, eff. July 1, 1994; Laws 1995, c. 285, § 5, eff. July 1, 1995.

[32]

§27A-2-7-117. Multi-user on-site treatment facilities - Permits - Suitability factors.

A. Two or more persons generating hazardous waste may enter into a compact to construct and operate a multi-user on-site treatment facility for the exclusive use of the members of such compact. Such facility shall not be used as a hazardous waste facility for off-site treatment, storage or disposal of hazardous waste.

B. To be eligible for a permit issued pursuant to the provisions of this section and the Oklahoma Hazardous Waste Management Act, a multi-user on-site treatment facility shall meet the following criteria:

1. The facility may be co-owned by the generators of hazardous waste who are members of the compact;

2. Each member of the compact shall be identified in the application and permit. In addition, the individual hazardous waste generated by each member shall be separately and distinctly characterized in the application and in the permit and shall meet the compatibility requirements established by the Department;

3. The facilities generating hazardous waste which is to be treated at the multi-user on-site treatment facility shall be located within the same county as the multi-user on-site treatment facility;

4. The multi-user on-site treatment facility shall be located upon the property of one of the compact members;

5. Financial responsibility requirements shall be the responsibility of the compact members and shall be prorated according to the relative amount of hazardous waste of a generator to be treated at the facility; and

6. The Department may require such other criteria and information in order to determine if the multi-user on-site treatment facility is physically and technically suitable for the hazardous waste to be treated at the facility.

C. A multi-user on-site treatment facility, located within an industrial park which treats, stores or disposes of wastes that are produced only within that industrial park, may be owned or operated by persons other than the generators of the waste.

D. Upon compliance with the provisions of the Oklahoma Hazardous Waste Management Act, this section and rules promulgated thereunder, the Department shall issue a permit for the construction and operation of a multi-user on-site treatment facility.

E. The board of county commissioners of the county in which a multi-user on-site treatment facility is proposed to be located shall review all transportation routes between such proposed location and the facilities generating hazardous waste which are operated by members of the compact. The provisions of Section 2-7-115 of this title relating to county roads and bridges shall apply to permit applications for multi-user on-site treatment facilities.

[33]Added by Laws 1988, c. 54, § 2, eff. Nov. 1, 1988. Amended by Laws 1991, c. 173, § 7; Laws 1992, c. 403, § 23, eff. Sept. 1, 1992; Laws 1993, c. 145, § 100, eff. July 1, 1993.

Renumbered from Title 63, § 1-2008.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 23, eff. July 1, 1994; Laws 1995, c. 1, § 7, emerg. eff. Mar. 2, 1995.

NOTE: Laws 1994, c. 353, § 21 repealed by Laws 1995, c. 1, § 40, emerg. eff. Mar. 2, 1995.
[34]
§27A-2-7-118. Facilities that recycle hazardous waste - Permit requirements, exemption - Prohibition of burning certain hazardous waste as fuel.

A. Facilities that recycle hazardous waste shall be exempt from subsection C of Sections 2-7-113 and 2-7-113.1, and Section 2-7-115 of this title with regard to those units exclusively used in the recycling process. Off-site hazardous waste recycling facilities are subject to the requirements specified by the Oklahoma Hazardous Waste Management Act, the Oklahoma Environmental Permitting Act, and rules promulgated thereunder, for a permit, and shall also meet design standards as promulgated by the Board. Such recycling facilities which were in existence on July 1, 1990, may but shall not be required to file a permit application pursuant to the provisions of the Oklahoma Hazardous Waste Management Act. A permit modification is not required for a permitted recycling facility to use new, improved, or better methods of recycling if the Department has approved the plans as being environmentally acceptable. An approved class 1 permit modification shall be required for a permitted recycling facility to increase the capacity of its recycling units or add new or different recycling units.

B. No hazardous waste having a heating value less than five thousand (5,000) British Thermal Units per pound shall be burned as fuel in any unit in this state permitted as a hazardous waste recycling unit.

C. No owner or operator of any unit in this state permitted as a hazardous waste recycling unit shall burn as fuel in such unit any substance which the owner or operator knows, or should know, contains hazardous waste which has a heating value of less than five thousand (5,000) British Thermal Units per pound which has been blended with other materials or wastes and produces a hazardous waste fuel with a heating value equal to or exceeding five thousand (5,000) British Thermal Units per pound.
[35]Added by Laws 1990, c. 296, § 6, operative July 1, 1990. Amended by Laws 1991, c. 173, § 12; Laws 1992, c. 403, § 34, eff. Sept. 1, 1992; Laws 1993, c. 145, § 101, eff. July 1, 1993. Renumbered from Title 63, § 1-2014.2 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 30, eff. July 1, 1993; Laws 1994, c. 373, § 24, eff. July 1, 1994; Laws 1995, c. 1, § 8, emerg. eff. March 2, 1995; Laws 1995, c. 285, § 6, eff. July 1, 1995.

NOTE: Laws 1994, c. 353, § 22 repealed by Laws 1995, c. 1, § 40, emerg. eff. March 2, 1995.
[36]
§27A-2-7-119. Permit fees.

A. The Environmental Quality Board shall establish a schedule of fees, pursuant to Section 2-3-402 of this title and the Administrative Procedures Act, to be charged for applications to issue and renew permits for hazardous waste facilities and for the regulation of hazardous waste. Such fees shall only be used for the implementation of the provisions of the Oklahoma Hazardous Waste Management Act pursuant to Section 2-3-402 of this title.

B. The Environmental Quality Board shall charge fees only within the following ranges:

For generator disposal plan: $100.00 to $10,000.00 per year

For permit application: $5,000.00 to $50,000.00

For application resubmittal: $100.00 to $1,000.00

For monitoring: $100.00 to $10,000.00 per year.

C. The Environmental Quality Board shall develop a separate schedule of reduced fees of not less than Twenty-five Dollars ($25.00) for small quantity generators.

[37]Added by Laws 1985, c. 113, § 1, emerg. eff. May 30, 1985. Amended by Laws 1986, c. 229, § 1, emerg. eff. June 10, 1986; Laws 1992, c. 403, § 13, eff. Sept. 1, 1992; Laws 1993, c. 145, § 102, eff. July 1, 1993. Renumbered from Title 63, § 1-2005.2 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 23, eff. July 1, 1994; Laws 2000, c. 130, § 1, emerg. eff. April 24, 2000.

[38]

§27A-2-7-120. Fee for disposal of liquid waste other than controlled industrial waste in underground injection well.

Any person subject to regulation by the Department of Environmental Quality disposing of liquid waste other than hazardous waste in an underground injection well shall pay a fee of two-hundredths of one cent (0.002) per gallon for such disposal, provided that the total fee shall be not less than Ten Thousand Dollars ($10,000.00) nor more than Fifty Thousand Dollars ($50,000.00) per year. Said fee shall be paid to the Department on a quarterly basis within one (1) month following the close of each quarter for the waste disposed in that preceding quarter. Said fees shall be deposited into the Department of Environmental Quality Revolving Fund.

[39]Added by Laws 1991, c. 173, § 5. Amended by Laws 1992, c. 403, § 16, eff. Sept. 1, 1992; Laws 1993, c. 10, § 7, emerg. eff. Mar. 21, 1993; Laws 1993, c. 145, § 103, eff. July 1, 1993. Renumbered from Title 63, § 1-2005.3B by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1993, c. 324, § 32, eff. July 1, 1993.

NOTE: Laws 1992, c. 361, § 1 repealed by Laws 1993, c. 10, § 16, emerg. eff. Mar. 21, 1993. Laws 1993, c. 148, § 1 repealed by Laws 1993, c. 324, § 58, eff. July 1, 1993.

[40]

§27A-2-7-121.1. Waiver of fee.

A. The Department of Environmental Quality may direct a facility to waive the fees described in paragraph 1 of subsection A of Section 2-7-121 of Title 27A of the Oklahoma Statutes for hazardous waste received from certain sites undergoing response actions under the authority of the federal Comprehensive Environmental Response, Compensation and Liability Act. A fee waiver may only be granted for response actions financed through the Superfund Trust Fund that are conducted by the Department or the federal Environmental Protection Agency, when the amount of fee waiver will qualify towards the contributions required of the state for such actions.

B. The Department of Environmental Quality may direct a facility to waive the fees described in paragraph 1 of subsection A of Section 2-7-121 of Title 27A of the Oklahoma Statutes for hazardous waste received from certain sites in Oklahoma undergoing remedial actions that are being conducted as a result of:

1. A consent order approved by the Department;

2. Fulfilling the requirements of a Compliance Schedule issued by the Department as a result of a permit; or

3. A Brownfields action that has been approved by the Department.

Such fee waivers may be granted for remedial actions only when the amount of the fee waiver will qualify toward the contributions required of the state in response actions financed through the Superfund Trust Fund. The Department shall void all waivers for fees as described in paragraph 1 of subsection A of Section 2-7-121 of Title 27A should the requirements of any

Consent Order, Compliance Schedule, or Brownfields action not be fulfilled as stipulated.
[41]Added by Laws 1999, c. 284, § 4, emerg. eff. May 27, 1999.
[42]
§27A-2-7-121. A. Annual fee - Exemptions - Expenditure of funds.

A. Every hazardous waste treatment facility, storage facility, underground injection facility, disposal facility, or off-site facility that recycles hazardous waste subject to the provisions of the Oklahoma Hazardous Waste Management Act shall pay to the Department of Environmental Quality an annual fee on the amount of hazardous waste managed by such facility.

1. Subject to paragraphs 2 and 7 of this subsection, such fees shall be:
    a. Nine Dollars ($9.00) per ton for on-site or off-site storage, treatment or land disposal,
    b. Four Dollars ($4.00) per ton for off-site recycling, including regeneration, or
    c. three cents ($0.03) per gallon for on-site or off-site underground injection.
2. There shall be a minimum fee per facility as follows:
    a. except as provided in subparagraph d of this paragraph, any person owning or operating an off-site hazardous waste treatment facility or disposal facility shall pay a total fee of not less than Fifty Thousand Dollars ($50,000.00) each state fiscal year,
    b. any person owning or operating an on-site hazardous waste treatment facility, storage facility, or disposal facility shall pay a total fee of not less than Twenty Thousand Dollars ($20,000.00) each state fiscal year. The annual fee for the on-site disposal of hazardous waste by underground injection shall not exceed Fifty Thousand Dollars ($50,000.00),
    c. any person owning or operating an off-site facility for the storage or recycling of hazardous waste shall pay a total fee of not less than Twenty Thousand Dollars ($20,000.00) each state fiscal year; provided, any such off-site recycling facility which consistently recycles fewer than ten (10) tons of hazardous waste per calendar month shall not be subject to this minimum annual fee. For the purpose of this subparagraph, storage includes physical separation or combining of wastes solely to facilitate efficient storage at the facility and/or efficient transportation, and
    d. any person owning or operating an off-site facility which accepts hazardous waste exclusively for the purpose of conducting research and design tests shall pay a total fee of not less than Ten Thousand Dollars ($10,000.00) each state fiscal year.

3. Off-site facilities may charge persons contracting for the services of the facility their proportional share of the fees required by the provisions of this section.

4. The facility shall become liable for payment of the fee on each ton or gallon of hazardous waste at the time it is received. For purposes of on-site facilities, receipt is deemed to have occurred when the waste is first managed in any unit or manner that requires a hazardous waste permit. The fee shall be payable by the facility to the Department only as provided for in subsection C of this section.

5. The fee imposed by the provisions of this section shall be payable only once without regard to any subsequent handling of the hazardous waste. The fee shall be based on the purpose for which the waste was received by the facility. In no event shall a facility be required to pay a

fee on each step or process involved in the storage, treatment, or disposal of the waste at the facility or a related facility under common control.

6. In computing the amount of the fee specified in subparagraph b of paragraph 1 of subsection A of this section for the off-site recycling or regeneration of hazardous waste, the assessment for regeneration shall be made on a dry weight basis.

7. If a generator of characteristic hazardous waste or listed hazardous waste treats the waste on-site to meet Best Demonstrated Available Technology Standards and disposes of the waste on-site, the waste shall be subject to a reduced treatment or on-site disposal fee of one-half (1/2) the rate required by subparagraph a of paragraph 1 of this subsection; provided, such rate reduction shall not exceed Twenty-two Thousand Dollars ($22,000.00) per calendar year.

B. The following facilities shall not be required to pay the fee required by the provisions of this section:

1. Facilities engaged only in the on-site recycling of hazardous waste; and

2. Facilities which have not received new hazardous waste within the preceding state fiscal year.

C. Payment of the fees required by this section shall be due quarterly for hazardous waste received by the facility during the prior calendar quarter. Such quarterly payments shall be due on the first day of the month of the following quarter. All payments shall be made within thirty (30) days from the date they become due.

D. The fees required by this section shall be paid in lieu of the monitoring fees imposed in subsection B of Section 2-7-119 of this title. All facilities subject to the provisions of this section shall not be required to pay or collect any additional fees for waste disposal unless specifically required by the Oklahoma Hazardous Waste Management Act.

E. All fees and other monies received by the Department pursuant to the provisions of this section shall be expended solely for the purposes specified in this section.

1. Ten percent (10%) of the fees collected from an off-site hazardous waste facility pursuant to the provisions of this section shall be deposited to the credit of the Special Economic Development Trust Funds. The funds for the Trusts accruing pursuant to the provisions of this section shall be distributed to each Trust established in proportion to the fees generated by the off-site hazardous waste facilities within the Trust area.

2. The Department shall expend monies received pursuant to the provisions of this section for one or more of the following purposes:

a. the administration of the provisions of the Oklahoma Hazardous Waste Management Act,
b. the development of an inventory of hazardous wastes currently produced in Oklahoma and management needs for the identified wastes,
c. the implementation of information exchange, technical assistance, public information, and educational programs,
d. the development and encouragement of waste reduction plans for Oklahoma waste generators, or
e. increased inspection of hazardous waste facilities which may include full time inspectors at off-site hazardous waste facilities.

F. To the extent that fees received pursuant to this section shall exceed the purposes specified in subsection E of this section, the Department shall only expend such funds for one or more of the following purposes:

1. Contributions required from the state pursuant to the federal Comprehensive

Environmental Response, Compensation and Liability Act for remediation or related action upon a site within the state;

2. Response, including but not limited to containment and removal, to emergency situations involving spillage, leakage, emissions or other discharge of hazardous waste or hazardous waste constituents to the environment where a responsible party cannot be timely identified or found or compelled to take appropriate emergency action to adequately protect human health and the environment;

3. State-funded remediation of sites contaminated by hazardous waste or hazardous waste constituents so as to present a threat to human health or the environment, to the extent that a responsible party cannot be timely identified or found or compelled to take such action, or is unable to take such action;

4. Costs incurred in pursuing an enforcement action to compel a responsible party to undertake appropriate response or remedial actions, or to recover from a responsible party monies expended by the state, as described in paragraphs 1 through 3 of this subsection; or

5. Financial assistance to municipalities or counties for the purposes and under the conditions specified in Section 2-7-305 of this title.

[43]Added by Laws 1990, c. 196, § 9, operative July 2, 1990. Amended by Laws 1991, c. 173, § 4; Laws 1992, c. 201 , § 2, eff. Jan. 1, 1993; Laws 1992, c. 403, § 15, eff. Sept. 1, 1992; Laws 1993, c. 145, § 104, eff. July 1, 1993. Renumbered from Title 63, § 1-2005.3A by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 24, eff. July 1, 1994; Laws 1996, c. 356, § 11, emerg. eff. June 14, 1996; Laws 2001, c. 191, § 1, emerg. eff. May 7, 2001.

[44]

§27A-2-7-122. Disposal by underground injection - Limitation of annual fee.

The Department shall not assess an annual fee for the on-site disposal of hazardous waste by underground injection which exceeds Fifty Thousand Dollars ($50,000.00).

[45]Added by Laws 1992, c. 201, § 7, emerg. eff. May 12, 1992. Amended by Laws 1993, c. 145, § 105, eff. July 1, 1993. Renumbered from Title 63, § 1-2002.a by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[46]

§27A-2-7-123. Permit issuance notice - Notice of remediation or related action taken – Interference with remediation.

A. Upon issuance of any permit issued pursuant to the requirements of the Oklahoma Hazardous Waste Management Act, the Department of Environmental Quality shall file a recordable notice of the permit in the land records of the county in which the site is located. The notice shall contain the legal description of the site as well as the terms under which the permit was issued.

B. The Department shall file a recordable notice of remediation or related action taken pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act in the land records of the county in which the site is located. The notice shall contain a legal description of the affected property and shall identify all engineering controls used to ensure the effectiveness of the remediation.

C. When remediation of contaminated property to risk-based standards is performed under an order of or a remediation plan approved by the Department, the Department shall file a recordable notice of remediation taken in the land records of the county in which the property is located. The notice shall contain a legal description of the affected property and shall identify all engineering controls used to ensure the effectiveness of the remediation.

D. The notices required in subsections B and C of this section shall also contain a prohibition against engaging in any activities that cause or could cause damage to the remediation or the engineering controls, or recontamination of the soil or groundwater. The notices shall also contain any appropriate restrictions on land use or other activities that are incompatible with the cleanup level, including, but not limited to, restrictions against using groundwater for drinking or irrigation purposes or redeveloping the land for residential use. Any person who damages or interferes with the remediation, the engineering controls, or continuing operation, maintenance or monitoring of the site is liable to repair the damage or remedy the interference, or for costs incurred by the Department in doing so. The Department may take administrative or civil action to recover costs or to compel compliance with this subsection.
[47]Added by Laws 1976, c. 251, § 5. Amended by Laws 1978, c. 260, § 4, emerg. eff. May 10, 1978. Renumbered from § 2755 of Title 63 by Laws 1982, c. 202, § 9. Amended by Laws 1993, c. 145, § 106, eff. July 1, 1993. Renumbered from § 1-2005.1 of Title 63 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 2000, c. 74, § 1, emerg. eff. April 14, 2000; Laws 2004, c. 141, § 2, eff. Nov. 1, 2004; Laws 2005, c. 1, § 25, emerg. eff. March 15, 2005.

NOTE: Laws 2004, c. 111, §2 repealed by Laws 2005, c. 1, § 26, emerg. eff. March 15, 2005.
[48]
§27A-2-7-124. Monitoring of closed facility.

After a hazardous waste facility has been closed, its owner or operator shall properly maintain and monitor the hazardous waste facility for a period of time required by rules of the Board and shall make such repairs or improvements as deemed necessary by the Department to ensure that no migration of hazardous waste material will occur from the hazardous waste facility. The rules of the Board which specify the period of time for maintenance and monitoring of closed facilities shall be in compliance with the hazardous waste regulations of the U.S. Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act.
[49]Laws 1976, c. 251, § 10; Laws 1978, c. 260, § 9, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 11, eff. July 1, 1981. Renumbered from Title 63, § 2760 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1985, c. 113, § 2, emerg. eff. May 30, 1985; Laws 1992, c. 403, § 24, eff. Sept. 1, 1992; Laws 1993, c. 145, § 107, eff. July 1, 1993. Renumbered from Title 63, § 1-2009 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[50]
§27A-2-7-125. Hazardous waste manifest - Disposal plan number assigned by Department - Transportation, etc. of waste without manifest in possession.

A. Persons generating hazardous waste shall provide a manifest to the operator of any mode of any offsite transportation carrying hazardous waste. Such manifest shall be in a form which has been prescribed by the Department of Environmental Quality and shall indicate a disposal plan number assigned by the Department which shows that the Department has approved the plans of the person generating such waste. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste. Such operator shall have the manifest in his possession while transporting or handling the hazardous waste. Upon delivery of the hazardous waste to a facility duly authorized to accept such waste, the operator shall submit such manifest to the receiving person for processing pursuant to rules promulgated by the Board.

B. No off-site treatment, storage, recycling or disposal facility shall accept the manifest

unless such manifest has a properly assigned disposal plan number indicating that the Department has approved the plans of the person generating the hazardous waste.

C. No person shall transport, receive, treat or dispose of hazardous waste without having the manifest in his possession.

[51]Added by Laws 1976, c. 251, § 11. Amended by Laws 1978, c. 260, § 10, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 12, eff. July 1, 1981. Renumbered from Title 63, § 2761 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1990, c. 296, § 4, operative July 1, 1990; Laws 1992, c. 403, § 26, eff. Sept. 1, 1992; Laws 1993, c. 145, § 108, eff. July 1, 1993. Renumbered from Title 63, § 1-2010 by Laws 1993, c. 145, § 359, eff. July 1, 1993; Laws 2000, c. 130, § 2, emerg. eff. April 24, 2000.

[52]

§27A-2-7-126. Orders.

In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act, the Department of Environmental Quality may issue a written order to any person whom the Department has reason to believe has violated or is presently in violation of the Oklahoma Hazardous Waste Management Act, or any rule promulgated thereunder.

1. Such order may require compliance with the Oklahoma Hazardous Waste Management Act or such rule immediately or within a specified time period or both. Such order may also assess an administrative penalty for any past or current violation of the Oklahoma Hazardous Waste Management Act or the rules and for each day or part of a day that such person fails to comply with such order.

   a. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations.
   b. Any penalty assessed in the order shall not exceed Twenty-five Thousand Dollars ($25,000.00) per day of noncompliance for each violation of the Oklahoma Hazardous Waste Management Act, the rules or the order. In assessing such penalties, the Executive Director shall consider the seriousness of the violation or violations and any good faith efforts to comply with applicable requirements.

2. Any order issued pursuant to this section shall become a final order unless, no later than fifteen (15) days after the order is served, the person or persons named therein request an administrative enforcement hearing. Upon such request the Department shall promptly provide for the hearing. The Department shall dismiss such proceedings where past and current compliance with the Oklahoma Hazardous Waste Management Act, the rules and the order is demonstrated.

   a. Orders and hearings are subject to the Administrative Procedures Act.
   b. A final order following an enforcement hearing may assess an administrative penalty of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.
   c. The Department may adopt procedural rules as necessary and appropriate to implement the provisions of this section.

3. Any order issued pursuant to the Oklahoma Hazardous Waste Management Act may require that corrective action be taken beyond the hazardous waste facility boundary where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that, despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake such action.

[53]Added by Laws 1985, c. 113, § 3, emerg. eff. May 30, 1985. Amended by Laws 1986, c. 180, § 5, emerg. eff. May 15, 1986; Laws 1990, c. 196, § 7, emerg. eff. May 10, 1990; Laws 1991, c. 173, § 11; Laws 1992, c. 403, § 28, eff. Sept. 1, 1992; Laws 1993, c. 145, § 109, eff. July 1, 1993. Renumbered from Title 63, § 1-2012.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993; Laws 1998, c. 186, § 2, eff. Nov. 1, 1998.
[54]
§27A-2-7-127. Corrective action - Permit review - Permit renewal - Information and reports.

A. In accordance with standards established by the Administrator of the Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act, the Department may require corrective action beyond a hazardous waste facility boundary as a condition of the issuance of a permit pursuant to the Oklahoma Hazardous Waste Management Act, where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that despite the owner's or operator's best efforts such owner or operator is unable to obtain the necessary permission to undertake such action. The Department may also require, as a condition of a permit issued pursuant to the Oklahoma Hazardous Waste Management Act, corrective action for all releases of hazardous waste from any solid waste management unit at a facility seeking a permit, regardless of the time the waste was placed in such unit. If such corrective action cannot be completed prior to issuance of the permit, such permit shall contain schedules of compliance for the corrective action required and assurances of financial responsibility for completing such corrective action.

B. The Department shall review each permit for a hazardous waste land disposal facility five (5) years after the date of such issuance or reissuance and shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable standards and permit requirements for hazardous waste facilities. Nothing in this subsection shall preclude the Department from reviewing and modifying a permit at any time during its term. The Department, in reviewing any application for a permit renewal, shall consider improvements in the state of control and measurement technology and changes in applicable regulations. Each issued or reissued permit shall contain such terms and conditions as the Department determines necessary to protect human health and the environment.

C. The Department is authorized to require each owner or operator applying for a permit for a hazardous waste landfill or surface impoundment to submit with the permit application information reasonably ascertainable by the owner or operator concerning the potential exposure to the public of hazardous wastes as a result of releases from a hazardous waste unit. The Department shall be authorized to make exposure and health assessment information available to the public and to other state and federal agencies.
[55]Laws 1986, c. 180, § 6, emerg. eff. May 15, 1986; Laws 1992, c. 403, § 30, eff. Sept. 1, 1992; Laws 1993, c. 145, § 110, eff. July 1, 1993. Renumbered from Title 63, § 1-2012.3 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[56]
§27A-2-7-128. Administrative penalties - Disposition and use.

Administrative penalties collected by the Department pursuant to the Oklahoma Hazardous Waste Management Act shall be paid into the Hazardous Waste Fund.
[57]Laws 1985, c. 113, § 4, emerg. eff. May 30, 1985; Laws 1992, c. 403, § 29, eff. Sept. 1, 1992; Laws 1993, c. 145, § 111, eff. July 1, 1993. Renumbered from Title 63, § 1-2012.2 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[58]

§27A-2-7-129. Violations - Civil penalties.

In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act, the Department may:

1. Temporarily suspend the permit of any operator of a hazardous waste facility until such facility conforms to the provisions of the Oklahoma Hazardous Waste Management Act and the rules promulgated thereunder;

2. Revoke the operating permit or license of any person who flagrantly and/or consistently violates the provisions of the Oklahoma Hazardous Waste Management Act or the rules promulgated thereunder, or who operates in such a manner as to cause or to continue in existence an environmentally unsafe condition. Such revocation may only take place following proper hearing, and shall conform to provisions of the Administrative Procedures Act. Such person shall not be eligible for reissuance of a license when finally adjudicated as guilty of flagrant and consistent violations of the Oklahoma Hazardous Waste Management Act or rules promulgated thereunder;

3. Cause proceedings to be instituted in the district court having jurisdiction in the area where the alleged violation occurs seeking an injunction to restrain a violation of the Oklahoma Hazardous Waste Management Act or the rules promulgated thereunder or to restrain the maintenance of a public nuisance; and

4. Cause proceedings to be instituted in the district court having jurisdiction in the area where the alleged violation of the Oklahoma Hazardous Waste Management Act or the rules promulgated thereunder occurs seeking a civil penalty of not more than Twenty-five Thousand Dollars ($25,000.00) per day or part of a day such violation occurs.

[59]Laws 1976, c. 251, § 13; Laws 1978, c. 260, § 12, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 14, eff. July 1, 1981. Renumbered from Title 63, § 2763 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1991, c. 173, § 10; Laws 1992, c. 403, § 27, eff. Sept. 1, 1992; Laws 1993, c. 145, § 112, eff. July 1, 1993. Renumbered from Title 63, § 1-2012 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[60]

§27A-2-7-130. Violations - Criminal penalties.

Except as otherwise provided by the Oklahoma Hazardous Waste Management Act or other law, any person who violates any of the provisions of the Oklahoma Hazardous Waste Management Act or rules promulgated thereunder shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment in the county jail for not more than six (6) months, or a fine of not less than Two Hundred Dollars ($200.00) nor more than Twenty-five Thousand Dollars ($25,000.00), or by both such fine and imprisonment. Each day or part of a day during which such violation is continued or repeated shall constitute a new and separate offense.

[61]Laws 1976, c. 251, § 12; Laws 1978, c. 260, § 11, emerg. eff. May 10, 1978; Laws 1981, c. 322, § 13, eff. July 1, 1981. Renumbered from Title 63, § 2762 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1991, c. 173, § 9; Laws 1993, c. 145, § 113, eff. July 1, 1993. Renumbered from Title 63, § 1-2011 by Laws 1993, c. 145, § 359, eff. July 1, 1993.

[62]

§27A-2-7-131. Initiation and prosecution of action.

Upon request of the Department, the district attorney of the county in which any violation of the Oklahoma Hazardous Waste Management Act or rules promulgated thereunder occurs shall initiate and prosecute any civil or criminal proceeding provided by the Oklahoma

Hazardous Waste Management Act.
[63]Laws 1978, c. 260, § 13, emerg. eff. May 10, 1978. Renumbered from Title 63, § 2763.1 by Laws 1981, c. 322, § 18, eff. July 1, 1981. Amended by Laws 1993, c. 145, § 114, eff. July 1, 1993. Renumbered from Title 63, § 1-2013 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[64]
§27A-2-7-132. Appeal of issuance of permit - Stay of time restraints.

The filing of a proceeding appealing the issuance of a permit authorizing a hazardous waste facility shall stay any time restraints specified in the permit relating to the term or expiration of the permit.
[65]Added by Laws 1990, c. 296, § 5, operative July 1, 1990. Amended by Laws 1992, c. 403, § 31, eff. Sept. 1, 1992; Laws 1993, c. 145, § 115, eff. July 1, 1993. Renumbered from Title 63, § 1-2012.4 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 373, § 25, eff. July 1, 1994.
[66]
§27A-2-7-133. Intervention.

The Department shall not oppose intervention by any person when permissive intervention may be authorized by statute or rule.
[67]Laws 1981, c. 322, § 15, eff. July 1, 1981; Laws 1993, c. 145, § 116, eff. July 1, 1993. Renumbered from Title 63, § 1-2013.1 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[68]
§27A-2-7-134. Summary suspension of permit for failure to remit penalty or fee - Revocation proceedings.

A. Unless otherwise authorized by the Department of Environmental Quality or stayed by a court of review, if a hazardous waste treatment, storage, disposal or recycling facility fails to remit to the Department any administrative penalty assessed against the facility pursuant to the provisions of the Oklahoma Environmental Quality Code, within the time period established by the final or consent order, the Department shall summarily suspend the hazardous waste operating permit of the facility.

B. Unless otherwise authorized by the Department or stayed by a court of review, if a hazardous waste treatment, storage, disposal or recycling facility fails to pay to the Department any fee required to be remitted to the Department on a quarterly, annual or other periodic basis pursuant to the provisions of this article or by rule promulgated pursuant thereto within sixty (60) days after an invoice is mailed by certified mail, return receipt requested, to the facility by the Department, the Department shall summarily suspend the hazardous waste operating permit of the facility.

C. Following suspension of a permit pursuant to the provisions of this section, the Department shall promptly institute proceedings for revocation of the permit pursuant to Section 2-3-502 of Title 27A of the Oklahoma Statutes.

D. Unless otherwise ordered by the Department or a court of review, the suspension or revocation of a hazardous waste operating permit shall not be deemed to relieve the facility from permit requirements for corrective action, closure of hazardous waste units, postclosure maintenance and monitoring, or similar requirements which relate primarily to remediation or closure.

E. The suspension or revocation of a hazardous waste operating permit shall not be deemed to require cessation of any operations at the facility which are unrelated to the treatment, storage, disposal or recycling of waste.

[69]Added by Laws 1998, c. 186, § 3, eff. Nov. 1, 1998.
[70]
§27A-2-7-201. Special Economic Development Trust Funds.

A. The county commissioners of the counties which are within a ten-mile radius of an off-site hazardous waste facility may establish a Special Economic Development Trust Fund for those counties.

B. The trust fund shall be used to market advantages of industrial development and to promote industrial development in the counties located within the trust area. Such uses shall allow the authority to acquire assets, develop property, and to contract with local municipalities or economic development trusts or authorities to promote economic development in the counties located within the trust area.

C. The trust fund shall consist of:

1. All monies received pursuant to Section 2-7-121 of this title;
2. All income from the investment of monies held in the trust fund;
3. Interest resulting from the deposit of such monies; and
4. Any other sums designated for deposit to the fund from any source, public or private.

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

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

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

3. The Trustees shall receive no compensation for service on the Board of Trustees, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties as trustees in accordance with the State Travel Reimbursement Act.

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

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

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

[71]Added by Laws 1991, c. 173, § 6. Amended by Laws 1991, c. 336, § 1, eff. July 1, 1991; Laws 1992, c. 403, § 17, eff. Sept. 1, 1992; Laws 1993, c. 10, § 8, emerg. eff. March 21, 1993; Laws 1993, c. 145, § 117, eff. July 1, 1993. Renumbered from Title 63, § 1-2005.3C by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 25, eff. July 1, 1994.
NOTE: Laws 1992, c. 361, § 2 repealed by Laws 1993, c. 10, § 16, emerg. eff. March 21, 1993. Laws 1992, c. 363, § 11 repealed by Laws 1993, c. 10, § 16, emerg. eff. March 21, 1993.
[72]
§27A-2-7-301. Short title.

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

[73]Laws 1982, c. 202, § 1; Laws 1992, c. 403, § 36, eff. Sept. 1, 1992; Laws 1993, c. 145, § 118, eff. July 1, 1993. Renumbered from Title 63, § 1-2015 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[74]
§27A-2-7-302. Purposes of act.

The purposes of the Hazardous Waste Fund Act are to:

1. Protect public health and safety, and the natural resources of the State of Oklahoma;

2. Provide for response to environmental emergencies and incidents; and

3. Establish a fund administered by the Department which will be available to monitor hazardous waste management facilities and to respond and assist municipalities and counties in responding to any emergency situation involving hazardous waste.

[75]Laws 1982, c. 202, § 2; Laws 1992, c. 403, § 37, eff. Sept. 1, 1992; Laws 1993, c. 145, § 119, eff. July 1, 1993. Renumbered from Title 63, § 1-2016 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[76]
§27A-2-7-303. Definitions.

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

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

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

[77]Laws 1982, c. 202, § 3; Laws 1992, c. 403, § 38, eff. Sept. 1, 1992; Laws 1993, c. 145, § 120, eff. July 1, 1993. Renumbered from Title 63, § 1-2017 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[78]
§27A-2-7-304. Creation of fund - Status - Expenditures - Purpose - Control and management - Use - Emergencies.

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

B. Hazardous waste fees paid into the Department of Environmental Quality Revolving

Fund pursuant to the Hazardous Waste Management Act may be transferred to the Hazardous Waste Fund.
[79]Added by Laws 1982, c. 202, § 4. Amended by Laws 1992, c. 403, § 39, eff. Sept. 1, 1992; Laws 1993, c. 145, § 121, eff. July 1, 1993. Renumbered from Title 63, § 1-2018 by Laws 1993, c. 145, § 359, eff. July 1, 1993. Amended by Laws 1994, c. 353, § 26, eff. July 1, 1994.
[80]
§27A-2-7-305. Assistance to political subdivisions.

To further benefit the citizens of the State of Oklahoma, the Department may, if funds are available from the fund, render financial assistance, by form of a matching grant not to exceed Fifty Thousand Dollars ($50,000.00), to any municipality or county of the state, which has prepared an emergency response plan which has been approved by the Department, for the purpose of providing basic emergency response training and protective equipment to be used by such municipality or county in responding to incidents involving hazardous waste. Such financial assistance shall be available only to those applicants which have a significant potential for initiating emergency response to an incident involving hazardous waste. The Department shall give priority to municipalities or counties of the state in which off-site facilities are located.
[81]Laws 1982, c. 202, § 5; Laws 1986, c. 229, § 2, emerg. eff. June 10, 1986; Laws 1992, c. 403, § 40, eff. Sept. 1, 1992; Laws 1993, c. 145, § 122, eff. July 1, 1993. Renumbered from Title 63, § 1-2019 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[82]
§27A-2-7-306. Rules.

The Board shall promulgate rules to implement and administer the Hazardous Waste Fund Act.
[83]Laws 1982, c. 202, § 6; Laws 1993, c. 145, § 123, eff. July 1, 1993. Renumbered from Title 63, § 1-2020 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[84]
§27A-2-7-307. Report of use and disposition of funds.

The Department shall annually submit a written report on the use and disposition of the fund to the Oklahoma State Legislature.
[85]Laws 1982, c. 202, § 7; Laws 1993, c. 145, § 124, eff. July 1, 1993. Renumbered from Title 63, § 1-2021 by Laws 1993, c. 145, § 359, eff. July 1, 1993.
[86]

APPENDIX E

§27A-2-14-101. Short title.

Sections 1 through 12 of this act shall be known and may be cited as the "Oklahoma Uniform Environmental Permitting Act".

[1]Added by Laws 1994, c. 373, § 1, eff. July 1, 1994.

[2]

§27A-2-14-102. Intent.

It is the intent of the Oklahoma Legislature that the Oklahoma Uniform Environmental Permitting Act provide for uniform permitting provisions regarding notices and public participation opportunities that apply consistently and uniformly to applications for permits and other permit authorizations issued by the Department of Environmental Quality.

[3]Added by Laws 1994, c. 373, § 2, eff. July 1, 1994. Amended by Laws 1995, c. 285, § 11, eff. July 1, 1995.

[4]

§27A-2-14-103. Definitions.

For the purposes of the Oklahoma Uniform Environmental Permitting Act:

1. "Application" means a document or set of documents, filed with the Department of Environmental Quality for the purpose of receiving a permit or the modification, amendment or renewal thereof from the Department. "Application" includes any subsequent additions, revisions or modifications submitted to the Department which supplement, correct or amend a pending application;

2. "Council" means any advisory council authorized by the Legislature to recommend rules to the Environmental Quality Board;

3. "Draft permit" means a draft document prepared by the Department after it has found a Tier II or III application for a permit to be administratively and technically complete, pursuant to the requirements of the Oklahoma Environmental Quality Code and rules promulgated thereunder, and that such application may warrant the issuance, modification or renewal of the permit;

4. "Permit" means a permission required by law and issued by the Department, the application for which has been classified as Tier I, II or III by the Board. The term "permit" includes but is not limited to:

a. specific types of permits and other Department authorizations including certifications, registrations, licenses and plan approvals, and

b. an approved variance from a promulgated rule; however, for existing facilities the Department may require additional notice and public participation opportunities for variances posing the potential for increased risk;

5. "Process meeting" means a meeting open to the public which is held by the Department to explain the permitting process and the public participation opportunities applicable to a specific Tier III application;

6. "Proposed permit" means a document, based on a draft permit and prepared by the Department after consideration of comments received on the draft permit, which indicates the Department's decision to issue a final permit pending the outcome of an administrative permit hearing, if any;

7. "Qualified interest group" means any organization with twenty-five or more members who are Oklahoma residents;

8. "Response to comments" means a document prepared by the Department after its review of timely comments received on a draft denial or draft permit pursuant to public comment

opportunities which:

a. specifies any provisions of the draft permit that were changed in the proposed or final permit and the reasons for such changes, and
b. briefly describes and responds to all significant comments raised during the public comment period or formal public meeting about the draft denial or draft permit;

9. "Tier I" means a basic process of permitting which includes application, notice to the landowner and Department review. For the Tier I process a permit shall be issued or denied by a technical supervisor of the reviewing Division or local representative of the Department provided such authority has been delegated thereto by the Executive Director;

10. "Tier II" means a secondary process of permitting which includes:

a. the Tier I process,
b. published notice of application filing,
c. preparation of draft permit or draft denial,
d. published notice of draft permit or draft denial and opportunity for a formal public meeting, and
e. public meeting, if any.

For the Tier II process, a permit shall be issued or denied by the Director of the reviewing Division provided such authority has been delegated thereto by the Executive Director; and

11. "Tier III" means an expanded process of permitting which includes:

a. the Tier II process except the notice of filing shall also include an opportunity for a process meeting,
b. preparation of the Department's response to comments, and
c. denial of application, or
d. preparation of a proposed permit, published notice of availability of proposed permit and response to comments and of opportunity for an administrative permit hearing; and administrative permit hearing if any.

For the Tier III process a permit shall be issued or denied by the Executive Director.

[5]Added by Laws 1994, c. 373, § 3, eff. July 1, 1994. Amended by Laws 1995, c. 285, § 12, eff. July 1, 1995.

[6]

§27A-2-14-104. Applicability.

A. The Oklahoma Uniform Environmental Permitting Act shall apply to applications filed with the Department on or after July 1, 1996.

B. Applications subject to the Oklahoma Uniform Environmental Permitting Act shall continue to be subject to additional or more comprehensive notice and public participation opportunities set forth in rules of the Board promulgated pursuant to federal requirements for individual state permitting programs.

[7]Added by Laws 1994, c. 373, § 4, eff. July 1, 1994. Amended by Laws 1995, c. 285, § 13, eff. July 1, 1995.

[8]

§27A-2-14-201. Rules for implementation.

A. The Board shall have the authority to promulgate rules to implement the Oklahoma Uniform Environmental Permitting Act for each tier which will to the greatest extent possible:

1. Enable applicants to follow a consistent application process;
2. Ensure that uniform public participation opportunities are offered;

3. Provide for uniformity in notices required of applicants; and

4. Set forth procedural application requirements.

B. Such rules shall:

1. Designate applications as Tier I, II or III. In making such determinations, the Board and each recommending Council shall consider information and data offered on:

a. the significance of the potential impact of the type of activity on the environment,

b. the amount, volume and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted or land applied,

c. the degree of public concern traditionally connected with the type of activity,

d. the federal classification, if any, for such proposed activity, operation or type of site or facility, and

e. any other factors relevant to such determinations;

2. For purposes of this section, the Board and each recommending Council shall ensure that such designations are consistent with any analogous classifications set forth in applicable federal programs.

C. Such rules shall for each tier:

1. Set forth uniform procedures for filing an application;

2. Contain specific uniform requirements for each type of notice required by the Oklahoma Uniform Environmental Permitting Act; provided, however, that if notice and public participation opportunities are required, such requirements shall not exceed those set forth for the tier unless required otherwise by applicable federal regulations promulgated as rules of the Board or a holding of the Oklahoma Supreme Court;

3. Contain other provisions needed to implement and administer this article; and

4. Designate positions to which the Executive Director may delegate, in writing, the power and duty to issue, renew, amend, modify and deny permits.

D. Such rules shall be adopted by the Board by March 1, 1996.

[9]Added by Laws 1994, c. 373, § 5, eff. July 1, 1994. Amended by Laws 1995, c. 285, § 14, eff. July 1, 1995.

[10]

§27A-2-14-202. Department of Environmental Quality - Powers and duties.

A. The Department is hereby authorized to implement and enforce the provisions of the Oklahoma Uniform Environmental Permitting Act and rules promulgated thereunder.

B. In addition to authority under the Oklahoma Environmental Quality Code, the Department shall have the power and duty to:

1. Evaluate applications for administrative and technical completeness pursuant to requirements of the Code and rules promulgated thereunder and, when necessary to determine such completeness, request changes, revisions, corrections, or supplemental submissions;

2. Evaluate notices related to applications for sufficiency of content and compliance and require that omissions or inaccuracies be cured;

3. Consider timely and relevant comments received;

4. Prepare responses to comments, draft and final denials, and draft, proposed and final permits;

5. Cooperate with federal agencies as is required for federal review or oversight of state permitting programs;

6. Consolidate processes related to multiple, pending applications filed by the same

applicant for the same facility or site in accordance with rules of the Board; and

7. Otherwise exercise all incidental powers as necessary and proper to implement the provisions of the Oklahoma Uniform Environmental Permitting Act and rules promulgated thereunder.

[11]Added by Laws 1994, c. 373, § 6, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 15, eff. July 1, 1996.

[12]

§27A-2-14-203. Repealed by Laws 1995, c. 285, § 26, eff. July 1, 1995.

§27A-2-14-301. Notice requirements.

A. Upon filing a Tier II or III application with the Department, the applicant shall publish notice of the filing as legal notice in one newspaper local to the proposed new site or existing facility. The publication shall identify locations where the application may be reviewed, including a location in the county where the proposed new site or existing facility is located.

B. For Tier III applications, the publication shall also include notice of a thirty-day opportunity to request, or give the date, time and place for, a process meeting on the permitting process. If the Department receives timely request and determines that a significant degree of public interest in the application exists, it shall schedule and hold such meeting. The applicant shall be entitled to attend the meeting and may make a brief presentation on the permit request. Any local community meeting to be held by the applicant on the proposed facility or activity for which a permit is sought may, with the agreement of the Department and the applicant, be combined with the process meeting authorized by this paragraph.

C. The provisions of this section shall not stay the Department's review of the application.

[13]Added by Laws 1994, c. 373, § 8, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 16, eff. July 1, 1996.

[14]

§27A-2-14-302. Draft denial or draft permit - Notice requirements - Public review.

A. Upon conclusion of its technical review of a Tier II or III application within the permitting timeframes established by rules promulgated by the Board, the Department shall prepare a draft denial or draft permit.

1. Notice of a draft denial shall be given by the Department and notice of a draft permit shall be given by the applicant.

2. Notice of the draft denial or draft permit shall be published as legal notice in one newspaper local to the proposed new site or existing facility. The notice shall identify places where the draft denial or draft permit may be reviewed, including a location in the county where the proposed new site or existing facility is located, and shall provide for a set time period for public comment and for the opportunity to request a formal public meeting on the respective draft denial or draft permit. Such time period shall be set at thirty (30) days after the date the notice is published unless a longer time is required by federal regulations promulgated as rules by the Board. In lieu of the notice of opportunity to request a public meeting, notice of the date, time, and place of a public meeting may be given, if previously scheduled.

B. Upon the publication of notice of a draft permit, the applicant shall make the draft permit and the application, except for proprietary provisions otherwise protected by law, available for public review at a location in the county where the proposed new site or existing facility is located.

[15]Added by Laws 1994, c. 373, § 9, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 17, eff. July 1, 1996.

[16]
§27A-2-14-303. Public meeting - Procedure.

The Department shall expeditiously schedule and hold a formal public meeting if the Department receives written timely request for such meeting, pursuant to the provisions of Section 2-14-302 of this title, and determines there is a significant degree of public interest in the draft denial or draft permit.

1. Notice of the meeting shall be given to the public at least thirty (30) days prior to the meeting date.

2. The public meeting shall be held at a location convenient to and near the proposed new site or existing facility not more than one hundred twenty (120) days after the date notice of the draft denial or draft permit was published.

3. At the meeting, any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements.

4. The public comment period shall automatically be extended to the close of the public meeting. Upon good cause shown, the presiding officer may extend the comment period further to a date certain by so stating at the meeting.

5. Such meeting shall not be a quasi-judicial proceeding.

6. The applicant or a representative of the applicant shall be present at the meeting to respond to questions.

[17]Added by Laws 1994, c. 373, § 10, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 18, eff. July 1, 1996.

[18]
§27A-2-14-304. Issuance or denial of final permit - Administrative procedures.

A. For draft permits or draft denials for Tier II applications on which no comment or public meeting request was timely received and on which no public meeting was held, the final permit shall be issued or denied.

B. For draft permits or draft denials for Tier II applications on which comment or a public meeting request was timely received or on which a public meeting was held, the Department, after considering the comments, shall prepare a response to comments and issue the draft permit as is or as amended or make final denial.

The response to comments shall be prepared within ninety (90) days after the close of the public comment period unless extended by the Executive Director upon a determination that additional time is required due to circumstances outside the control of the Department. Such circumstances may include, but shall not be limited to, an act of God, a substantial and unexpected increase in the number of applications filed, additional review duties imposed on the Department from an outside source, or outside review by a federal agency.

C. For a draft permit for a Tier III application, after the public comment period and the public meeting, if any, the Department shall prepare a response to comments and either issue a final denial in accordance with paragraph 2 of this subsection or prepare a proposed permit.

1. When a proposed permit is prepared, the applicant shall publish notice, as legal notice in one newspaper local to the proposed new site or existing facility, of the Department's tentative decision to issue the permit. Such notice shall identify the places where the proposed permit and the Department's response to comments may be reviewed, including a location in the county where the proposed new site or existing facility is located and shall offer a twenty-day opportunity to request an administrative hearing to participate in as a party. The opportunity to request a hearing shall be available to the applicant and any person or qualified interest group

who claims to hold a demonstrable environmental interest and who alleges that the construction or operation of the proposed facility or activity would directly and adversely affect such interest.

If no written administrative hearing request is received by the Department by the end of twenty (20) days after the publication date of the notice, the final permit shall be issued.

2. If the Department's final decision is to deny the permit, it shall give notice to the applicant and issue a final denial in accordance with subsection F of this section.

D. When an administrative hearing is timely requested on a proposed permit in accordance with subsection C of this section, all timely requests shall be combined in a single hearing. The hearing shall be a quasi-judicial proceeding and shall be conducted by an Administrative Law Judge in accordance with Article 2 of the Administrative Procedures Act, the Code and rules promulgated by the Environmental Quality Board.

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

2. The Department shall schedule a prehearing conference within sixty (60) days after the end of the hearing request period.

3. The Department shall move expeditiously to an evidentiary proceeding in which parties shall have the right to present evidence before the Department on whether the proposed permit and the technical data, models and analyses, and information in the application upon which the proposed permit is based are in substantial compliance with applicable provisions of the Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

4. Failure of any party to participate in the administrative proceeding with good faith and diligence may result in a default judgment with regard to that party; provided however, that no final permit shall be issued solely on the basis of any such judgment.

E. If the Department decides to reverse its initial draft decision, it shall withdraw the draft denial or draft permit and prepare a draft permit or draft denial, as appropriate. Notice of the withdrawal of the original draft and preparation of the revised draft shall be given as provided in Section 2-14-302 of this title. The Department shall then re-open the comment period and provide additional opportunity for a formal public meeting on the revised draft as described in Section 2-14-303 of this title.

F. Upon final issuance or denial of a permit for a Tier III application, the Department shall provide public notice of the final permit decision and the availability of the response to comments, if any.

G. Any appeal of a Tier III final permit decision or any final order connected therewith shall be made in accordance with the provisions of the Code and the Administrative Procedures Act.

H. Any applicant, within ten (10) days after final denial of the application for a new original permit on which no final order was issued, may petition the Department for reconsideration on the grounds stated in subsection A of Section 317 of Title 75 of the Oklahoma Statutes as if the denial was an order. Disposition of the petition shall be by order of the Executive Director according to subsections B and D of Section 317 of Title 75 of the Oklahoma Statutes.

[19]Added by Laws 1994, c. 373, § 11, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 19, eff. July 1, 1996; Laws 2002, c. 227, § 3, emerg. eff. May 9, 2002.

[20]

§27A-2-14-305. General permits.

For common and routine permit applications, the Department of Environmental Quality

may expedite the permitting process by issuing permits of general applicability, hereafter identified as "general permits". General permits shall be subject to all the Tier II administrative procedures including the public participation requirements. The administrative process for rulemaking shall not be applicable to the issuance of general permits. Individual applicants may obtain authorization through the Tier I process to conduct an activity covered by a general permit. General permits are limited to activities under the Tier I and Tier II classifications.
[21]Added by Laws 1997, c. 200, § 1, eff. July 1, 1997.
[22]
§27A-2-14-401. Repealed by Laws 2002, c. 227, § 4, emerg. eff. May 9, 2002.

APPENDIX F

§75-250. Short title.

A. This section and Sections 250.1 through 323 of this title shall be known and may be cited as the "Administrative Procedures Act".

B. All statutes hereinafter enacted and codified as part of the Administrative Procedures Act shall be considered and deemed part of the Administrative Procedures Act.

[1]Added by Laws 1987, c. 207, § 1. Amended by Laws 1989, c. 360, § 1, emerg. eff. June 3, 1989; Laws 1997, c. 206, § 2, eff. Nov. 1, 1997.

[2]

§75-250.1. Composition of act.

A. The Administrative Procedures Act shall be composed of two Articles. Sections 250, 250.1, 250.3, 250.4, 250.5 and 250.8 of this title are applicable to both Articles I and II. Article I relating to agency filing and publication requirements for rules shall consist of Sections 250.2, 250.6, 250.7 and 250.9 through 308.2 of this title and Section 5 of this act. Article II relating to agency notice and hearing requirements for individual proceedings shall consist of Sections 308a through 323 of this title.

B. Except as otherwise specifically provided in Section 250.4 of this title, all agencies shall comply with the provisions of Article I and Article II of the Administrative Procedures Act.

[3]Added by Laws 1987, c. 207, § 2. Amended by Laws 1989, c. 360, § 2, emerg. eff. June 3, 1989; Laws 1997, c. 206, § 3, eff. Nov. 1, 1997.

[4]

§75-250.2. Legislative intent.

A. Article V of the Oklahoma Constitution vests in the Legislature the power to make laws, and thereby to establish agencies and to designate agency functions, budgets and purposes. Article VI of the Oklahoma Constitution charges the Executive Branch of Government with the responsibility to implement all measures which may be resolved upon by the Legislature.

B. In creating agencies and designating their functions and purposes, the Legislature may delegate rulemaking authority to these agencies to facilitate administration of legislative policy. The delegation of rulemaking authority is intended to eliminate the necessity of establishing every administrative aspect of general public policy by legislation. In so doing, however, the Legislature reserves to itself:

1. The right to retract any delegation of rulemaking authority unless otherwise precluded by the Oklahoma Constitution.

2. The right to establish any aspect of general policy by legislation, notwithstanding any delegation of rulemaking authority.

3. The right and responsibility to designate the method for rule promulgation, review and modification.

4. The right to approve, delay, suspend, veto, or amend the implementation of any rule or proposed rule while under review by the Legislature by joint resolution.

5. The right to disapprove a proposed rule or amendment to a rule during the legislative review period independent of any action by the Governor by a concurrent resolution.

6. The right to disapprove a permanent or emergency rule at any time if the Legislature determines such rule to be an imminent harm to the health, safety or welfare of the public or the state or if the Legislature determines that a rule is not consistent with legislative intent.

[5]Added by Laws 1987, c. 207, § 3. Amended by Laws 1991, c. 326, § 1, eff. July 1, 1991; Laws 1992, c. 310, § 1, eff. July 1, 1992.

[6]

§75-250.3. Definitions.

As used in the Administrative Procedures Act:

1. "Administrative head" means an official or agency body responsible pursuant to law for issuing final agency orders;

2. "Adopted" means that a proposed rule has been approved by the agency but has not been reviewed by the Legislature and the Governor;

3. "Agency" includes but is not limited to any constitutionally or statutorily created state board, bureau, commission, office, authority, public trust in which the state is a beneficiary, or interstate commission, except:

a. the Legislature or any branch, committee or officer thereof, and

b. the courts;

4. "Final" or "finally adopted" means a rule other than an emergency rule, which has been approved by the Legislature and by the Governor, or approved by the Legislature pursuant to subsection B of Section 308 of this title and otherwise complies with the requirements of the Administrative Procedures Act but has not been published pursuant to Section 255 of this title;

5. "Final agency order" means an order that includes findings of fact and conclusions of law pursuant to Section 312 of this title, is dispositive of an individual proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of this title and which is subject to judicial review;

6. "Hearing examiner" means a person meeting the qualifications specified by Article II of the Administrative Procedures Act and who has been duly appointed by an agency to hold hearings and, as required, render orders or proposed orders;

7. "Individual proceeding" means the formal process employed by an agency having jurisdiction by law to resolve issues of law or fact between parties and which results in the exercise of discretion of a judicial nature;

8. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

9. "Office" means the Office of the Secretary of State;

10. "Order" means all or part of a formal or official decision made by an agency including but not limited to final agency orders;

11. "Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in an individual proceeding;

12. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

13. "Political subdivision" means a county, city, incorporated town or school district within this state;

14. "Promulgated rule" means a finally adopted rule which has been filed and published in accordance with the provisions of the Administrative Procedures Act, an emergency rule or preemptory rule which has been approved by the Governor;

15. "Rule" means any agency statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the agency. The term "rule" includes the amendment or revocation of an effective rule but does not include:

a. the issuance, renewal, denial, suspension or revocation or other sanction of an individual specific license,

b. the approval, disapproval or prescription of rates. For purposes of this

subparagraph, the term "rates" shall not include fees or charges fixed by an agency for services provided by that agency including but not limited to fees charged for licensing, permitting, inspections or publications,

c. statements and memoranda concerning only the internal management of an agency and not affecting private rights or procedures available to the public,

d. declaratory rulings issued pursuant to Section 307 of this title,

e. orders by an agency, or

f. press releases or "agency news releases", provided such releases are not for the purpose of interpreting, implementing or prescribing law or agency policy;

16. "Rulemaking" means the process employed by an agency for the formulation of a rule; and

17. "Secretary" means the Secretary of State.

[7]Added by Laws 1983, c. 327, § 2. Amended by Laws 1985, c. 196, § 11, operative July 1, 1985; Laws 1987, c. 207, § 11. Renumbered from § 301 of this title by Laws 1987, c. 207, § 27. Amended by Laws 1988, c. 292, § 1, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 3, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 1, eff. July 1, 1991; Laws 1992, c. 310, § 2, eff. July 1, 1992; Laws 1994, c. 182, § 1, eff. July 1, 1994; Laws 1997, c. 206, § 4, eff. Nov. 1, 1997; Laws 1998, c. 239, § 1, eff. Nov. 1, 1998.

[8]

§75-250.4. Compliance with act - Exemptions.

A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.

2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and E of Section 303 of this title and Section 306 of this title. To the extent of any conflict or inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.

3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs.

4. The Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Office of Homeland Security and the Board of Trustees of the Oklahoma College Savings Plan shall be exempt from Article I of the Administrative Procedures Act.

5. The Transportation Commission and the Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions, plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and programming, and the operation and control of the State Highway System.

6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:

a. prescribing standards of higher education,

b. prescribing functions and courses of study in each institution to conform to the standards,

c. granting of degrees and other forms of academic recognition for completion of

the prescribed courses,

d. allocation of state-appropriated funds, and

e. fees within the limits prescribed by the Legislature.

7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.

8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 303.2, 304, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations, or pursuant to Chapter 6 of Title 47 of the Oklahoma Statutes, to maintain a current incorporation of federal commercial driver license regulations, for which the Commissioner has no discretion when the state is mandated to promulgate rules identical to federal rules and regulations.

b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in "The Oklahoma Register". Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference.

c. Such copies of promulgated rules shall be filed with the Secretary as required by Section 251 of this title.

d. For any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

9. The Council on Judicial Complaints shall be exempt from Section 306 of Article I of the Administrative Procedures Act, with respect to review of the validity or applicability of a rule by an action for declaratory judgment, or any other relief based upon the validity or applicability of a rule, in the district court or by an appellate court. A party aggrieved by the validity or applicability of a rule made by the Council on Judicial Complaints may petition the Court on the Judiciary to review the rules and issue opinions based upon them.

10. The Department of Corrections, State Board of Corrections, county sheriffs and managers of city jails shall be exempt from Article I of the Administrative Procedures Act with respect to:

a. prescribing internal management procedures for the management of the state prisons, county jails and city jails and for the management, supervision and control of all incarcerated prisoners, and

b. prescribing internal management procedures for the management of the probation and parole unit of the Department of Corrections and for the supervision of probationers and parolees.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission;
2. The Commission for Human Services;
3. The Oklahoma Ordnance Works Authority;
4. The Corporation Commission;
5. The Pardon and Parole Board;

6. The Midwestern Oklahoma Development Authority;
7. The Grand River Dam Authority;
8. The Northeast Oklahoma Public Facilities Authority;
9. The Council on Judicial Complaints;
10. The Board of Trustees of the Oklahoma College Savings Plan;
11. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;
12. The Board of Regents or employees of any university, college, or other institution of higher learning, except with respect to expulsion of any student for disciplinary reasons; provided, that upon any alleged infraction by a student of rules of such institutions, with a lesser penalty than expulsion, such student shall be entitled to such due process, including notice and hearing, as may be otherwise required by law, and the following grounds of misconduct, if properly alleged in disciplinary proceedings against a student, shall be cause to be barred from the campus and be removed from any college or university-owned housing, upon conviction in a court of law:
    a. participation in a riot as defined by the penal code,
    b. possession or sale of any drugs or narcotics prohibited by the penal code, Section 1 et seq. of Title 21 of the Oklahoma Statutes, or
    c. willful destruction of or willful damage to state property;
13. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:
    a. any rule regarding the running of a race,
    b. any violation of medication laws and rules,
    c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,
    d. any assault or other destructive acts within Commission-licensed premises,
    e. any violation of prohibited devices, laws and rules, or
    f. any filing of false information;
14. The Commissioner of Public Safety only with respect to driver license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;
15. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;
16. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;
17. The Oklahoma Military Department;
18. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;
19. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority;
20. The position audit procedure, including the impartial review process, of the Office of Personnel Management pursuant to Section 840-4.3 of Title 74 of the Oklahoma Statutes.

Provided, that any appeal from an impartial review determination to a court of competent jurisdiction shall be confined to the record in accordance with the provisions of Article II of the Administrative Procedures Act; and

21. The Oklahoma Office of Homeland Security.

[9]Added by Laws 1987, c. 207, § 12. Amended by Laws 1987, c. 236, § 125, emerg. eff. July 20, 1987; Laws 1988, c. 292, § 2, emerg. eff. July 1, 1988; Laws 1990, c. 136, § 1, emerg. eff. April 25, 1990; Laws 1990, c. 300, § 2, emerg. eff. May 30, 1990; Laws 1993, c. 330, § 30, eff. July 1, 1993; Laws 1994, c. 384, § 1, eff. July 1, 1994; Laws 1995, c. 330, § 4, emerg. eff. June 8, 1995; Laws 1996, c. 320, § 11, emerg. eff. June 12, 1996; Laws 1997, c. 206, § 5, eff. Nov. 1, 1997; Laws 1998, c. 239, § 2, eff. Nov. 1, 1998; Laws 1999, c. 1, § 42, emerg. eff. Feb. 24, 1999; Laws 1999, c. 423, § 11, emerg. eff. June 10, 1999; Laws 2000, c. 6, § 30, emerg. eff. March 20, 2000; Laws 2001, c. 131, § 16, eff. July 1, 2001; Laws 2002, c. 402, § 12, eff. July 1, 2002; Laws 2003, c. 279, § 13, emerg. eff. May 26, 2003; Laws 2004, c. 157, § 6, emerg. eff. April 26, 2004.

NOTE: Laws 1987, c. 231, § 5 repealed by Laws 1987, c. 236, § 203, emerg. eff. July 20, 1987. Laws 1998, c. 203, § 10 repealed by Laws 1999, c. 1, § 45, emerg. eff. Feb. 24, 1999. Laws 1999, c. 142, § 4 repealed by Laws 2000, c. 6, § 33, emerg. eff. March 20, 2000.

[10]

§75-250.4a. Certain rules to be available for public inspection - Deletion of obsolete rules and internal policy statements - Private rights and procedures not affected.

A. Any agency exempt from all or part of the Administrative Procedures Act pursuant to subsection A of Section 250.4 of Title 75 of the Oklahoma Statutes shall maintain and make available for public inspection its exempt rules at its principal place of business.

B. It is recognized by the Oklahoma Legislature that agencies specified by subsection A of this section have published rules containing obsolete rules or internal policy statements or agency statements which do not meet the Administrative Procedures Act definition of rules. Therefore, by December 31, 1998, each such agency shall conduct an internal review of its rules to determine whether each of its rules is current and is a rule as such term is defined by the Administrative Procedures Act. Any rule determined by an agency to be obsolete or an internal policy statement or any agency statement which does not meet the definition of a rule pursuant to the Administrative Procedures Act shall be deleted by the agency. Notice of such deletion shall be submitted to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor for informational purposes.

C. The provisions of this section shall not be construed to authorize any agency to amend any rule or to delete any rule which affects any private rights or procedures available to the public.

[11]Added by Laws 1997, c. 206, § 6, eff. Nov. 1, 1997.

[12]

§75-250.5. Act not to apply to certain governments, authorities, etc.

This act shall not apply to municipalities, counties, school districts, and other agencies of local government; nor to specialized agencies, authorities, and entities created by the legislature, performing essentially local functions, such as, but not limited to, Urban Renewal Authorities, Port Authorities, City and City-County Planning Commissions, Conservancy and other Districts, and public trusts having a municipality or county, or agency thereof, as beneficiary; but this act shall apply to public trusts having the state, or any department or agency thereof, as beneficiary.

[13]Laws 1963, c. 371, § 24. Renumbered from § 324 by Laws 1987, c. 207, § 27.
[14]
§75-250.6. Commission for Human Services - Preemptive rules - Approval by Governor - Filing of approval and rule - Publication - Disapproval by Legislature - Exemptions.

A. 1. The Commission for Human Services may promulgate a preemptive rule pursuant to the provisions of this section:

a. when the Commission for Human Services is required by federal law, federal rules, a state law enacted pursuant to federal law or federal rule, or order of a court of competent jurisdiction to adopt a rule, or an amendment, revision or revocation of an existing rule, and

b. which if such rule is not immediately adopted would result in the imposition of a financial penalty, or a reduction, withholding or loss of federal funds.

2. A preemptive rule must be approved by the Governor pursuant to this section.

3. The conditions specified in this subsection for the promulgation of a preemptive rule shall be the only conditions authorized for promulgation of such rule by the Commission for Human Services.

B. 1. Upon the adoption of such preemptive rule by the Commission, the Director of the Department of Human Services shall request the Governor to approve the rules on the basis that such rules are required to comply with a federal law, federal rule, a state law enacted pursuant to federal law or rule, or order of a court of competent jurisdiction and which if such rules are not immediately adopted would result in a financial penalty, or a reduction, withholding or loss of federal funds.

2. Upon the filing of the request for approval of a preemptive rule, the Governor shall review such rule and decide as to whether such rule should be approved. Prior to approval of a preemptive rule, the Governor shall submit the preemptive rule to the Office of the Secretary of State for review of proper formatting unless the preemptive rule has been reviewed by the Office prior to agency submission to the Governor. Failure of the Governor to approve such rule within twenty-eight (28) calendar days shall constitute denial of the rule as a preemptive rule.

3. Upon approval of a preemptive rule, the Governor shall immediately notify the Commission. Upon receipt of notice of the approval of the preemptive rule, the Commission shall file the number of copies specified by the Secretary of the approval issued by the Governor and the number of copies specified by the Secretary of the preemptive rule with the Office pursuant to Section 251 of this title.

4. The preemptive rule shall be published in accordance with the provisions of Section 255 of this title in "The Oklahoma Register" following approval by the Governor. The Governor's approval and the approved rules shall be retained as official records by the Office of Administrative Rules.

5. For informational purposes only, a copy of the Governor's approval and the preemptive rule shall be submitted by the Commission to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within ten (10) days of the approval of the preemptive rule by the Governor.

6. Upon approval by the Governor, the rule shall be considered promulgated and shall be in force immediately, or if a later date is required by statute or specified in the rule, the later date is the effective date.

C. A preemptive rule shall be considered to be a permanent rule and shall remain in full force and effect unless and until specifically disapproved during the first thirty (30) calendar

days of the next regular legislative session following promulgation of such preemptive rule or unless an earlier expiration date is specified by the Commission. The Legislature may disapprove such rule pursuant to Section 308 of this title. Any resolution introduced for the purpose of disapproving such rule shall not be subject to regular legislative cut off dates.

D. Except as otherwise provided by this section, preemptive rules shall be promulgated and published in compliance with Article I of the Administrative Procedures Act. Preemptive rules promulgated pursuant to the provisions of this section shall be exempt from the provisions of Sections 253, 303, 303.1, 303.2, 304, 308 and 308.1 of this title.

[15]Added by Laws 1988, c. 266, § 25, operative July 1, 1988. Amended by Laws 1990, c. 300, § 3, eff. July 1, 1991; Laws 1991, c. 326, § 2, eff. July 1, 1991; Laws 1994, c. 384, § 2, eff. July 1, 1994; Laws 1997, c. 206, § 8, eff. Nov. 1, 1997; Laws 1998, c. 239, § 3, eff. Nov. 1, 1998.

[16]

§75-250.7. Conflicts between filed rules and published rules - Corrections of errors - Status of Code rules - Presumption of compliance with act.

A. Prior to publication in the "Code" or any of its supplements, in cases where there is a conflict between the finally adopted rules filed with the Office pursuant to Section 251 of this title and rules published in "The Oklahoma Register", the rules published in "The Oklahoma Register" pursuant to Section 255 of this title shall govern and shall constitute the official rule of the agency. Except as provided in subsection C of this section, permanent rules published in "The Oklahoma Register" shall be void and of no effect upon publication of the next succeeding "Code" or "Code" supplement, if not published in such "Code" or "Code" supplement.

B. The Secretary is authorized to establish procedures for correcting spelling errors in:

1. The finally adopted rules of any agency or any document submitted for publication in "The Oklahoma Register" or the "Code"; or

2. Any rules or other document published in "The Oklahoma Register".

C. Rules published in the "Code" and in the supplements thereto, and permanent rules published in "The Oklahoma Register" after the closing date for publication in the last preceding "Code" or "Code" supplement, as announced by the Secretary, but prior to publication of the next succeeding "Code" or "Code" supplement, shall constitute the official permanent rules of the state.

D. For any rule published in the "Code" or the supplements thereto, there shall be a rebuttable presumption that such rule has been promulgated in compliance with the Administrative Procedures Act.

[17]Added by Laws 1988, c. 292, § 3, emerg. eff. July 1, 1988. Amended by Laws 1990, c. 300, § 4, eff. July 1, 1991; Laws 1991, c. 326, § 3, eff. July 1, 1991; Laws 1994, c. 384, § 3, eff. July 1, 1994; Laws 1997, c. 206, § 9, eff. Nov. 1, 1997.

[18]

§75-250.8. Time computations.

In computing any period of time prescribed or allowed by the Administrative Procedures Act, the day of the act, or event, from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes or any other day when the receiving office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as defined by the Oklahoma Statutes, or any other day when the receiving office does not remain open for public business until 4:00 p.m.; provided, permanent rules shall become effective on the

tenth day after the rules are published in “The Oklahoma Register”, as set forth in subsection B of Section 304 of this title, regardless of the day of the week.
[19]Laws 1989, c. 360, § 4, emerg. eff. June 3, 1989. Amended by Laws 2004, c. 183, § 1, emerg. eff. May 3, 2004.
[20]
§75-250.9. Transfer of powers, duties and responsibilities of Director of Department of Libraries relating to publication of The Oklahoma Register and Administrative Code to Secretary of State.

There is hereby established an Office of Administrative Rules within the Office of the Secretary of State. The Office of Administrative Rules shall have the primary responsibility for publishing "The Oklahoma Register" and the "Oklahoma Administrative Code" and otherwise implementing the provisions of Article I of the Administrative Procedures Act. The Secretary of State shall provide for the adequate staffing of the Office to implement the provisions of this section including but not limited to an editor-in-chief.
[21]Added by Laws 1990, c. 300, § 5, eff. July 1, 1991. Amended by Laws 1991, c. 326, § 4, eff. July 1, 1991; Laws 1997, c. 206, § 10, eff. Nov. 1, 1997.
[22]
§75-250.10. Request for agency review of rules.

The Governor by Executive Order or either house of the Legislature or both houses of the Legislature by resolution, or a small business or the Small Business Regulatory Review Committee pursuant to Section 5 of this act, may request an agency to review its rules to determine whether or not the rules in question should be amended, repealed or redrafted. The agency shall respond to requests from the Governor or the Legislature within ninety (90) calendar days of such request.
[23]Added by Laws 1994, c. 384, § 11, eff. July 1, 1994. Amended by Laws 2002, c. 495, § 7, eff. July 1, 2002.
[24]
§75-251. Furnishing copies of permanent rules - Rules for administration of section - Filing of new rules and amendments, revisions or revocations - Format - Incorporation of standards by reference - Publication of executive orders - Electronic filing.

A. 1. Upon the request of the Secretary, each agency shall furnish to the Office a complete set of its permanent rules in such form as is required by the Secretary or as otherwise provided by law.

2. The Secretary shall promulgate rules to ensure the effective administration of the provisions of Article I of the Administrative Procedures Act. The rules shall include, but are not limited to, rules prescribing paper size, numbering system, and the format of documents required to be filed pursuant to the provisions of the Administrative Procedures Act or such other requirements as deemed necessary by the Secretary to implement the provisions of the Administrative Procedures Act.

B. 1. Each agency shall file the number of copies specified by the Secretary of all new rules, and all amendments, revisions or revocations of existing rules attested to by the agency, pursuant to the provisions of Section 254 of this title, with the Office within thirty (30) calendar days after they become finally adopted.

2. An agency filing rules pursuant to the provisions of this subsection:

a. shall prepare the rules in plain language which can be easily understood,

b. shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to effectively convey the meaning of a

rule interpreting that language, the reference shall clearly indicate the portion of the language which is statutory and the portion which is the agency's amplification or interpretation of that language,

c. shall indicate whether a rule is new, amends an existing permanent rule or repeals an existing permanent rule. If a rule amends an existing rule, the rule shall indicate the language to be deleted typed with a line through the language and language to be inserted typed with the new language underscored,

d. shall state if the rule supersedes an existing emergency rule,

e. shall include a reference to any rule requiring a new or revised form in a note to the rule. The Secretary shall insert that reference in "The Oklahoma Register" as a notation to the affected rule,

f. shall prepare, in plain language, an analysis of new or amended rules. The analysis shall include but not be limited to a reference to any statute that the rule interprets, any related statute or any related rule,

g. may include with its rules, brief notes, illustrations, findings of facts, and references to digests of Supreme Court cases, other court decisions, or Attorney General's opinions, and other explanatory material. Such material may be included if the material is labeled or set forth in a manner which clearly distinguishes it from the rules,

h. shall include other information, in such form and in such manner as is required by the Secretary, and

i. may change the format of existing rules without any rulemaking action by the agency in order to comply with the standard provisions established by the Secretary for "Code" and "The Oklahoma Register" publication so long as there is no substantive change to the rule.

C. The Secretary is authorized to determine a numbering system and other standardized format for documents to be filed and may refuse to accept for publication any document that does not substantially conform to the promulgated rules of the Secretary.

D. In order to avoid unnecessary expense, an agency may use the published standards established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies by incorporating the standards or rules in its rules or regulations by reference to the specific issue or issues of publications in which the standards are published, without reproducing the standards in full. The standards shall be readily available to the public for examination at the administrative offices of the agency. In addition, a copy of such standards shall be kept and maintained by the agency pursuant to the provisions of the Preservation of Essential Records Act.

E. The Secretary shall provide for the publication of all Executive Orders received pursuant to the provisions of Section 664 of Title 74 of the Oklahoma Statutes.

F. The Secretary may authorize or require the filing of rules or Executive Orders by or through electronic data or machine readable equipment in such form and manner as is required by the Secretary.

[25]Added by Laws 1961, p. 602, § 1. Amended by Laws 1984, c. 154, § 1, eff. Nov. 1, 1984; Laws 1987, c. 207, § 4; Laws 1988, c. 292, § 4, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 5, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 6, eff. July 1, 1991; Laws 1991, c. 326, § 5, eff. July 1, 1991; Laws 1994, c. 384, § 4, eff. July 1, 1994; Laws 1997, c. 206, § 11, eff. Nov. 1,

1997; Laws 1998, c. 239, § 4, eff. Nov. 1, 1998.
[26]
§75-252. Filing as condition of validity - Notification of failure to comply.

A. Any rule, amendment, revision, or revocation of an existing rule made by an agency on or after October 16, 1987, may be held void and of no effect pursuant to Sections 306 and 307 of this title. All provisions herein shall also apply to all agencies that may hereafter be created. All courts, boards, commissions, agencies, authorities, instrumentalities, and officers of the State of Oklahoma shall take judicial or official notice of any rule, amendment, revision, or revocation of an existing rule promulgated pursuant to the provisions of the Administrative Procedures Act.

B. Upon failure of an agency to comply with the provisions of Sections 251 through 256 of this title except when not applicable, the Secretary shall forward a written notice of the failure to comply to the chief administrative officer of the agency. The notice shall state a reasonable time, not to exceed thirty (30) calendar days, in which the agency shall fully comply. Further failure to comply shall be reported in writing to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Governor, and the Attorney General. Upon such notification, the Attorney General shall immediately seek agency compliance and if required, to institute mandamus proceedings to secure compliance by said agency.
[27]Laws 1961, p. 603, § 2; Laws 1987, c. 207, § 5; Laws 1988, c. 292, § 5, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 6, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 7, eff. July 1, 1991.
[28]
§75-253. Emergency rules.

A. If an agency finds that an imminent peril exists to the preservation of the public health, safety, or welfare, or that a compelling public interest requires an emergency rule, amendment, revision, or revocation of an existing rule, an agency may promulgate, at any time, any such rule, provided the Governor first approves such rule pursuant to the provisions of this section.

B. An emergency rule adopted by an agency shall:

1. Be prepared in the format required by Section 251 of this title;

2. Include an impact statement which meets the requirements contained in Section 303 of this title unless such impact statement is, with the prior written consent of the Governor, waived specifically by the agency to the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest in the process of promulgating an emergency rule. In addition, the impact statement shall provide information on any cost impacts of the rule received by the agency from any private or public entities;

3. Be transmitted in duplicate to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, including the information required by this subsection within ten (10) days after the rule is adopted; and

4. One copy to be transmitted on the same day that filing occurs with the Governor to the Oklahoma Advisory Committee on Intergovernmental Relations if the emergency rule would have an impact on political subdivisions as determined by the agency in the rule impact statement. The filing shall include all information supplied to the Governor regarding such emergency rule pursuant to this section and Section 251 of this title.

C. 1. Upon the filing of an adopted emergency rule by an agency with the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Senate, under the provisions of subsection B of this section, the Governor shall review such rule and shall decide as to whether or not such emergency rule should be approved. Prior to approval

of emergency rules, the Governor shall submit the emergency rule to the Secretary of State for review of proper formatting.

2. If the Governor disapproves the adopted emergency rule, the Governor shall return the entire document to the agency with reasons for the disapproval. If the agency elects to modify such rule, the agency shall make such modifications and resubmit the rule to the Governor for approval.

3. Emergency rules adopted by an agency or approved by the Governor shall be subject to review pursuant to the provisions of Section 306 of this title.

D. 1. Upon approval by the Governor, an emergency rule shall be considered promulgated and shall be in force immediately, or on such later date as specified therein. An emergency rule shall only be applied prospectively from its effective date.

2. The Governor shall have forty-five (45) calendar days to review the emergency rule. Within the forty-five-calendar-day period, the Governor may approve the emergency rule or disapprove the emergency rule. Failure of the Governor to approve an emergency rule within the specified period shall constitute disapproval of the emergency rule. Upon disapproval of an emergency rule, the Governor shall notify within fifteen (15) days, in writing, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules.

E. 1. Upon approval of an emergency rule, the Governor shall immediately notify the agency. Upon receipt of the notice of the approval, the agency shall file with the Office of Administrative Rules the number of copies required by the Secretary of the written approval and the emergency rule.

2. A copy of the Governor's approval shall be submitted by the Governor to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules when the rulemaking agency is notified of approval.

3. The emergency rule shall be published in accordance with the provisions of Section 255 of this title in "The Oklahoma Register" following the approval by the Governor. The Governor's approval and the approved rules shall be retained as official records by the Office of Administrative Rules.

F. Emergency rules shall be effective from the date of approval by the Governor or a later date as specified in the approved emergency rule, unless otherwise specifically provided by the Legislature, through the first day of the next succeeding Regular Session of the Oklahoma Legislature, after the promulgation of such emergency rule, and shall be in full force and effect through July 14 following such session unless it is made ineffective pursuant to subsection H of this section.

G. No agency shall adopt any emergency rule which establishes or increases fees, except during such times as the Legislature is in session, unless specifically mandated by the Legislature or federal legislation, or when the failure to establish or increase fees would conflict with an order issued by a court of law.

H. 1. If an emergency rule is of a continuing nature, the agency promulgating such emergency rule shall initiate proceedings for promulgation of a permanent rule pursuant to Sections 303 through 308.2 of this title. If an emergency rule is superseded by another emergency rule prior to the enactment of a permanent rule, the latter emergency rule shall retain the same expiration date as the superseded emergency rule, unless otherwise authorized by the Legislature.

2. Any promulgated emergency rule shall be made ineffective if:

a. disapproved by the Legislature,
b. superseded by the promulgation of permanent rules,
c. any adopted rules based upon such emergency rules are subsequently disapproved pursuant to Section 308 of this title, or
d. an earlier expiration date is specified by the agency in the rules.

3. a. Emergency rules in effect on the first day of the session shall be null and void on July 15 immediately following sine die adjournment of the Legislature unless otherwise specifically provided by the Legislature.

b. Unless otherwise authorized by the Legislature, by concurrent resolution or by law, an agency shall not adopt any emergency rule, which has become null and void pursuant to subparagraph a of this paragraph, as a new emergency rule or adopt any emergency rules of similar scope or intent as the emergency rules which became null and void pursuant to subparagraph a of this paragraph.

I. Emergency rules shall not become effective unless approved by the Governor pursuant to the provisions of this section.

J. 1. The requirements of Section 303 of this title relating to notice and hearing shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an abbreviated notice and hearing process determined to be necessary by an agency.

2. The rule report required pursuant to Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section. Provided this shall not be construed to prevent an agency from complying with such requirements at the discretion of such agency.

3. The statement of submission required by Section 303.1 of this title shall not be applicable to emergency rules promulgated pursuant to the provisions of this section.

K. Prior to approval or disapproval of an emergency rule by the Governor, an agency may withdraw from review an emergency rule submitted pursuant to the provisions of this section. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Office of Administrative Rules. In order to be promulgated as emergency rules, any replacement rules shall be resubmitted pursuant to the provisions of this section.

[29]Added by Laws 1961, p. 603, § 3. Amended by Laws 1987, c. 207, § 6; Laws 1988, c. 292, § 7, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 7, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 8, eff. July 1, 1991; Laws 1991, c. 326, § 6, eff. July 1, 1991; Laws 1992, c. 310, § 3, emerg. eff. May 27, 1992; Laws 1994, c. 182, § 2, eff. July 1, 1994; Laws 1994, c. 384, § 5, eff. July 1, 1994; Laws 1996, c. 225, § 1, eff. Nov. 1, 1996; Laws 1997, c. 206, § 12, eff. Nov. 1, 1997; Laws 1998, c. 239, § 5, eff. Nov. 1, 1998; Laws 1999, c. 211, § 1, eff. Nov. 1, 1999.

[30]

§75-254. Attestation of rules - Proof of publication - Copies - Preservation.

A. Prior to the submission to the Governor of emergency rules, or prior to the transmission of a finally adopted rule to the Secretary, the rulemaking authority or its designee shall attest:

1. To the correctness of copies of any rule and any amendment, revision, or revocation thereof; and

2. That such rules were made and adopted if the rules are emergency rules or finally adopted if the rules are permanent rules in substantial compliance with the Administrative

Procedures Act.

Such attested rules shall then be transmitted to the Secretary or if the rules are emergency to the Governor's office, for filing and publication pursuant to the Administrative Procedures Act.

B. Upon publication of such transmitted rules pursuant to Section 255 of this title, the Secretary shall send proof of publication to the agency submitting the rules for publication. The agency submitting the rules shall make such rules available to the public in accordance with the Open Records Act.

C. Copies of such rules shall be permanently preserved by the Secretary.

[31]Added by Laws 1961, p. 603, § 4. Amended by Laws 1987, c. 207, § 7; Laws 1988, c. 292, § 8, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 9, eff. July 1, 1991; Laws 1998, c. 239, § 6, eff. Nov. 1, 1998.

[32]

§75-255. Publication of The Oklahoma Register - Publication of rules and regulations.

A. 1. The Secretary is hereby authorized, directed, and empowered to publish "The Oklahoma Register" not less than monthly for the publication of new rules, any amendment, revision or revocation of an existing rule, emergency rules, any notices of such rulemaking process and Executive Orders as are required by law to be published in "The Oklahoma Register". Said rules or amendments, revisions, or revocations of existing rules shall be published in the first issue of "The Oklahoma Register" published pursuant to Sections 251, 253, 256, 303, 303.1, 303.2 and 308 of this title after the date of acceptance by the Secretary.

2. The Secretary shall cause a copy of each publication of "The Oklahoma Register" to be sent to those county clerks who request it, to members of the Legislature upon request, and to such other agencies, libraries, and officials as the Secretary may select. The Secretary may charge recipients of the publication a cost sufficient to defray the cost of publication and mailing.

3. The Secretary shall cause a copy of all rules, all new rules, and all amendments, revisions, or revocations of existing rules to be on file and available for public examination in the Office during normal office hours.

4. The Secretary shall promulgate rules to systematize the designations of rules. To establish said system or to preserve uniformity of designations, the Secretary may require the agency to change the title or numbering of any rule or any amendment, revision, or revocation thereof.

B. The Secretary is authorized to provide for the publication of rules in summary form when the rules are of such length that publication of the full text would be too costly. The summary shall be prepared by the agency submitting the rules and shall state where the full text of the rule may be obtained.

C. The notice required pursuant to the provisions of Section 303 of this title shall be published in "The Oklahoma Register" prior to the adoption of a new rule, or amendment, revision or revocation of any existing rule. The notice shall include the information required by Section 303 of this title.

[33]Added by Laws 1961, p. 603, § 5. Amended by Laws 1983, c. 76, § 1, eff. Nov. 1, 1983; Laws 1987, c. 207, § 8; Laws 1988, c. 292, § 9, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 8, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 10, eff. July 1, 1991; Laws 1996, c. 35, § 1, eff. Nov. 1, 1996; Laws 1997, c. 206, § 13, eff. Nov. 1, 1997; Laws 1998, c. 239, § 7, eff. Nov. 1, 1998.

[34]

§75-256. Oklahoma Administrative Code - Publication - Task Force on Administrative Rules.

A. 1. The Secretary shall provide for the codification, compilation, indexing and publication of agency rules and Executive Orders in a publication which shall be known as the "Oklahoma Administrative Code" in the following manner:

a. On or before January 1, 1992, the Secretary shall compile Executive Orders which are effective pursuant to paragraph 3 of subsection B of this section, and agency rules which have been submitted pursuant to the agency schedule of compliance and have been accepted as properly codified, as set forth in this section, and rules promulgated by the Secretary. Such compilation shall be maintained by the Office of Administrative Rules and shall be updated by agencies, in a manner prescribed by the Secretary, to reflect subsequent permanent rulemaking. Prior to publication of the first "Code", as set forth in subparagraph b of this paragraph, the compilation shall constitute the official permanent rules of the state. Effective January 1, 1992, any permanent rule not included in such compilation shall be void and of no effect.

b. On or before December 1, 1992, the Secretary shall have indexed and published the "Oklahoma Administrative Code". To effectuate this provision, the Secretary may contract for the publishing and indexing, or both of the "Oklahoma Administrative Code". Any permanent rule not published in the "Code" shall be void and of no effect. A finally adopted rule filed and published in "The Oklahoma Register" may be valid until publication of the next succeeding "Code" or "Code" supplement following the date of its final adoption. Provided, a permanent rule which is finally adopted after the closing date for publication in a "Code" or "Code" supplement as announced by the Secretary may be valid until publication of the next succeeding "Code" or "Code" supplement. A permanent rule which is published in "The Oklahoma Register" after the closing date for publication in the first "Code", as announced by the Secretary, shall be void and of no effect upon publication of the next succeeding "Code" or "Code" supplement, if not published in the "Code" or "Code" supplement.

2. Compilations or revisions of the "Code" or any part thereof shall be supplemented or revised annually. The "Code" shall be organized by state agency and shall be arranged, indexed and printed in a manner to permit separate publications of portions thereof relating to individual agencies.

3. Annual supplements to the "Code" shall be cumulative. Emergency rules shall not be published in the "Code" or in any supplements thereto.

4. The "Code" and the supplements shall include a general subject index and an agency index of all rules and Executive Orders contained therein. "The Oklahoma Register" shall also include a sections-affected index of the "Code". The "Code" and supplements shall contain such notes, cross references and explanatory materials as required by the Secretary.

5. The Secretary in preparing such rules for publication in the "Code" or supplements shall omit all material shown in canceled type. The Secretary shall not prepare any rule for publication in the "Code" which amends or revises a rule unless the rule so amending or revising conforms to the provisions of the Administrative Procedures Act.

6. The Secretary is authorized to determine a numbering system and other standardized

format for documents to be filed and may refuse to accept for publication any document that does not substantially conform to the promulgated rules of the Secretary.

B. 1. Rules submitted and accepted for publication in the "Code" by August 15 of each year shall be published in the next succeeding "Code" or supplement thereto.

2. As soon as possible after August 15 of each year, the Secretary shall assemble all rules and Executive Orders, except emergency rules, promulgated after the publication of the preceding "Code" or "Code" supplement in accordance with the provisions of the Administrative Procedures Act for publication in the "Oklahoma Administrative Code". The "Code" or supplements thereto should be published as soon as possible after August 30 of each year.

3. Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order. Copies of all Executive Orders shall be published and indexed in the "Oklahoma Administrative Code". All Executive Orders placing agencies or employees under the State Merit System of Personnel Administration shall remain in effect unless otherwise modified by action of the Legislature.

C. The Secretary is hereby authorized and empowered to publish or to contract to publish the "Oklahoma Administrative Code", and to publish or contract to publish such annual cumulative supplements so as to keep the "Code" current. All such agreements shall provide that the publisher shall make such publications in such form and arrangement as shall be approved by the Secretary. The Secretary may publish or authorize the publication of the "Code" in part.

D. The Secretary is authorized to correct spelling errors in rules submitted for publication in the "Code" or any such supplements or in "The Oklahoma Register". Any other errors in rules submitted for publication in the "Code" may be noted in editorial notes provided by the Secretary.

E. The Secretary shall make copies of the "Code" generally available at a cost sufficient to defray the cost of publication and mailing. Except as otherwise provided by Section 257.1 of this title, the Secretary is authorized to sell or otherwise distribute the "Code" and its supplements.

F. 1. The codification system, derivations, cross references, notes of decisions, source notes, authority notes, numerical lists, and codification guides, other than the actual text of rules, indexes, tables and other aids relevant to the publication of the "Oklahoma Administrative Code" and "The Oklahoma Register" shall be the property of the state and may be reproduced only with the written consent of the Secretary. The information which appears on the same page with the text of a rule may be reproduced incidentally with the reproduction of the rule, if the reproduction is for the private use of the individual and not for resale. No person shall attempt to copyright or publish the "Oklahoma Administrative Code" or "The Oklahoma Register", in printed or electronic media, without expressed written consent of the Secretary of State. The Secretary shall notify the Speaker of the House of Representatives and the President Pro Tempore of the Senate of any requests to copyright or publish the "Oklahoma Administrative Code" or "The Oklahoma Register", prior to consent by the Secretary.

2. The Secretary may provide for the electronic access to the "Oklahoma Administrative Code" and "The Oklahoma Register" by:

a. subscription, or

b. an exclusive or a nonexclusive contract for public and private access.

3. Publications of rules by agencies are not official publications.

4. The sale or resale of the "Oklahoma Administrative Code" or any part thereof by the

Secretary of State shall be exempt from any requirement mandating acquisition of a resale number and payment of sales tax.
[35]Added by Laws 1961, p. 604, § 6. Amended by Laws 1978, c. 165, § 13; Laws 1987, c. 207, § 9; Laws 1988, c. 292, § 10, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 11, eff. July 1, 1991; Laws 1991, c. 326, § 7, eff. July 1, 1991; Laws 1992, c. 310, § 4, eff. July 1, 1992; Laws 1994, c. 100, § 1, eff. Sept. 1, 1994; Laws 1994, c. 384, § 6, eff. July 1, 1994; Laws 1997, c. 206, § 14, eff. Nov. 1, 1997; Laws 1998, c. 239, § 8, eff. Nov. 1, 1998.
[36]
§75-256.1. Repealed by Laws 1994, c. 384, § 14, eff. July 1, 1994.
§75-256.2. Repealed by Laws 1994, c. 384, § 14, eff. July 1, 1994.
§75-256.3. Fees for copying, reproducing or certifying records.

The Office of Administrative Rules shall charge the public for the costs of copying, reproducing or certifying records of the Office of Administrative Rules pursuant to Section 24A.5 of Title 51 of the Oklahoma Statutes.
[37]Added by Laws 1992, c. 310, § 5, eff. July 1, 1992.
[38]
§75-257. Implementation of Article I of Act - Legal assistance.

A. Upon the request of the Secretary, the Office of the Attorney General shall provide such legal assistance to the Office as is necessary to implement the provisions of Article I of the Administrative Procedures Act.

B. The Attorney General shall prepare and provide for the publication and distribution to the agencies, a pamphlet or information sheet as to the procedures required by the Administrative Procedures Act for the adoption, review, and promulgation of rules.
[39]Added by Laws 1987, c. 207, § 10. Amended by Laws 1990, c. 300, § 14, eff. July 1, 1991.
[40]
§75-257.1. Reciprocal agreements for exchange of administrative codes - Offices entitled to free copy of Code.

A. The Secretary is authorized to enter into and make reciprocal agreements with other states to allow exchanges of administrative codes of such states.

B. 1. Each of the following offices shall be entitled to receive, as soon as available from the Secretary, without cost, one copy of the printed volumes of the "Code" and the supplements thereto:

a. County clerk of each county;
b. Clerk of the Supreme Court;
c. Attorney General;
d. Governor;
e. Speaker of the House of Representatives and the President Pro Tempore of the Senate;
f. the Research, Legal and Fiscal Divisions of the House of Representatives;
g. the Legislative Division of the Senate; and
h. the Department of Libraries for the Law Library.

2. The Department of Libraries is authorized to obtain number of copies of the "Code" and the supplements thereto necessary for use for deposit with the Publications Clearinghouse pursuant to Sections 3-113.1 through 3-115 of Title 65 of the Oklahoma Statutes. The Secretary is authorized to retain sufficient copies for exchange purposes with other states for copies of their rules.

[41]Added by Laws 1988, c. 292, § 13, emerg. eff. July 1, 1988. Amended by Laws 1990, c. 300, § 15, eff. July 1, 1991; Laws 1991, c. 326, § 8, eff. July 1, 1991; Laws 1997, c. 206, § 15, eff. Nov. 1, 1997.
[42]
§75-301. Renumbered as § 250.3 by Laws 1987, c. 207, § 27.
§75-302. Promulgation of certain rules - Public inspection of rules, orders, decisions and opinions - Rulemaking record - Prohibited actions - Violations.

A. In addition to other rulemaking requirements imposed by law, each agency which has rulemaking authority, shall:

1. Promulgate as a rule a description of the organization of the agency, stating the general course and method of the operations of the agency and the methods whereby the public may obtain information or make submissions or requests;

2. Promulgate rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions issued by the agency for use by the public;

3. Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, promulgated or used by the agency in the discharge of its functions;

4. Make available for public inspection pursuant to the provisions of the Open Records Act all final orders, decisions and opinions.

B. 1. An agency shall maintain an official rulemaking record for each proposed rule or promulgated rule. The record and materials incorporated by reference shall be available for public inspection.

2. The agency rulemaking record shall contain:

a. copies of all publications in "The Oklahoma Register" with respect to the rule or the proceeding upon which the rule is based,

b. copies of any portions of the agency's public rulemaking docket containing entries relating to the rule or the proceeding upon which the rule is based,

c. all written petitions, requests, submissions, and comments received by the agency and all other written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based,

d. any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations,

e. a copy of any regulatory analysis prepared for the proceeding upon which the rule is based,

f. a copy of the rule and analysis of each such rule filed with the Office pursuant to Section 251 of this title,

g. all petitions for exceptions to, amendments of, or repeal or suspension of, the rule,

h. a copy of the rule impact statement, if made, and

i. such other information concerning such rules as may be determined necessary by the agency.

3. Upon judicial review, the record required by this section constitutes the official agency

rulemaking record with respect to a rule. Except as otherwise required by a provision of law, the agency rulemaking record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.

C. 1. By December 31, 2002, each agency that issues precedent-setting orders shall maintain and index all such orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying in the main office and each regional or district office of the agency. The orders shall be indexed by subject.

2. After December 31, 2002, an order shall not be relied upon as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

3. An agency shall consistently apply rules to each person subject to the jurisdiction of the agency regarding issuance of orders.

D. An agency shall not by internal policy, memorandum, or other form of action not otherwise authorized by the Administrative Procedures Act:

1. Amend, interpret, implement, or repeal a statute or a rule;

2. Expand upon or limit a statute or a rule; and

3. Except as authorized by the Constitution of the United States, the Oklahoma Constitution or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Oklahoma Constitution, a statute, or a rule.

E. Any agency memorandum, internal policy, or other form of action violative of this section or the spirit thereof is null, void, and unenforceable.

F. This section shall not be construed to prohibit an agency issuing an opinion or administrative decision which is authorized by statute provided that, unless such opinion or administrative decision is issued pursuant to the procedures required pursuant to the Administrative Procedures Act, such decision or opinion shall not have the force and effect of law.

[43]Added by Laws 1963, c. 371, § 2. Amended by Laws 1987, c. 207, § 13; Laws 1988, c. 292, § 14, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 16, eff. July 1, 1991; Laws 1997, c. 206, § 16, eff. Nov. 1, 1997; Laws 1998, c. 239, § 9, eff. Nov. 1, 1998.

[44]

§75-303. Adoption, amendment or revocation of rule - Procedure.

A. Prior to the adoption of any rule or amendment or revocation of a rule, the agency shall:

1. Cause notice of any intended action to be published in "The Oklahoma Register" pursuant to subsection B of this section;

2. For at least thirty (30) days after publication of the notice of the intended rulemaking action, afford a comment period for all interested persons to submit data, views or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule;

3. Hold a hearing, if required, as provided by subsection C of this section;

4. Consider the effect its intended action may have on the various types of business and governmental entities. Except where such modification or variance is prohibited by statute or constitutional constraints, if an agency finds that its actions may adversely affect any such entity, the agency may modify its actions to exclude that type of entity, or may "tier" its actions to allow rules, penalties, fines or reporting procedures and forms to vary according to the size of a business or governmental entity or its ability to comply or both. For business entities, the agency

shall include a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable data to the extent possible, taking into account both short-term and long-term consequences; and

5. Consider the effect its intended action may have on the various types of consumer groups. If an agency finds that its actions may adversely affect such groups, the agency may modify its actions to exclude that type of activity.

B. The notice required by paragraph 1 of subsection A of this section shall include, but not be limited to:

1. In simple language, a brief summary of the rule;
2. The proposed action being taken;
3. The circumstances which created the need for the rule;
4. The specific legal authority authorizing the proposed rule;
5. The intended effect of the rule;
6. If the agency determines that the rule affects business entities, a request that such entities provide the agency, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule;
7. The time when, the place where, and the manner in which interested persons may present their views thereon pursuant to paragraph 3 of subsection A of this section;
8. Whether or not the agency intends to issue a rule impact statement according to subsection D of this section and where copies of such impact statement may be obtained for review by the public;
9. The time when, the place where, and the manner in which persons may demand a hearing on the proposed rule if the notice does not already provide for a hearing. If the notice provides for a hearing, the time and place of the hearing shall be specified in the notice; and
10. Where copies of the proposed rules may be obtained for review by the public. An agency may charge persons for the actual cost of mailing a copy of the proposed rules to such persons.

The number of copies of such notice as specified by the Secretary shall be submitted to the Secretary who shall publish the notice in "The Oklahoma Register" pursuant to the provisions of Section 255 of this title.

Prior to or within three (3) days after publication of the notice in "The Oklahoma Register", the agency shall cause a copy of the notice of the proposed rule adoption and the rule impact statement, if available, to be mailed to all persons who have made a timely request of the agency for advance notice of its rulemaking proceedings. Provided, in lieu of mailing copies, an agency may electronically notify interested persons that a copy of the proposed rule and the rule impact statement, if available, may be viewed on the agency's web site. If an agency posts a copy of the proposed rule and rule impact statement on its web site, the agency shall not charge persons for the cost of downloading or printing the proposed rule or impact statement. Each agency shall maintain a listing of persons or entities requesting such notice.

C. 1. If the published notice does not already provide for a hearing, an agency shall schedule a hearing on a proposed rule if, within thirty (30) days after the published notice of the proposed rule adoption, a written request for a hearing is submitted by:

a. at least twenty-five persons,
b. a political subdivision,

c. an agency,
d. an association having not less than twenty-five members, or
e. the Small Business Regulatory Review Committee.

At that hearing persons may present oral argument, data, and views on the proposed rule.

2. A hearing on a proposed rule may not be held earlier than thirty (30) days after notice of the hearing is published pursuant to subsection B of this section.

3. The provisions of this subsection shall not be construed to prevent an agency from holding a hearing or hearings on the proposed rule although not required by the provisions of this subsection; provided that notice of such hearing shall be published in "The Oklahoma Register" at least thirty (30) days prior to such hearing.

D. 1. Except as otherwise provided in this subsection, an agency shall issue a rule impact statement of a proposed rule prior to or within fifteen (15) days after the date of publication of the notice of proposed rule adoption. The rule impact statement may be modified after any hearing or comment period afforded pursuant to the provisions of this section.

2. Except as otherwise provided in this subsection, the rule impact statement shall include, but not be limited to:

a. a brief description of the purpose of the proposed rule,
b. a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities,
c. a description of the classes of persons who will benefit from the proposed rule,
d. a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change,
e. the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency,
f. a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule,
g. a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act,
h. an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule,
i. a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk,

j. a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented, and

k. the date the rule impact statement was prepared and if modified, the date modified.

3. To the extent an agency for good cause finds the preparation of a rule impact statement or the specified contents thereof are unnecessary or contrary to the public interest in the process of adopting a particular rule, the agency may request the Governor to waive such requirement. Upon request by an agency, the Governor may also waive the rule impact statement requirements if the agency is required to implement a statute or federal requirement that does not require an agency to interpret or describe the requirements, such as federally mandated provisions which afford the agency no discretion to consider less restrictive alternatives. If the Governor fails to waive such requirement, in writing, prior to publication of the notice of the intended rulemaking action, the rule impact statement shall be completed. The determination to waive the rule impact statement shall not be subject to judicial review.

4. The rule shall not be invalidated on the ground that the contents of the rule impact statement are insufficient or inaccurate.

E. Upon completing the requirements of this section, an agency may adopt a proposed rule. No rule is valid unless adopted in substantial compliance with the provisions of this section.

[45]Added by Laws 1963, c. 371, § 3. Amended by Laws 1982, c. 284, § 1, operative Oct. 1, 1982; Laws 1987, c. 207, § 14; Laws 1988, c. 292, § 15, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 17, eff. July 1, 1991; Laws 1991, c. 326, § 9, eff. July 1, 1991; Laws 1994, c. 384, § 7, eff. July 1, 1994; Laws 1995, c. 1, § 38, emerg. eff. March 2, 1995; Laws 1996, c. 225, § 2, eff. Nov. 1, 1996; Laws 1997, c. 206, § 17, eff. Nov. 1, 1997; Laws 1998, c. 239, § 10, eff. Nov. 1, 1998; Laws 1999, c. 211, § 2, eff. Nov. 1, 1999; Laws 2002, c. 495, § 8, eff. July 1, 2002; Laws 2003, c. 75, § 3, eff. July 1, 2003; Laws 2003, c. 317, § 1, emerg. eff. May 28, 2003.

NOTE: Laws 1994, c. 182, § 3 repealed by Laws 1995, c. 1, § 40, emerg. eff. March 2, 1995.

[46]

§75-303.1. Filing of rules, amendments, revisions or revocations and agency rule report with the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

A. Within ten (10) days after adoption of a permanent rule, the agency shall file two copies of the following with the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate: all such new rules or amendments; revisions or revocations to an existing rule proposed by an agency; and the agency rule report as required by subsection E of this section.

B. If the agency determines in the rule impact statement prepared as part of the agency rule report that the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing a proposed permanent rule, a copy of the proposed rule and rule report shall be filed within ten (10) days after adoption of the permanent rule with the Oklahoma Advisory Committee on Intergovernmental Relations for its review. Said Committee may communicate any recommendations that it may deem necessary to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate during the period that the permanent rules are being reviewed.

C. When the rules have been submitted to the Governor, the Speaker of the House of

Representatives and the President Pro Tempore of the Senate, the agency shall also submit to the Office of Administrative Rules for publication in "The Oklahoma Register", a statement that the adopted rules have been submitted to the Governor and the Legislature.

D. The text of the adopted rules shall be submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate in the same format as required by the Secretary pursuant to Section 251 of this title.

E. The report required by subsection A of this section shall include:

1. The date the notice of the intended rulemaking action was published in "The Oklahoma Register" pursuant to Section 255 of this title;

2. The name and address of the agency;

3. The title and number of the rule;

4. A citation to the statutory authority for the rule;

5. A brief summary of the content of the adopted rule;

6. A statement explaining the need for the adopted rule;

7. The date and location of the meeting, if held, at which such rules were adopted or the date and location when the rules were adopted if the rulemaking agency is not required to hold a meeting to adopt rules;

8. A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules;

9. A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing;

10. A rule impact statement if required pursuant to Section 303 of this title;

11. An incorporation by reference statement if the rule incorporates a set of rules from a body outside the state, such as a national code;

12. The members of the governing board of the agency adopting the rules and the recorded vote of each member;

13. The proposed effective date of the rules, if an effective date is required pursuant to paragraph 1 of subsection B of Section 304 of this title; and

14. Any other information requested by the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate or either rule review committee.

[47]Added by Laws 1988, c. 292, § 17, emerg. eff. July 1, 1988. Amended by Laws 1989, c. 360, § 9, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 18, eff. July 1, 1991; Laws 1994, c. 384, § 8, eff. July 1, 1994; Laws 1996, c. 225, § 3, eff. Nov. 1, 1996; Laws 1997, c. 206, § 18, eff. Nov. 1, 1997; Laws 1998, c. 239, § 11, eff. Nov. 1, 1998.

[48]

§75-303.2. Approval or disapproval by the Governor - Time limit.

A. The Governor shall have forty-five (45) calendar days from receipt of a rule to approve or disapprove the rule.

1. If the Governor approves the rule, the Governor shall immediately notify the agency in writing of the approval. A copy of such approval shall be given by the Governor to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon receipt of the approval, the agency shall submit a notice of such approval to the Office of Administrative

Rules for publication in "The Oklahoma Register".

2. If the Governor disapproves the adopted rule, the Governor shall return the entire document to the agency with reasons in writing for the disapproval. Notice of such disapproval shall be given by the Governor to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Failure of the Governor to approve a rule within the specified period shall constitute disapproval of the rule by the Governor. Upon receipt of the disapproval, or upon failure of the Governor to approve the rule within the specified period, the agency shall submit a notice of such disapproval to the Office of Administrative Rules for publication in "The Oklahoma Register". Any effective emergency rule which would have been superseded by a disapproved permanent rule, shall be deemed null and void on the date the Governor disapproves the permanent rule.

B. Rules not approved by the Governor pursuant to the provisions of this section shall not become effective unless otherwise approved by the Legislature by joint resolution pursuant to subsection B of Section 308 of Title 75 of the Oklahoma Statutes.

[49]Added by Laws 1998, c. 239, § 12, eff. Nov. 1, 1998.

[50]

§75-304. Filing of adopted rules - Effective date of adopted rule or Executive Order.

A. Each agency shall file copies of each rule finally adopted by it with the Secretary, as required by Section 251 of this title.

B. 1. Each rule finally adopted is effective ten (10) calendar days after publication in "The Oklahoma Register" pursuant to Section 255 of this title unless a later date is required by statute or specified in the rule, the agency rule report, or "The Oklahoma Register", the later date is the effective date. A rule shall only be applied prospectively from its effective date.

2. a. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately or at a stated date after certification by the Governor. An emergency rule shall only be applied prospectively from its effective date.

b. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

C. Executive Orders signed by the Governor shall become effective upon the date specified therein or immediately upon issuance.

[51]Added by Laws 1963, c. 371, § 4. Amended by Laws 1987, c. 207, § 15; Laws 1988, c. 292, § 16, emerg. eff. July 1, 1988; Laws 1990, c. 300, § 19, eff. July 1, 1991; Laws 1997, c. 206, § 19, eff. Nov. 1, 1997; Laws 1998, c. 239, § 13, eff. Nov. 1, 1998.

[52]

§75-305. Petition requesting promulgation, amendment or repeal of a rule - Form and procedure.

An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. The agency shall act upon said petition within a reasonable time. If, within thirty (30) calendar days after submission of a petition, the agency has not initiated rulemaking proceedings in accordance with the Administrative Procedures Act, the petition shall be deemed to have been denied.

[53]Laws 1963, c. 371, § 5; Laws 1987, c. 207, § 16.

[54]

§75-306. Validity or applicability of rules - Action - Parties - Presumption of validity - Burden of proof when rule appealed - Declaratory judgment.

A. The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of the county of the residence of the person seeking relief or, at the option of such person, in the county wherein the rule is sought to be applied, if it is alleged the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.

B. The agency shall be made a party to the action.

C. Rules promulgated pursuant to the provisions of the Administrative Procedures Act are presumed to be valid until declared otherwise by a district court of this state or the Supreme Court. When a rule is appealed pursuant to the Administrative Procedures Act it shall be the duty of the promulgating agency to show and bear the burden of proof to show:

1. that the agency possessed the authority to promulgate the rule;

2. that the rule is consistent with any statute authorizing or controlling its issuance and does not exceed statutory authority;

3. that the rule is not violative of any other applicable statute or the Constitution; and

4. that the laws and administrative rules relating to the adoption, review and promulgation of such rules were faithfully followed.

The provisions of this subsection shall not be construed to impair the power and duty of the Attorney General to review such rules and regulations and issue advisory opinions thereon.

D. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

[55]Laws 1963, c. 371, § 6; Laws 1977, c. 114, § 1, eff. Oct. 1, 1977; Laws 1987, c. 207, § 17.

[56]

§75-307. Filing and disposition of petitions for declaratory rulings - Judicial review.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any rule or order of the agency. A declaratory ruling, or refusal to issue such ruling, shall be subject to a judicial review in the manner provided for review of decisions in individual proceedings as provided in Sections 317 through 323 of this title.

[57]Laws 1963, c. 371, § 7; Laws 1987, c. 207, § 18.

[58]

§75-307.1. Legislative review of adopted rules and rulemaking process.

A. The Speaker of the House of Representatives and the President Pro Tempore ofthe Senate may each establish a rule review committee or designate standing committees of each such house to review administrative rules.

B. Such committees may meet separately or jointly at any time, during sessions of the Legislature and in the interim.

C. The function of the committees so established or designated shall be the review and promotion of adequate and proper rules by agencies and developing an understanding on the part of the public respecting such rules. Such function shall be advisory only.

Each committee may review all adopted rules and such other rules the committee deems appropriate and may make recommendations concerning such rules to their respective house of the Legislature, or to the agency adopting the rule, or to both their respective house of the Legislature and the agency.

D. In addition to the review of agency-adopted rules pursuant to this act, each such committee shall have the power and duty to:

1. Conduct a continuous study and investigations as to whether additional legislation or

changes in legislation are needed based on various factors, including but not limited to, review of proposed rules, review of existing rules including but not limited to consideration of amendments to or repeal of existing rules, the lack of rules, the ability of agencies to promulgate such rules, and the needs of administrative agencies;

2. Conduct a continuous study of the rulemaking process of all state agencies including those agencies exempted by Section 250.4 of this title for the purpose of improving the rulemaking process;

3. Conduct such other studies and investigations relating to rules as may be determined to be necessary by the committee; and

4. Monitor and investigate compliance of agencies with the provisions of the Administrative Procedures Act, make periodic investigations of the rulemaking activities of all agencies and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

[59]Added by Laws 1987, c. 207, § 19. Amended by Laws 1988, c. 292, § 18, emerg. eff. July 1, 1988.

[60]

§75-307.2. Repealed by Laws 1988, c. 292, § 22, emerg. eff. July 1, 1988.

§75-308. Review of proposed rules by Legislature - Approval or disapproval.

A. Upon receipt of any adopted rules, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign such rules to the appropriate committees of each such house of the Legislature for review. Except as otherwise provided by this section, upon receipt of such rules, the Legislature shall have thirty (30) legislative days to review such rules.

B. 1. By the adoption of a joint resolution, the Legislature may disapprove any rule, waive the thirty-legislative-day review period and approve any rule which has been submitted for review, or otherwise approve any rule.

2. a. (1) The Legislature may by concurrent resolution disapprove a proposed rule or a proposed amendment to a rule submitted to the Legislature or an emergency rule prior to such rule having the force and effect of law.

(2) Any such proposed rule or proposed amendment to a permanent rule shall be disapproved by both houses of the Legislature prior to the termination of the legislative review period specified by this section.

(3) Any such concurrent resolution shall not require the approval of the Governor, and any such rule so disapproved shall be invalid and of no effect regardless of the approval of the Governor of such rule.

b. By adoption of a concurrent resolution, the Legislature may waive the thirty-legislative-day review period for any rule which has been submitted for review.

C. Unless otherwise authorized by the Legislature by concurrent resolution, or by law, whenever a rule is disapproved as provided in subsection B of this section, the agency adopting such rules shall not have authority to resubmit an identical rule, except during the first sixty (60) calendar days of the next regular legislative session. Any effective emergency rule which would have been superseded by a disapproved permanent rule shall be deemed null and void on the date the Legislature disapproves the permanent rule. Rules may be disapproved in part or in whole by the Legislature. Any resolution enacted disapproving a rule shall be filed with the Secretary for publication in "The Oklahoma Register".

D. Unless otherwise provided by specific vote of the Legislature, resolutions introduced for purposes of disapproving or approving a rule shall not be subject to regular legislative cutoff dates, shall be limited to such provisions as may be necessary for disapproval or approval of a rule, and any such other direction or mandate regarding the rule deemed necessary by the Legislature. The resolution shall contain no other provisions.

E. 1. Transmission of a rule for legislative review on or before April 1 of each year shall result in the approval of such rule by the Legislature if:

a. the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been submitted pursuant to Section 303.1 of this title, or

b. the Legislature has adjourned before the expiration of said thirty (30) legislative days of submission of such rules, and has failed to disapprove such rule.

2. After April 1 of each year, transmission of a rule for legislative review shall result in the approval of such rule by the Legislature only if the Legislature is in regular session and has failed to disapprove such rule within thirty (30) legislative days after such rule has been so transmitted. In the event the Legislature adjourns before the expiration of such thirty (30) legislative days, such rule shall carry over for consideration by the Legislature during the next regular session and shall be considered to have been originally transmitted to the Legislature on the first day of said next regular session for review pursuant to this section. As an alternative, an agency may request direct legislative approval of such rules or waiver of the thirty-legislative-day review provided by subsection B of this section. An agency may also adopt emergency rules under the provisions of Section 253 of this title.

F. Prior to final adoption of a rule, an agency may withdraw a rule from legislative review. Notice of such withdrawal shall be given to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and to the Secretary for publication in "The Oklahoma Register".

G. Except as otherwise provided by Sections 253, 250.4 and 250.6 of this title or as otherwise specifically provided by the Legislature, no agency shall promulgate any rule unless reviewed by the Legislature pursuant to this section. An agency may promulgate an emergency rule only pursuant to Section 253 of this title.

H. Any rights, privileges, or interests gained by any person by operation of an emergency rule, shall not be affected by reason of any subsequent disapproval or rejection of such rule by either house of the Legislature.

[61]Added by Laws 1963, c. 371, § 8. Amended by Laws 1975, c. 289, § 1, emerg. eff. June 5, 1975; Laws 1978, c. 253, § 1, emerg. eff. May 1, 1978; Laws 1981, c. 48, § 1; Laws 1982, c. 18, § 1, emerg. eff. March 23, 1982; Laws 1987, c. 207, § 21; Laws 1988, c. 292, § 19, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 10, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 20, eff. July 1, 1991; Laws 1991, c. 326, § 10, eff. July 1, 1991; Laws 1992, c. 310, § 6, eff. July 1, 1992; Laws 1994, c. 384, § 9, eff. July 1, 1994; Laws 1995, c. 1, § 39, emerg. eff. March 2, 1995; Laws 1997, c. 206, § 20, eff. Nov. 1, 1997; Laws 1998, c. 239, § 14, eff. Nov. 1, 1998.

NOTE: Laws 1994, c. 182, § 4 repealed by Laws 1995, c. 1, § 40, emerg. eff. March 2, 1995.
[62]

§75-308.1. Expiration of legislative and gubernatorial review periods - Submission of adopted rules to Department of Libraries for publication.

A. Upon the approval by the Legislature and the Governor, or upon approval by joint resolution of the Legislature pursuant to subsection B of Section 308 of this title, a rule shall be considered finally adopted. The agency shall submit such finally adopted rule to the Secretary for filing and publishing such rule pursuant to Sections 251 and 255 of this title.

B. The text of the rule submitted for publication shall be the same as the text of the rule considered by the Legislature and the Governor.

[63]Added by Laws 1987, c. 207, § 22. Amended by Laws 1988, c. 292, § 20, emerg. eff. July 1, 1988; Laws 1989, c. 360, § 11, emerg. eff. June 3, 1989; Laws 1990, c. 300, § 21, eff. July 1, 1991; Laws 1997, c. 206, § 21, eff. Nov. 1, 1997; Laws 1998, c. 239, § 15, eff. Nov. 1, 1998.

[64]

§75-308.2. Rules - Necessity of promulgation - Interpretations not to change - Prospective effect only - Limitation period on contest proceedings - Force of law and prima facie evidence.

A. No agency rule is valid or effective against any person or party, or may be invoked by the agency for any purpose, until it has been promulgated as required in the Administrative Procedures Act.

B. A proceeding to contest any promulgated rule on the ground of noncompliance with the procedural requirements of Article I of the Administrative Procedures Act must be commenced within two (2) years from the effective date of the promulgated rule.

C. Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as otherwise provided by law, rules shall be prima facie evidence of the proper interpretation of the matter to which they refer.

[65]Added by Laws 1987, c. 207, § 23. Amended by Laws 1991, c. 326, § 11, eff. July 1, 1991; Laws 1996, c. 225, § 4, eff. Nov. 1, 1996; Laws 1997, c. 206, § 22, eff. Nov. 1, 1997.

[66]

§75-308a. Jurisdiction.

The provisions of Article II of the Administrative Procedures Act govern the hearing procedures of agencies, and does not grant jurisdiction, not otherwise provided by law. The Legislature recognizes that agencies take actions and make decisions, other than by individual proceedings for which the right to judicial review is intended to be exercised pursuant to other laws.

[67]Added by Laws 1992, c. 310, § 7, eff. July 1, 1992.

[68]

§75-309. Individual proceedings - Notice - Hearing.

A. In an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing;

2. A statement of the legal authority and jurisdiction under which the hearing is to be held;

3. A reference to the particular sections of the statutes and rules involved; and

4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

D. Deliberations by administrative heads, hearing examiners, and other persons authorized by law may be held in executive session pursuant to paragraph 8 of subsection B of Section 307 of Title 25 of the Oklahoma Statutes.

E. Unless precluded by law, informal disposition may be made of any individual proceeding by stipulation, agreed settlement, consent order, or default.

F. The record in an individual proceeding shall include:

1. All pleadings, motions and intermediate rulings;
2. Evidence received or considered at the individual proceeding;
3. A statement of matters officially noticed;
4. Questions and offers of proof, objections, and rulings thereon;
5. Proposed findings and exceptions;
6. Any decision, opinion, or report by the officer presiding at the hearing; and
7. All other evidence or data submitted to the hearing examiner or administrative head in connection with their consideration of the case provided all parties have had access to such evidence.

G. Oral proceedings shall be electronically recorded. Such recordings shall be maintained for such time so as to protect the record through judicial review. Copies of the recordings shall be provided by the agency at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting the transcription. For judicial review, electronic recordings of an individual proceeding, as certified by the agency, may be submitted to the reviewing court by the agency as part of the record of the proceedings under review without transcription unless otherwise required to be transcribed by the reviewing court. In such case, the expense of transcriptions shall be taxed and assessed against the nonprevailing party. Parties to any proceeding may have the proceedings transcribed by a court reporter at their own expense.

H. Findings of fact shall be based exclusively on the evidence received and on matters officially noticed in the individual proceeding unless otherwise agreed upon by the parties on the record.

[69]Added by Laws 1963, c. 371, § 9. Amended by Laws 1992, c. 310, § 8, eff. July 1, 1992; Laws 1994, c. 384, § 12, eff. July 1, 1994.

[70]

§75-310. Procedures before agency.

In individual proceedings:

1. Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law in respect to: self-incrimination; confidential communications between husband and wife during the subsistence of the marriage relation; communication between attorney and client, made in that relation; confessions made to a clergyman or priest in his or her professional capacity in the course of discipline enjoined by the church to which he or she belongs; communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by a practitioner through a physical examination of a patient made in a professional capacity; records and files of any official or agency of any state or of the United States which, by any statute of a state or of the United States are made confidential and privileged. No greater exclusionary effect shall be given any such rule or privilege than would obtain in an action in court. Agencies may exclude incompetent, irrelevant, immaterial, and

unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

3. A party may conduct cross-examinations required for a full and true disclosure of the facts;

4. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

5. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented.

6. A party may request the exclusion of witnesses to the extent and for the purposes stated in Section 2615 of Title 12 of the Oklahoma Statutes. Exclusion of a witness shall not be a violation of the Oklahoma Open Meeting Act.

[71]Added by Laws 1963, c. 371, § 10. Amended by Laws 1999, c. 46, § 1, eff. Nov. 1, 1999.

[72]

§75-311. Proposed orders.

A. Except as otherwise provided by Section 311.1 of this title, if the administrative head of an agency has not heard the case or read the record of an individual proceeding, a final agency order adverse to a party shall not be made until a proposed order is served upon the party, and an opportunity is afforded to the party to file exceptions and present briefs and oral argument to the administrative head who is to render the final agency order. The proposed order shall be accompanied by a statement of the reasons therefor and of each issue of fact or law necessary to the proposed order, prepared by the hearing examiner or by one who has read the record.

B. Such proposed order shall be served upon the parties at least fifteen (15) days prior to a hearing or meeting at which the administrative head is to consider or render a decision on the proposed order. At such hearing or meeting, the parties shall be afforded an opportunity to present briefs and oral arguments concerning the proposed order.

C. The parties by written stipulation may waive compliance with this section.

[73]Added by Laws 1963, c. 371, § 11. Amended by Laws 1992, c. 310, § 9, eff. July 1, 1992; Laws 1995, c. 317, § 1, emerg. eff. June 5, 1995; Laws 1998, c. 239, § 16, eff. Nov. 1, 1998.

[74]

§75-311.1. Department of Health - Final agency orders - Authority.

A. The Commissioner of the State Department of Health may delegate the authority to issue a final agency order adverse to a party to an agency administrative law judge if:

1. The administrative law judge has a general knowledge of the Public Health Code, and rules promulgated thereto;

2. The administrative law judge:

a. is currently licensed to practice law by the Supreme Court of this state,

b. has a working knowledge of the Administrative Procedures Act and administrative rules of the State Department of Health,
c. is not an owner, stockholder, employee or officer of, nor has any other business relationship with, any corporation, partnership, or other business or entity that is subject to regulation by the State Department of Health,
d. is separate and apart from the legal division or office of general counsel of the State Department of Health,
e. is not responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the State Department of Health, and
f. has not been engaged in the performance of investigative or prosecuting functions for the State Department of Health regarding the party receiving the final agency order; and

3. The Commissioner in delegating the authority to issue final agency orders adverse to a party pursuant to this section specifically designates by written agency policy and procedure the type or category of final agency order which may be issued by the administrative law judge.

B. The provisions of this section shall not be construed to authorize or allow restraints on the authority of the Commissioner to adopt, reject, review, modify or correct the findings of fact and conclusions of law or any proposed order issued by the administrative law judge.

C. When the administrative law judge issues a final agency order, that order becomes the final order of the State Department of Health without further proceeding unless there is a request for rehearing, reopening, or reconsideration pursuant to Section 317 of Title 75 of the Oklahoma Statutes or a filing for judicial review pursuant to Section 318 of Title 75 of the Oklahoma Statutes.

[75]Added by Laws 1995, c. 317, § 2, emerg. eff. June 5, 1995.

[76]

§75-312. Final agency orders - Contents - Notification.

A. A final agency order adverse to a party shall:

1. Be in writing; and

2. Include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the final agency order shall include a ruling upon each proposed finding.

B. Parties shall be notified either personally or by certified mail, return receipt requested, of any final agency order. Upon request, a copy of the order shall be delivered or mailed forthwith to each party and to his attorney of record.

[77]Laws 1963, c. 371, § 12; Laws 1992, c. 310, § 10, eff. July 1, 1992.

[78]

§75-313. Agency members not to communicate.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an individual proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member (1) may communicate with other members of the agency, and (2) may have

the aid and advice of one or more personal assistants.
[79]Laws 1963, c. 371, § 13.
[80]
§75-314. Issuance or denial of new license - Revocation, suspension, annulment, withdrawal or nonrenewal of existing license.

A. Except as otherwise specifically provided by law, the issuance or denial of a new license shall not require an individual proceeding.

B. Except as otherwise prohibited by law, if a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any transfer of an activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. In case the application for renewal or for a new license with reference to any transfer of an activity of a continuing nature is denied or the terms of the new license limited, the existing license does not expire until the last day for seeking review of the final agency order or a later date fixed by order of the reviewing court.

C. 1. Unless otherwise provided by law, an existing license shall not be revoked, suspended, annulled, withdrawn or nonrenewed unless, prior to the institution of such final agency order, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention or renewal of the license.

2. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.
[81]Laws 1963, c. 371, § 14; Laws 1992, c. 310, § 11, eff. July 1, 1992.
[82]
§75-314.1. Implementation of emergency action pending final outcome of proceedings.

As authorized by or pursuant to law, if an agency finds that the public health, safety, or welfare imperatively requires emergency action, has promulgated administrative rules which provide for such action and incorporates a finding regarding the emergency in its order, emergency actions may be ordered pending the final outcome of proceedings instituted pursuant to this article.
[83]Added by Laws 1994, c. 384, § 10, eff. July 1, 1994.
[84]
§75-315. Furnishing of information, attendance of witnesses and production of books, records, etc. - Subpoenas.

A. 1. The agency conducting any individual proceeding shall have power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers or other objects as may be necessary and proper for the purposes of the proceeding.

2. The agency, or any party to a proceeding before it, may take the depositions of witnesses, within or without the state, in the same manner as is provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in any proceeding affected by this act. Provided, however, all or any part of the deposition may be objected to at time of hearing, and may be received in evidence or excluded from the evidence by the agency or individual conducting the hearing in accordance with the law with reference to evidence in this act or with reference to evidence in courts of record under the law of the State of

Oklahoma.

B. In furtherance of the powers granted by subsection A of this section, any agency, administrative head, hearing examiner or any other duly authorized member or employee thereof, upon its own motion may, and upon the request of any party appearing in an individual proceeding shall:

1. Issue subpoenas for witnesses;

2. Issue subpoenas duces tecum to compel the production of books, records, papers or other objects, which may be served by the marshal of the agency or by any person in any manner prescribed for the service of a subpoena in a civil action; or

3. Quash a subpoena or subpoenas duces tecum so issued; provided, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

C. 1. In case of disobedience to any subpoena issued and served under this section or to any lawful agency requirement for information, or of the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before an agency, the agency may apply to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. Forthwith the court or the judge shall cite the respondent to appear and shall hear the matter as expeditiously as possible.

2. If the disobedience or refusal is found to be unlawful, the court, or the judge, shall enter an order requiring compliance. Disobedience of such an order shall be punished as contempt of court in the same manner and by the same procedure as is provided for like conduct committed in the course of judicial proceedings.

[85]Laws 1963, c. 371, § 15; Laws 1992, c. 310, § 12, eff. July 1, 1992.

[86]

§75-315.1. Public hearings - Fees.

No agency shall charge a fee to any person wishing to submit evidence, views or arguments at any public hearing authorized by the Oklahoma Administrative Procedures Act concerning rules, regulations, licenses, permits, orders or any other proposed agency action. Nothing in this act shall be construed to prohibit the collection of any licensing or permit fees or other fees otherwise prescribed by statute.

[87]Laws 1976, c. 60, § 1, emerg. eff. April 19, 1976.

[88]

§75-316. Disqualification of hearing examiner or agency member.

A hearing examiner or agency member shall withdraw from any individual proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing examiner or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the administrative head of the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing examiner, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the agency shall proceed with the proceeding if a quorum remains. If a quorum no longer exists, by virtue of the member's disqualification, the Governor immediately shall appoint a member pro tempore to sit in place of

the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of Section 311 of this title shall apply.
[89]Added by Laws 1963, c. 371, § 16. Amended by Laws 1997, c. 206, § 23, eff. Nov. 1, 1997; Laws 1998, c. 62, § 2, eff. Nov. 1, 1998.
[90]
§75-317. Rehearing, reopening or reconsideration of agency decision.

A. A final agency order issued by an administrative head of an agency shall be subject to rehearing, reopening or reconsideration by such administrative head. Any application or request for such rehearing, reopening or reconsideration shall be made by any party aggrieved by the final agency order within ten (10) days from the date of the entry of such final agency order. The grounds for such action shall be either:

1. Newly discovered or newly available evidence, relevant to the issues;

2. Need for additional evidence adequately to develop the facts essential to proper decision;

3. Probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the final agency order;

4. Need for further consideration of the issues and the evidence in the public interest; or

5. A showing that issues not previously considered ought to be examined in order properly to dispose of the matter.

B. The order of the agency granting rehearing, reconsideration or review, or the petition of a party therefor, shall set forth the grounds which justify such action.

C. Nothing in this section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

D. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a hearing examiner. The hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered.

E. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.
[91]Laws 1963, c. 371, § 17; Laws 1992, c. 310, § 13, eff. July 1, 1992.
[92]
§75-318. Judicial review.

A. 1. Any party aggrieved by a final agency order in an individual proceeding is entitled to certain, speedy, adequate and complete judicial review thereof pursuant to the provisions of this section and Sections 319, 320, 321, 322 and 323 of this title.

2. This section shall not prevent resort to other means of review, redress, relief or trial de novo, available because of constitutional provisions.

3. Neither a motion for new trial nor an application for rehearing shall be prerequisite to secure judicial review.

B. 1. The judicial review prescribed by this section for final agency orders, as to agencies whose final agency orders are made subject to review, under constitutional or statutory provisions, by appellate proceedings in the Supreme Court of Oklahoma, shall be afforded by such proceedings taken in accordance with the procedure and under the conditions otherwise provided by law, but subject to the applicable provisions of Sections 319 through 324 of this

title, and the rules of the Supreme Court.

2. In all other instances, proceedings for review shall be instituted by filing a petition, in the district court of the county in which the party seeking review resides or at the option of such party where the property interest affected is situated, within thirty (30) days after the appellant is notified of the final agency order as provided in Section 312 of this title.

C. Copies of the petition shall be served upon the agency and all other parties of record, and proof of such service shall be filed in the court within ten (10) days after the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

D. In any proceedings for review brought by a party aggrieved by a final agency order:

1. The agency whose final agency order was made subject to review may be entitled to recover against such aggrieved party any court costs, witness fees and reasonable attorney fees if the court determines that the proceeding brought by the party is frivolous or was brought to delay the effect of said final agency order.

2. The party aggrieved by the final agency order may be entitled to recover against such agency any court costs, witness fees, and reasonable attorney fees if the court determines that the proceeding brought by the agency is frivolous.

[93]Laws 1963, c. 371, § 18; Laws 1977, c. 114, § 2, eff. Oct. 1, 1977; Laws 1992, c. 310, § 14, eff. July 1, 1992.

[94]

§75-319. Staying enforcement of agency decision pending review.

(1) The filing of a proceeding for review shall not stay enforcement of the agency decision; but the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper, and shall do so whenever required by subsection (2) of this section.

(2) In every proceeding in any court for the review of an order of an agency, upon the filing of an application, supported by verified statements of material fact establishing that the enforcement of the order pending final decision would result in present, continuous and irreparable impairment of the constitutional rights of the applicant, a stay of the enforcement of such order and of the accrual of penalties thereunder shall be entered upon the condition that:

(a) injury to adverse parties or to the public, as the case may be, can be obviated through the furnishing of security adequate to compensate for any loss which may be suffered as a result of the stay in the event the order is affirmed, in whole or in part;

(b) a supersedeas bond, in the amount and with sureties prescribed and approved by the reviewing court, in its sound judicial discretion, as adequate to meet requirement (a), be filed with such court. If an application for supersedeas hereunder, accompanied by a proposal for a supersedeas bond, is not acted upon by the court within forty-five (45) days from the filing thereof, the order appealed from thereupon shall be automatically superseded and stayed, during the pendency of the appeal, upon the filing of the bond proposed in the application, provided, however, that the court thereafter may reasonably modify the terms of the supersedeas as to amount and surety whereupon the appellant shall comply with such modification in order to maintain the supersedeas in effect.

[95]Laws 1963, c. 371, § 19. [96]

§75-320. Transmission of record to reviewing court - Stipulations.

Within thirty (30) days after service of the petition for review or equivalent process upon it, or within such further time as the reviewing court, upon application for good cause shown, may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. For purposes of this section, "record" shall include

such information as specified by Section 309 of this title. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs resulting therefrom. The court may require or permit subsequent corrections or additions to the record when deemed desirable.
[97]Laws 1963, c. 371, § 20; Laws 1992, c. 310, § 15, eff. July 1, 1992.
[98]
§75-321. Review without jury - Additional testimony.

The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.
[99]Laws 1963, c. 371, § 21.
[100]
§75-322. Setting aside, modifying or reversing of orders - Remand - Affirmance.

(1) In any proceeding for the review of an agency order, proceeding for the review of an agency order, the Supreme Court or the district court, as the case may be, in the exercise of proper judicial discretion or authority, may set aside or modify the order, or reverse it and remand it to the agency for further proceedings, if it determines that the substantial rights of the appellant or petitioner for review have been prejudiced because the agency findings, inferences, conclusions or decisions, are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the agency; or

(c) made upon unlawful procedure; or

(d) affected by other error of law; or

(e) clearly erroneous in view of the reliable, material, probative and substantial competent evidence, as defined in Section 10 of this act, including matters properly noticed by the agency upon examination and consideration of the entire record as submitted; but without otherwise substituting its judgment as to the weight of the evidence for that of the agency on question of fact; or

(f) arbitrary or capricious; or

(g) because findings of fact, upon issues essential to the decision were not made although requested.

(2) The reviewing court, also in the exercise of proper judicial discretion or authority, may remand the case to the agency for the taking and consideration of further evidence, if it is deemed essential to a proper disposition of the issue.

(3) The reviewing court shall affirm the order and decision of the agency, if it is found to be valid and the proceedings are free from prejudicial error to the appellant.
[101]Laws 1963, c. 371, § 22.
[102]
§75-323. Review of final judgment of a district or superior court by appeal to Supreme Court.

An aggrieved party, or the agency, without any motion for a new trial, may secure a review of any final judgment of a district or superior court under this act by appeal to the Supreme Court. Such appeal shall be taken in the manner and time provided by law for appeal to the Supreme Court from the district court in civil actions. An agency taking an appeal shall not be required to give bond.
[103]Laws 1963, c. 371, § 23.

APPENDIX G

§25-301. Citation.

This act shall be known as the Oklahoma Open Meeting Act.

§25-302. Public policy.

It is the public policy of the State of Oklahoma to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems.

[1]Laws 1977, c. 214, § 2, eff. Oct. 1, 1977. [2]

§25-303. Times and places - Advance notice.

All meetings of public bodies, as defined hereinafter, shall be held at specified times and places which are convenient to the public and shall be open to the public, except as hereinafter specifically provided. All meetings of such public bodies, except for executive sessions of the State Banking Board and Oklahoma Savings and Loan Board, shall be preceded by advance public notice specifying the time and place of each such meeting to be convened as well as the subject matter or matters to be considered at such meeting, as hereinafter provided.

[3]Amended by Laws 1987, c. 61, § 19, emerg. eff. May 4, 1987. [4]

§25-304. Definitions.

As used in the Oklahoma Open Meeting Act:

1. "Public body" means the governing bodies of all municipalities located within this state, boards of county commissioners of the counties in this state, boards of public and higher education in this state and all boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts or any entity created by a public trust, task forces or study groups in this state supported in whole or in part by public funds or entrusted with the expending of public funds, or administering public property, and shall include all committees or subcommittees of any public body. It shall not mean the state judiciary, the Council on Judicial Complaints when conducting, discussing, or deliberating any matter relating to a complaint received or filed with the Council, the Legislature, or administrative staffs of public bodies, including, but not limited to, faculty meetings and athletic staff meetings of institutions of higher education when those staffs are not meeting with the public body, or entry-year assistance committees. Furthermore, it shall not mean the multidisciplinary team provided for in subsection C of Section 1-502.2 of Title 63 of the Oklahoma Statutes or any school board meeting for the sole purpose of considering recommendations of a multidisciplinary team and deciding the placement of any child who is the subject of such recommendations. Furthermore, it shall not mean meetings conducted by stewards designated by the Oklahoma Horse Racing Commission pursuant to Section 203.4 of Title 3A of the Oklahoma Statutes when the stewards are officiating at races or otherwise enforcing rules of the Commission;

2. "Meeting" means the conduct of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a teleconference;

3. "Regularly scheduled meeting" means a meeting at which the regular business of the public body is conducted;

4. "Special meeting" means any meeting of a public body other than a regularly scheduled meeting or emergency meeting;

5. "Emergency meeting" means any meeting called for the purpose of dealing with an emergency. For purposes of this act, an emergency is defined as a situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss;

6. “Continued or reconvened meeting” means a meeting which is assembled for the purpose of finishing business appearing on an agenda of a previous meeting. For the purposes of this act, only matters on the agenda of the previous meeting at which the announcement of the continuance is made may be discussed at a continued or reconvened meeting; and

7. “Teleconference” means a conference among members of a public body remote from one another who are linked by interactive telecommunication devices permitting both visual and auditory communication between and among members of the public body and members of the public.

[5]Added by Laws 1977, c. 214, § 4, eff. Oct. 1, 1977. Amended by Laws 1982, c. 342, § 12, emerg. eff. June 2, 1982; Laws 1988, c. 153, § 6, eff. July 1, 1988; Laws 1993, c. 282, § 1, eff. Sept. 1, 1993; Laws 1998, c. 370, § 3, eff. Nov. 1, 1998; Laws 1999, c. 1, § 9, emerg. eff. Feb. 24, 1999; Laws 1999, c. 423, § 10, emerg. eff. June 10, 1999.

NOTE: Laws 1998, c. 315, § 1 repealed by Laws 1999, c. 1, § 45, emerg. eff. Feb. 24, 1999.

[6]

§25-305. Recording of votes.

In all meetings of public bodies, the vote of each member must be publicly cast and recorded.

[7]Laws 1977, c. 214, § 5, eff. Oct. 1, 1977. [8]

§25-306. Circumvention of act - Teleconferences excepted.

No informal gatherings or any electronic or telephonic communications, except teleconferences as authorized by Section 3 of this act, among a majority of the members of a public body shall be used to decide any action or to take any vote on any matter.

[9]Laws 1977, c. 214, § 6, eff. Oct. 1, 1977; Laws 1993, c. 282, § 2, eff. Sept. 1, 1993.

[10]

§25-307. Executive sessions.

A. No public body shall hold executive sessions unless otherwise specifically provided in this section.

B. Executive sessions of public bodies will be permitted only for the purpose of:

1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;

2. Discussing negotiations concerning employees and representatives of employee groups;

3. Discussing the purchase or appraisal of real property;

4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest;

5. Permitting district boards of education to hear evidence and discuss the expulsion or suspension of a student when requested by the student involved or the student’s parent, attorney or legal guardian;

6. Discussing matters involving a specific handicapped child;

7. Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law;

8. Engaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act; or

9. Discussing the following:

a. the investigation of a plan or scheme to commit an act of terrorism,
b. assessments of the vulnerability of government facilities or public improvements to an act of terrorism,
c. plans for deterrence or prevention of or protection from an act of terrorism,
d. plans for response or remediation after an act of terrorism,
e. information technology of the public body but only if the discussion specifically identifies:
    (1) design or functional schematics that demonstrate the relationship or connections between devices or systems,
    (2) system configuration information,
    (3) security monitoring and response equipment placement and configuration,
    (4) specific location or placement of systems, components or devices,
    (5) system identification numbers, names, or connecting circuits,
    (6) business continuity and disaster planning, or response plans, or
    (7) investigation information directly related to security penetrations or denial of services, or
f. the investigation of an act of terrorism that has already been committed.

For the purposes of this subsection, the term "terrorism" means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.

C. Notwithstanding the provisions of subsection B of this section, the following public bodies may hold executive sessions:

1. The State Banking Board, as provided for under Section 306.1 of Title 6 of the Oklahoma Statutes;

2. The Oklahoma Industrial Finance Authority, as provided for in Section 854 of Title 74 of the Oklahoma Statutes;

3. The Oklahoma Development Finance Authority, as provided for in Section 5062.6 of Title 74 of the Oklahoma Statutes;

4. The Oklahoma Center for the Advancement of Science and Technology, as provided for in Section 5060.7 of Title 74 of the Oklahoma Statutes;

5. The Oklahoma Savings and Loan Board, as provided for under subsection A of Section 381.74 of Title 18 of the Oklahoma Statutes;

6. The Oklahoma Health Research Committee for purposes of conferring on matters pertaining to research and development of products, if public disclosure of the matter discussed would interfere with the development of patents, copyrights, products, or services;

7. A review committee, as provided for in Section 855 of Title 62 of the Oklahoma Statutes;

8. The Child Death Review Board for purposes of receiving and conferring on matters pertaining to materials declared confidential by law;

9. The Domestic Violence Fatality Review Board as provided in Section 1601 of Title 22 of the Oklahoma Statutes;

10. All nonprofit foundations, boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups supported in whole or part by public funds or entrusted with the expenditure of public funds for purposes of conferring on matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal to entice a business to locate within their jurisdiction if public

disclosure of the matter discussed would interfere with the development of products or services or if public disclosure would violate the confidentiality of the business; and

11. The Oklahoma Indigent Defense System Board for purposes of discussing negotiating strategies in connection with making possible counteroffers to offers to contract to provide legal representation to indigent criminal defendants and indigent juveniles in cases for which the System must provide representation pursuant to the provisions of the Indigent Defense System Act.

D. An executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body, and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer, or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session.

E. No public body may go into an executive session unless the following procedures are strictly complied with:

1. The proposed executive session is noted on the agenda as provided in Section 311 of this title;

2. The executive session is authorized by a majority vote of a quorum of the members present and the vote is a recorded vote; and

3. Except for matters considered in executive sessions of the State Banking Board and the Oklahoma Savings and Loan Board, and which are required by state or federal law to be confidential, any vote or action on any item of business considered in an executive session shall be taken in public meeting with the vote of each member publicly cast and recorded.

F. A willful violation of the provisions of this section shall:

1. Subject each member of the public body to criminal sanctions as provided in Section 314 of this title; and

2. Cause the minutes and all other records of the executive session, including tape recordings, to be immediately made public.

[11]Added by Laws 1977, c. 214, § 7, eff. Oct. 1, 1977. Amended by Laws 1985, c. 218, § 1, eff. Nov. 1, 1985; Laws 1986, c. 264, § 12, operative July 1, 1986; Laws 1987, c. 61, § 20, emerg. eff. May 4, 1987; Laws 1987, c. 222, § 115, operative July 1, 1987; Laws 1988, c. 153, § 7, eff. July 1, 1988; Laws 1989, c. 7, § 1, emerg. eff. March 27, 1989; Laws 1989, c. 200, § 1, emerg. eff. May 8, 1989; Laws 1992, c. 12, § 1, eff. Sept. 1, 1992; Laws 1993, c. 69, § 1, eff. Sept. 1, 1993; Laws 1993, c. 195, § 3, eff. July 1, 1993; Laws 1994, c. 384, § 13, eff. July 1, 1994; Laws 1998, c. 315, § 2, emerg. eff. May 28, 1998; Laws 1999, c. 1, § 10, emerg. eff. Feb. 24, 1999; Laws 2001, c. 284, § 3, eff. July 1, 2001; Laws 2003, c. 175, § 1, emerg. eff. May 5, 2003.

NOTE: Laws 1985, c. 168, § 9 repealed by Laws 1986, c. 264, § 13, operative July 1, 1986. Laws 1998, c. 201, § 6 repealed by Laws 1999, c. 1, § 45, emerg. eff. Feb. 24, 1999.

[12]

§25-307.1. Teleconferences.

A. No public body shall hold meetings by teleconference except:

1. Oklahoma Futures;

2. The Oklahoma State Regents for Higher Education;

3. The State Board of Medical Licensure and Supervision;

4. The State Board of Osteopathic Examiners;

5. The Board of Dentistry;

6. The Variance and Appeals Boards created in Sections 1021.1, 1697 and 1850.16 and the Construction Industries Board created in Section 1000.2 of Title 59 of the Oklahoma Statutes;

7. A public trust whose beneficiary is a municipality; however, no more than twenty percent (20%) of a quorum of the trustees may participate by teleconference and during any such meetings all votes shall be roll call votes;

8. The Native American Cultural and Educational Authority;

9. The Corporation Commission;

10. The State Board of Career and Technology Education;

11. The Oklahoma Funeral Board; and

12. The District Attorneys Council.

B. A board of education of a technology center school district may hold meetings by videoconference where each board member is visible to each other and the public through a video monitor, subject to the following:

1. No fewer than three members of a five-member board or four members of a seven-member board shall be present in person at the site of each meeting;

2. The public notice posted in advance of the meeting shall indicate such meeting will be conducted via videoconference;

3. Each site and room where members of the board are present for a meeting by videoconference shall be open and accessible to the public, and the public shall be allowed into the site and room; and

4. The public shall be allowed to participate or have input in a meeting at the videoconference site in the same manner and to the same extent as the public is allowed to participate or have input in a meeting at the site of the meeting.

C. No public body authorized to hold meetings by teleconference or videoconference shall conduct an executive session by teleconference or videoconference.

[13]Added by Laws 1993, c. 282, § 3, eff. Sept. 1, 1993. Amended by Laws 1994, c. 323, § 37, eff. July 1, 1994; Laws 1995, c. 152, § 1, eff. Nov. 1, 1995; Laws 1995, c. 358, § 2, eff. Nov. 1, 1995; Laws 1997, c. 108, § 1, eff. Nov. 1, 1997; Laws 1998, c. 315, § 3, emerg. eff. May 28, 1998; Laws 1999, c. 397, § 16, emerg. eff. June 10, 1999; Laws 2000, c. 6, § 6, emerg. eff. March 20, 2000; Laws 2000, c. 148, § 1, eff. July 1, 2000; Laws 2003, c. 57, § 28, emerg. eff. April 10, 2003; Laws 2003, c. 474, § 5, eff. Nov. 1, 2003; Laws 2004, c. 5, § 14, emerg. eff. March 1, 2004.

NOTE: Laws 1994, c. 293, § 14 repealed by Laws 1995, c. 1, § 40, emerg. eff. March 2, 1995. Laws 1995, c. 1, § 6 repealed by Laws 1995, c. 358, § 13, eff. Nov. 1, 1995. Laws 1999, c. 259, § 1 repealed by Laws 2000, c. 6, § 33, emerg. eff. March 20, 2000. Laws 2003, c. 318, § 2 repealed by Laws 2004, c. 5, § 15, emerg. eff. March 1, 2004. Laws 2003, c. 324, § 1 repealed by Laws 2004, c. 5, § 16, emerg. eff. March 1, 2004.

[14]

§25-308. Meeting between Governor and majority members of public body.

Any meeting between the governor and a majority of members of any public body shall be open to the public and subject to all other provisions of this act.

[15]Laws 1977, c. 214, § 8, eff. Oct. 1, 1977. [16]

§25-309. Legislature.

The Legislature shall conduct open meetings in accordance with rules to be adopted by each house thereof.

[17]Laws 1977, c. 214, § 9, eff. Oct. 1, 1977. [18]

§25-310. Legislative committee members attending executive sessions.

Any member of the Legislature appointed as a member of a committee of either house of the Legislature or joint committee thereof shall be permitted to attend any executive session authorized by the Oklahoma Open Meeting Act of any state agency, board or commission whenever the jurisdiction of such committee includes the actions of the public body involved.

[19]Laws 1977, c. 214, § 10, eff. Oct. 1, 1977; Laws 1981, c. 272, § 7, eff. July 1, 1981. [20]

§25-311. Public bodies - Notice.

A. Notwithstanding any other provisions of law, all regularly scheduled, continued or reconvened, special or emergency meetings of public bodies shall be preceded by public notice as follows:

1. All public bodies shall give notice in writing by December 15 of each calendar year of the schedule showing the date, time and place of the regularly scheduled meetings of such public bodies for the following calendar year.

2. All state public bodies, including, but not limited to, public trusts and other bodies with the state as beneficiary, shall give such notice to the Secretary of State.

3. All county public bodies, including, but not limited to, public trusts and any other bodies with the county as beneficiary, shall give such notice to the county clerk of the county wherein they are principally located.

4. All municipal public bodies, including, but not limited to, public trusts and any other bodies with the municipality as beneficiary, shall give such notice to the municipal clerk of the municipality wherein they are principally located.

5. All multicounty, regional, areawide or district public bodies, including, but not limited to, district boards of education, shall give such notice to the county clerk of the county wherein they are principally located, or if no office exists, to the county clerk of the county or counties served by such public body.

6. All governing boards of state institutions of higher education, and committees and subcommittees thereof, shall give such notice to the Secretary of State. All other public bodies covered by the provisions of this act which exist under the auspices of a state institution of higher education, but a majority of whose members are not members of the institution's governing board, shall give such notice to the county clerk of the county wherein the institution is principally located.

7. The Secretary of State and each county clerk or municipal clerk shall keep a record of all notices received in a register open to the public for inspection during regular office hours, and, in addition, shall make known upon any request of any person the contents of said register.

8. If any change is to be made of the date, time or place of regularly scheduled meetings of public bodies, then notice in writing shall be given to the Secretary of State or county clerk or municipal clerk, as required herein, not less than ten (10) days prior to the implementation of any such change.

9. In addition to the advance public notice in writing required to be filed for regularly scheduled meetings, all public bodies shall, at least twenty-four (24) hours prior to such meetings, display public notice of said meeting, setting forth thereon the date, time, place and agenda for said meeting, such twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays and holidays legally declared by the State of Oklahoma; provided,

however, the posting of an agenda shall not preclude a public body from considering at its regularly scheduled meeting any new business. Such public notice shall be posted in prominent public view at the principal office of the public body or at the location of said meeting if no office exists. "New business", as used herein, shall mean any matter not known about or which could not have been reasonably foreseen prior to the time of posting.

10. In the event any meeting is to be continued or reconvened, public notice of such action, including date, time and place of the continued meeting, shall be given by announcement at the original meeting. Only matters appearing on the agenda of the meeting which is continued may be discussed at the continued or reconvened meeting.

11. Special meetings of public bodies shall not be held without public notice being given at least forty-eight (48) hours prior to said meetings. Such public notice of date, time and place shall be given in writing, in person or by telephonic means to the Secretary of State or to the county clerk or to the municipal clerk by public bodies in the manner set forth in paragraphs 2, 3, 4, 5 and 6 of this section. The public body also shall cause written notice of the date, time and place of the meeting to be mailed or delivered to each person, newspaper, wire service, radio station, and television station that has filed a written request for notice of meetings of the public body with the clerk or secretary of the public body or with some other person designated by the public body. Such written notice shall be mailed or delivered at least forty-eight (48) hours prior to the special meeting. The public body may charge a fee of up to Eighteen Dollars ($18.00) per year to persons or entities filing a written request for notice of meetings, and may require such persons or entities to renew the request for notice annually. In addition, all public bodies shall, at least twenty-four (24) hours prior to such special meetings, display public notice of said meeting, setting forth thereon the date, time, place and agenda for said meeting. Only matters appearing on the posted agenda may be considered at said special meeting. Such public notice shall be posted in prominent public view at the principal office of the public body or at the location of said meeting if no office exists. Twenty-four (24) hours prior public posting shall exclude Saturdays and Sundays and holidays legally declared by the State of Oklahoma.

12. In the event of an emergency, an emergency meeting of a public body may be held without the public notice heretofore required. Should an emergency meeting of a public body be necessary, the person calling such a meeting shall give as much advance public notice as is reasonable and possible under the circumstances existing, in person or by telephonic or electronic means.

B. 1. All agendas required pursuant to the provisions of this section shall identify all items of business to be transacted by a public body at a meeting, including, but not limited to, any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding prescribed by the Administrative Procedures Act.

2. If a public body proposes to conduct an executive session, the agenda shall:

a. contain sufficient information for the public to ascertain that an executive session will be proposed;
b. identify the items of business and purposes of the executive session; and
c. state specifically the provision of Section 307 of this title authorizing the executive session.

[21]Laws 1977, c. 214, § 11, eff. Oct. 1, 1977; Laws 1987, c. 184, § 1, eff. Nov. 1, 1987; Laws 1992, c. 12, § 2, eff. Sept. 1, 1992.

[22]

§25-312. Minutes of meetings - Recording of proceedings.

A. The proceedings of a public body shall be kept by a person so designated by such public body in the form of written minutes which shall be an official summary of the proceedings showing clearly those members present and absent, all matters considered by the public body, and all actions taken by such public body. The minutes of each meeting shall be open to public inspection and shall reflect the manner and time of notice required by this act.

B. In the written minutes of an emergency meeting, the nature of the emergency and the proceedings occurring at such meeting, including reasons for declaring such emergency meeting, shall be included.

C. Any person attending a public meeting may record the proceedings of said meeting by videotape, audiotape or by any other method; providing, however, such recording shall not interfere with the conduct of the meeting.

[23]Laws 1977, c. 214, § 12, eff. Oct. 1, 1977; Laws 1992, c. 78, § 1, emerg. eff. April 13, 1992.
[24]

§25-313. Actions taken in willful violation of act.

Any action taken in willful violation of this act shall be invalid.

[25]Laws 1977, c. 214, § 13, eff. Oct. 1, 1977. [26]

§25-314. Violations – Misdemeanor - Penalty.

Any person or persons willfully violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a period not exceeding one (1) year or by both such fine and imprisonment.

[27]Added by Laws 1977, c. 214, § 14, eff. Oct. 1, 1977.
[28]

APPENDIX H

§21-1230.1. Environmental Crimes Act - Short title.

Sections 339 through 347 of this act shall be known and may be cited as the "Environmental Crimes Act".

[1]Added by Laws 1992, c. 363, § 1, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 338, eff. July 1, 1993.

[2]

§21-1230.2. Definitions.

A. As used in the Environmental Crimes Act:

1. "Waste" means at least twenty-eight (28) gallons or two hundred twenty (220) pounds, whether liquid or solid, of discarded or abandoned materials and by-products including but not limited to trash, refuse, garbage, biomedical waste, sewage, ash, sludge, deleterious substances, oil field wastes, commercial and industrial waste and chemical waste; and

2. "Hazardous waste" means:

a. waste that is subject to regulation as a hazardous waste under the federal Resource Conservation and Recovery Act, Title 42 U.S.C., Section 6901 et seq., and regulations adopted pursuant thereto,

b. waste that is subject to regulation as a hazardous waste under the Oklahoma Hazardous Waste Management Act, or

c. waste that is ignitable, corrosive, reactive or toxic as determined by testing for the characteristics of ignitability, corrosivity, reactivity or toxicity as provided in 40 Code of Federal Regulations, Sections 261.21 through 261.24.

B. The minimum quantity requirements in paragraph 1 of subsection A of this section shall not apply to chemical wastes used or intended for use in the manufacture of controlled substances in violation of the Uniform Controlled Dangerous Substances Act and shall not apply to hazardous wastes in circumstances involving unlawful disposal or concealment of hazardous waste as prohibited in Sections 1230.6 and 1230.7 of this title.

C. The term hazardous waste shall not include the handling, hauling, storage and disposition of salt water, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and processing of oil and gas, including reclaiming of oil from tank bottoms located on leases and tank farms located outside the boundaries of a refinery.

[3]Added by Laws 1992, c. 363, § 2, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 339, eff. July 1, 1993; Laws 2001, c. 386, § 3, eff. July 1, 2001.

[4]

§21-1230.3. Unlawful hazardous waste transportation.

Any person who knowingly and willfully transports or causes the transportation of hazardous waste within the State of Oklahoma without a proper manifest, as prescribed in the Oklahoma Hazardous Waste Management Act, commits the offense of unlawful hazardous waste transportation.

[5]Added by Laws 1992, c. 363, § 3, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 340, eff. July 1, 1993.

[6]

§21-1230.4. Unlawful waste management.

Any person required by law to have a permit or authorization from the Oklahoma Department of Environmental Quality, the Oklahoma Corporation Commission or the Oklahoma

Department of Agriculture to receive, store, treat, process, recycle or dispose of waste, who without such permit or authorization knowingly and willfully receives, stores, treats, processes, recycles or disposes of waste, commits the offense of unlawful waste management.
[7]Added by Laws 1992, c. 363, § 4, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 341, eff. July 1, 1993.
[8]
§21-1230.5. Unlawful misrepresentation of waste.

A. It shall be unlawful to knowingly and willfully:

1. Make false statements, include false data or omit material information in an application for a waste permit, or for a waste authorization, from the Oklahoma Department of Environmental Quality, the Oklahoma Corporation Commission or the Oklahoma Department of Agriculture;

2. Make false statements, include false data or omit material information in a waste manifest, waste label, or other waste compliance document, record or plan required by law to be created, maintained or submitted to any state agency;

3. Submit a false sample of waste for laboratory analysis;

4. Make false statements or include false data in, or omit material information from, a laboratory analysis of waste;

5. Tamper with an environmental monitoring device to compromise or impair the accuracy of the device; or

6. Provide hazardous waste to another person for transportation without providing a proper manifest as prescribed in the Oklahoma Hazardous Waste Management Act.

B. Any person who violates the provisions of this section commits the offense of unlawful misrepresentation of waste.
[9]Added by Laws 1992, c. 363, § 5, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 342, eff. July 1, 1993.
[10]
§21-1230.6. Unlawful disposal of hazardous waste.

Any person who knowingly and willfully fails to secure a permit required by or pursuant to law, and who, without lawful permit or authorization, knowingly and willfully disposes, directs the disposal or aids and abets the disposal of hazardous waste into a sanitary sewer system without appropriate pretreatment, or at a solid waste landfill, transfer station or processing facility, or at any unpermitted disposal place commits the offense of unlawful disposal of hazardous waste.
[11]Added by Laws 1992, c. 363, § 6, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 343, eff. July 1, 1993.
[12]
§21-1230.7. Unlawful concealment of hazardous waste.

Any person commits the offense of unlawful concealment of hazardous waste who knowingly and willfully subjects any other person, including but not limited to peace officers, emergency responders or clean-up crews, to the potential for immediate or long-term risk to their health or safety by exposure to chemical wastes, by knowingly and willfully:

1. Concealing or causing other persons to conceal the unlawful abandonment or disposal of hazardous waste;

2. Concealing or causing other persons to conceal that hazardous waste is being transported; or

3. Misrepresenting or causing other persons to misrepresent the type of hazardous waste being transported.

[13]Added by Laws 1992, c. 363, § 7, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 344, eff. July 1, 1993.

[14]

§21-1230.8. Penalties.

Any person convicted of the offense of:

1. Unlawful hazardous waste transportation shall be guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Twenty-five Thousand Dollars ($25,000.00) or both such fine and imprisonment;

2. Unlawful waste management with respect to:

   a. waste other than hazardous waste shall be guilty of a misdemeanor punishable by a fine of not more than Ten Thousand Dollars ($10,000.00), and

   b. hazardous waste shall be guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Fifty Thousand Dollars ($50,000.00) or both such fine and imprisonment;

3. Unlawful waste misrepresentation with respect to:

   a. waste other than hazardous waste shall be guilty of a misdemeanor punishable by a fine of not more than Five Thousand Dollars ($5,000.00), and

   b. hazardous waste shall be guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Twenty-five Thousand Dollars ($25,000.00) or both such fine and imprisonment;

4. Unlawful disposal of hazardous waste shall be guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Twenty-five Thousand Dollars ($25,000.00) or both such fine and imprisonment; and

5. Unlawful concealment of hazardous waste shall be guilty of a felony punishable by imprisonment for not less than two (2) years nor more than ten (10) years and a fine of not more than One Hundred Thousand Dollars ($100,000.00).

[15]Added by Laws 1992, c. 363, § 8, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 345, eff. July 1, 1993; Laws 1997, c. 133, § 313, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 211, eff. July 1, 1999.

NOTE: Laws 1998, 1st Ex.Sess., c. 2, § 23 amended the effective date of Laws 1997, c. 133, § 313 from July 1, 1998, to July 1, 1999.

[16]

§21-1230.9. Penalty enhancements.

The fines provided for in Section 1230.8 of this title shall be doubled for any person convicted of any violation of the provisions of the Environmental Crimes Act if:

1. The conviction is for a second or subsequent violation of the same or another provision of the Environmental Crimes Act; or

2. The convicted person profited from or received any remuneration for the actions leading to the conviction.

[17]Added by Laws 1992, c. 363, § 9, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 346, eff. July 1, 1993.

[18]

§21-1230.10. Laws saved from repeal - Penalties not in lieu of civil or administrative penalties.

Nothing in Sections 1230.1 through 1230.10 of this title is intended to repeal any existing law. Any penalty imposed under Section 1230.8 of this title shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.
[19]Added by Laws 1992, c. 363, § 10, emerg. eff. June 4, 1992. Amended by Laws 1993, c. 145, § 347, eff. July 1, 1993.
[20]

APPENDIX I

§51-24A.1. Short title.
Section 24A.1 et seq. of this title shall be known and may be cited as the "Oklahoma Open Records Act".
[1]Added by Laws 1985, c. 355, § 1, eff. Nov. 1, 1985. Amended by Laws 1988, c. 68, § 1, eff. Nov. 1, 1988; Laws 1988, c. 187, § 1, emerg. eff. June 6, 1988; Laws 1996, c. 247, § 41, eff. July 1, 1996; Laws 1997, c. 2, § 10, emerg. eff. Feb. 26, 1997.

NOTE: Laws 1996, c. 209, § 1 repealed by Laws 1997, c. 2, § 26, emerg. eff. Feb. 26, 1997.
[2]
§51-24A.2. Public policy - Purpose of act.
As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.
[3]Added by Laws 1985, c. 355, § 2, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 2, emerg. eff. June 6, 1988.
[4]
§51-24A.3. Definitions.
Definitions. As used in this act:
1. "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean computer software, nongovernment personal effects or, unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system, personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body. "Record" does not mean any digital audio/video recordings of the toll collection and

safeguarding activities of the Oklahoma Transportation Authority. “Record” does not mean any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at such facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park. "Record" does not mean a Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this act;

2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust, county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, "public body" does not mean judges, justices, the Council on Judicial Complaints, the Legislature, or legislators;

3. "Public office" means the physical location where public bodies conduct business or keep records;

4. "Public official" means any official or employee of any public body as defined herein; and

5. "Law enforcement agency" means any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation.

[5]Added by Laws 1985, c. 355, § 3, eff. Nov. 1, 1985. Amended by Laws 1987, c. 222, § 117, operative July 1, 1987; Laws 1988, c. 187, § 3, emerg. eff. June 6, 1988; Laws 1993, c. 39, § 1, eff. Sept. 1, 1993; Laws 1996, c. 209, § 2, eff. Nov. 1, 1996; Laws 1998, c. 315, § 4, emerg. eff. May 28, 1998; Laws 1998, c. 368, § 11, eff. July 1, 1998; Laws 2001, c. 355, § 1, emerg. eff. June 1, 2001; Laws 2002, c. 478, § 2, eff. July 1, 2002; Laws 2003, c. 3, § 42, emerg. eff. March 19, 2003; Laws 2004, c. 328, § 1, eff. July 1, 2004.

NOTE: Laws 2002, c. 293, § 3 repealed by Laws 2003, c. 3, § 43, emerg. eff. March 19, 2003.

[6]

§51-24A.4. Record of receipts and expenditures.

In addition to other records which are kept or maintained, every public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto, except that such records may be disposed of as provided by law.

[7]Added by Laws 1985, c. 355, § 4, eff. Nov. 1, 1985.

[8]

§51-24A.5. Inspection, copying and/or mechanical reproduction of records - Exemptions.

All records of public bodies and public officials shall be open to any person for inspection, copying, and/or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, Section 24A.1 et seq. of this title, does not apply to records specifically required by law to be kept confidential including:

a. records protected by a state evidentiary privilege such as the attorney-client privilege, the

work product immunity from discovery and the identity of informer privileges, or
b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, or
c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.
2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions, provided however, the Oklahoma Department of Public Safety shall not be required to assemble for the requesting person specific information requested from the Oklahoma Department of Public Safety's Driver License file relating to persons whose names and dates of birth or whose driver license numbers are not furnished by the requesting person. The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names and dates of birth are not furnished by the requesting person.
3. Any request for a record which contains individual records of persons and the cost of copying, reproducing or certifying such individual record which is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of document copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall said document copying fee exceed twenty-five cents ($0.25) per page for documents having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar ($1.00) per copied page for a certified copy. However, if the request:
a. is solely for commercial purpose, or
b. would clearly cause excessive disruption of the public body's essential functions,
then the public body may charge a reasonable fee to recover the direct cost of document search; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of data for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy.
Any public body establishing fees under this act shall post a written schedule of said fees at its principal office and with the county clerk.
In no case shall a search fee be charged when the release of said documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.
The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.
4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, such index shall not be copied and/or mechanically reproduced for the purpose of sale of such information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.
6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one such person shall be available at all times to release records during the regular business hours of the public body.
[9]Added by Laws 1985, c. 355, § 5, eff. Nov. 1, 1985. Amended by Laws 1986, c. 213, § 1, emerg. eff. June 6, 1986; Laws 1986, c. 279, § 29, operative July 1, 1986; Laws 1988, c. 187, § 4, emerg. eff. June 6, 1988; Laws 1992, c. 231, § 2, emerg. eff. May 19, 1992; Laws 1993, c. 97, § 7, eff. Sept. 1, 1993; Laws 1996, c. 209, § 3, eff. Nov. 1, 1996; Laws 2000, c. 342, § 8, eff. July 1, 2000; Laws 2001, c. 137, § 1, emerg. eff. April 24, 2001.
[10]
§51-24A.6. Public body maintaining less than 30 hours of regular business per week - Inspection, copying or mechanical reproduction of records.
A. If a public body or its office does not have regular business hours of at least thirty (30) hours a week, the public body shall post and maintain a written notice at its principal office and with the county clerk where the public body is located which notice shall:
1. Designate the days of the week when records are available for inspection, copying or mechanical reproduction;
2. Set forth the name, mailing address, and telephone number of the individual in charge of the records; and
3. Describe in detail the procedures for obtaining access to the records at least two days of the week, excluding Sunday.
B. The person requesting the record and the person authorized to release the records of the public body may agree to inspection, copying, or mechanical reproduction on a day and at a time other than that designated in the notice.
[11]Added by Laws 1985, c. 355, § 6, eff. Nov. 1, 1985.
[12]
§51-24A.7. Personnel records - Confidentiality - Inspection and copying.
A. A public body may keep personnel records confidential:
1. Which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or
2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.
B. All personnel records not specifically falling within the exceptions provided in subsection A of this section shall be available for public inspection and copying including, but not limited to, records of:
1. An employment application of a person who becomes a public official;
2. The gross receipts of public funds;
3. The dates of employment, title or position; and
4. Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.

C. Except as may otherwise be made confidential by statute, an employee of a public body shall have a right of access to his own personnel file.
D. Public bodies shall keep confidential the home address of any person employed or formerly employed by the public body.
[13]Added by Laws 1985, c. 355, § 7, eff. Nov. 1, 1985. Amended by Laws 1990, c. 257, § 6, emerg. eff. May 23, 1990; Laws 1994, c. 177, § 1, eff. Sept. 1, 1994.
[14]
§51-24A.8. Law enforcement records - Disclosure.
A. Law enforcement agencies shall make available for public inspection, if kept, the following records:
1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;
2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;
3. Conviction information, including the name of any person convicted of a criminal offense;
4. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;
5. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer and a brief summary of what occurred;
6. A crime summary, including a departmental summary of crimes reported and public calls for service by classification or nature and number;
7. Radio logs, including a chronological listing of the calls dispatched; and
8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of his commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of his discharge or escape.
B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.
C. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.
D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall be made available for public inspection in a manner to be determined by the Department.
E. The Council on Law Enforcement Education and Training (C.L.E.E.T.) shall keep confidential all records it maintains pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and deny release of records relating to any employed or certified full-time officer, reserve officer, retired officer or other person; teacher lesson plans, tests and other teaching materials; and personal communications concerning individual students except under the following circumstances:
1. To verify the current certification status of any peace officer;
2. As may be required to perform the duties imposed by Section 3311 of Title 70 of the Oklahoma Statutes;

3. To provide to any peace officer copies of the records of that peace officer upon submitting a written request;
4. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and
5. Pursuant to an order of the district court of the State of Oklahoma.
[15]Added by Laws 1985, c. 355, § 8, eff. Nov. 1, 1985. Amended by Laws 1989, c. 212, § 8, eff. Nov. 1, 1989; Laws 2000, c. 349, § 2, eff. Nov. 1, 2000; Laws 2001, c. 5, § 29, emerg. eff. March 21, 2001.

NOTE: Laws 2000, c. 226, § 1 repealed by Laws 2001, c. 5, § 30, emerg. eff. March 21, 2001.
[16]
§51-24A.9. Personal notes and personally created material - Confidentiality.
Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project.
[17]Added by Laws 1985, c. 355, § 9, eff. Nov. 1, 1985.
[18]
§51-24A.10. Voluntarily supplied information - Bids, computer programs, appraisals and prospective business locations - Department of Commerce records - Confidentiality - Disclosure.
A. Any information, records or other material heretofore voluntarily supplied to any state agency, board or commission which was not required to be considered by that agency, board or commission in the performance of its duties may, within thirty (30) days from June 6, 1988, be removed from the files of such agency, board or commission by the person or entity which originally voluntarily supplied such information. Provided, after thirty (30) days from the effective date of this act, any information voluntarily supplied shall be subject to full disclosure pursuant to this act.
B. If disclosure would give an unfair advantage to competitors or bidders, a public body may keep confidential records relating to:
1. Bid specifications for competitive bidding prior to publication by the public body; or
2. Contents of sealed bids prior to the opening of bids by a public body; or
3. Computer programs or software but not data thereon; or
4. Appraisals relating to the sale or acquisition of real estate by a public body prior to award of a contract; or
5. The prospective location of a private business or industry prior to public disclosure of such prospect except for records otherwise open to inspection such as applications for permits or licenses.
C. Except as set forth hereafter, the Oklahoma Department of Commerce may keep confidential:
1. Business plans, feasibility studies, financing proposals, marketing plans, financial statements or trade secrets submitted by a person or entity seeking economic advice from the Oklahoma Department of Commerce; and
2. Information compiled by the Oklahoma Department of Commerce in response to those submissions.
The Oklahoma Department of Commerce may not keep confidential that submitted information when and to the extent the person or entity submitting the information consents to disclosure.
D. Although they must provide public access to their records, including records of the name,

address, rate paid for services, charges, and payment for each customer, public bodies that provide utility services to the public may keep confidential credit information, credit card numbers, telephone numbers, and bank account information for individual customers; provided that, where a public body performs billing or collection services for a utility regulated by the Corporation Commission pursuant to a contractual agreement, any customer or individual payment data obtained or created by the public body in performance of the agreement shall not be a record for purposes of this act.
[19]Added by Laws 1985, c. 355, § 10, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 5, emerg. eff. June 6, 1988; Laws 1996, c. 209, § 4, eff. Nov. 1, 1996; Laws 2004, c. 186, § 1, emerg. eff. May 3, 2004.
[20]
§51-24A.10a. Oklahoma Medical Center - Market research and marketing plans - Confidentiality.
The Oklahoma Medical Center may keep confidential market research conducted by and marketing plans developed by the Oklahoma Medical Center if the Center determines that disclosure of such research or plans would give an unfair advantage to competitors of the Oklahoma Medical Center regarding marketing research and planning, public education, and advertising and promotion of special and general services provided by the Oklahoma Medical Center.
[21]Added by Laws 1988, c. 266, § 22, operative July 1, 1988.
[22]
§51-24A.11. Library, archive or museum materials - Confidentiality.
A. A public body may keep confidential library, archive, or museum materials donated to the public body to the extent of any limitations imposed as a condition of the donation and any information which would reveal the identity of an individual who lawfully makes a donation to or on behalf of a public body including, but not limited to, donations made through a foundation operated in compliance with Sections 5-145 and 4306 of Title 70 of the Oklahoma Statutes.
B. If library, archive, or museum materials are donated to a public body and the donation may be claimed as a tax deduction, the public body may keep confidential any information required as a condition of the donation except the date of the donation, the appraised value claimed for the donation, and a general description of the materials donated and their quantity.
[23]Added by Laws 1985, c. 355, § 11, eff. Nov. 1, 1985. Amended by Laws 1992, c. 231, § 3, emerg. eff. May 19, 1992.
[24]
§51-24A.12. Litigation files and investigatory files of Attorney General, district or municipal attorney - Confidentiality.
Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.
[25]Added by Laws 1985, c. 355, § 12, eff. Nov. 1, 1985. Amended by Laws 1988, c. 187, § 6, emerg. eff. June 6, 1988.
[26]
§51-24A.13. Federal records - Confidentiality.
Records coming into the possession of a public body from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent

required by federal law.
[27]Added by Laws 1985, c. 355, § 13, eff. Nov. 1, 1985.
[28]
§51-24A.14. Personal communications relating to exercise of constitutional rights - Confidentiality.
Except for the fact that a communication has been received and that it is or is not a complaint, a public official may keep confidential personal communications received by the public official from a person exercising rights secured by the Constitution of the State of Oklahoma or the Constitution of the United States. The public official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right.
[29]Added by Laws 1985, c. 355, § 14, eff. Nov. 1, 1985.
[30]
§51-24A.15. Crop and livestock reports - Public warehouse financial statements - Confidentiality.
A. The Division of Agricultural Statistics, Oklahoma Department of Agriculture, also known as the Oklahoma Crop and Livestock Reporting Service, may keep confidential crop and livestock reports provided by farmers, ranchers, and agribusinesses to the extent the reports individually identify the providers.
B. The State Board of Agriculture is authorized to provide for the confidentiality of any financial statement filed pursuant to Section 9-22 of Title 2 of the Oklahoma Statutes. Copies of such financial statements may only be obtained upon written request to the Commissioner of Agriculture.
Upon good cause shown, and at the discretion of the Commissioner of Agriculture, such financial statements may be released.
[31]Added by Laws 1985, c. 355, § 15, eff. Nov. 1, 1985. Amended by Laws 1988, c. 259, § 14, emerg. eff. June 29, 1988.
[32]
§51-24A.16. Educational records and materials - Confidentiality.
A. Except as set forth in subsection B of this section, public educational institutions and their employees may keep confidential:
1. Individual student records;
2. Teacher lesson plans, tests and other teaching material; and
3. Personal communications concerning individual students.
B. If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying. "Directory information" includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as directory information with respect to each student attending the institution or agency and shall allow a reasonable period of time after the notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without prior consent of the parent or guardian or the student if the student is eighteen (18) years of age or older.

C. A public school district may release individual student records for the current or previous school year to a school district at which the student was previously enrolled for purposes of evaluating educational programs and school effectiveness.
[33]Added by Laws 1985, c. 355, § 16, eff. Nov. 1, 1985. Amended by Laws 1986, c. 116, § 1, emerg. eff. April 9, 1986; Laws 2003, c. 430, § 1, eff. July 1, 2003.
[34]
§51-24A.17. Violations - Penalties - Civil liability.
A. Any public official who willfully violates any provision of the Oklahoma Open Records Act, upon conviction, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both such fine and imprisonment.
B. Any person denied access to a record of a public body or public official may bring a civil suit for declarative and/or injunctive relief and, if successful, shall be entitled to reasonable attorney fees. If the public body or public official successfully defends a civil suit and the court finds that the suit was clearly frivolous, the public body or public official shall be entitled to reasonable attorney fees.
C. A public body or public official shall not be civilly liable for damages for providing access to records as allowed under the Oklahoma Open Records Act.
[35]Added by Laws 1985, c. 355, § 17, eff. Nov. 1, 1985.
[36]
§51-24A.18. Additional recordkeeping not required.
Except as may be required in Section 4 of this act, this act does not impose any additional recordkeeping requirements on public bodies or public officials.
[37]Added by Laws 1985, c. 355, § 18, eff. Nov. 1, 1985.
[38]
§51-24A.19. Research records - Confidentiality.
In addition to other records that a public body may keep confidential pursuant to the provisions of the Oklahoma Open Records Act, a public body may keep confidential:
1. Any information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent or copyright the research, or any other proprietary rights any entity may have in the research or the results of the research including, but not limited to, trade secrets and commercial or financial information obtained from an entity financing or cooperating in the research, research protocols, and research notes, data, results, or other writings about the research; and
2. The specific terms and conditions of any license or other commercialization agreement relating to state owned or controlled technology or the development, transfer, or commercialization of the technology. Any other information relating to state owned or controlled technology or the development, transfer, or commercialization of the technology which, if disclosed, will adversely affect or give other persons or entities an advantage over public bodies in negotiating terms and conditions for the development, transfer, or commercialization of the technology. However, institutions within The Oklahoma State System of Higher Education shall:
a. report to the Oklahoma State Regents for Higher Education as requested, on forms provided by the Regents, research activities funded by external entities or the institutions, the results of which have generated new intellectual property, and
b. report to the Oklahoma State Regents for Higher Education annually on forms provided:

(1) expenditures for research and development supported by the institution,
(2) any financial relationships between the institution and private business entities,
(3) any acquisition of an equity interest by the institution in a private business,
(4) the receipt of royalty or other income related to the sale of products, processes, or ideas by the institution or a private business entity with which the institution has established a financial arrangement,
(5) the gains or losses upon the sale or other disposition of equity interests in private business entities, and
(6) any other information regarding technology transfer required by the Oklahoma State Regents for Higher Education.
The reports required in subparagraphs a and b of this paragraph shall not be deemed confidential and shall be subject to full disclosure pursuant to the Oklahoma Open Records Act.
[39]Added by Laws 1988, c. 68, § 2, eff. Nov. 1, 1988. Amended by Laws 1999, c. 287, § 1, emerg. eff. May 27, 1999.
[40]
§51-24A.20. Records in litigation or investigation file - Access.
Access to records which, under the Oklahoma Open Records Act, would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file. However, a law enforcement agency may deny access to a copy of such a record in an investigative file if the record or a true and complete copy thereof is available for public inspection and copying at another public body.
[41]Added by Laws 1988, c. 187, § 7, emerg. eff. June 6, 1988.
[42]
§51-24A.21. Increment district reports - Exemption from copying fees.
The fees that may be charged by a public body pursuant to the provisions of paragraph 3 of Section 24A.5 of Title 51 of the Oklahoma Statutes shall not be charged when a state agency or taxing entity located within the boundaries of any district created pursuant to the provisions of the Local Development Act request a copy of the reports required by subsections A and B of Section 18 of this act.
[43]Added by Laws 1992, c. 342, § 21.
[44]
§51-24A.22. Public utilities - Confidential books, records and trade secrets.
A. The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers which the Commission determines are confidential books and records or trade secrets.
B. As used in this section, "public utility" means any entity regulated by the Corporation Commission, owning or operating for compensation in this state equipment or facilities for:
1. Producing, generating, transmitting, distributing, selling or furnishing electricity;
2. The conveyance, transmission, or reception of communication over a telephone system; or
3. Transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public.
[45]Added by Laws 1994, c. 315, § 12, eff. July 1, 1994.
[46]
§51-24A.23. Department of Wildlife Conservation - Confidentiality of information relating to hunting and fishing licenses.

A. The Department of Wildlife Conservation shall keep confidential the information provided by persons, including the name and address of the person, applying for or holding any permit or license issued by the Department, to the extent the information individually identifies the person. The Department may use the information for Department purposes or allow the United States Fish and Wildlife Service to use the information for survey purposes only. The Department shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. The provisions of subsection A of this section shall not apply to information provided by persons applying for or holding a commercial hunting or fishing license.

[47]Added by Laws 1996, c. 32, § 1, eff. July 1, 1996.

[48]

§51-24A.24. Office of Juvenile System Oversight - Confidentiality of investigatory records and notes.

Unless otherwise provided by law, the Office of Juvenile System Oversight may keep its investigatory records and notes confidential, unless ordered by a court of competent jurisdiction to disclose the information.

[49]Added by Laws 1996, c. 247, § 42, eff. July 1, 1996.

[50]

§51-24A.25. Order of court for removal of materials from public record.

Any order of the court for removal of materials from the public record shall require compliance with the provisions of paragraphs 2 through 7 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes.

[51]Added by Laws 2000, c. 172, § 4, eff. Nov. 1, 2000.

[52]

§51-24A.26. Intergovernmental self-insurance pools.

An intergovernmental self-insurance pool may keep confidential proprietary information, such as actuarial reports, underwriting calculations, rating information and records that are created based on conclusions of such information that are developed through the operation of the intergovernmental self-insurance pool.

[53]Added by Laws 2000, c. 226, § 2, eff. Nov. 1, 2000.

NOTE: Editorially renumbered from § 24A.25 of this title to avoid duplication in numbering.

[54]

§51-24A.27. Vulnerability assessments of critical assets in water and wastewater systems.

A. Any state environmental agency or public utility shall keep confidential vulnerability assessments of critical assets in both water and wastewater systems. State environmental agencies or public utilities may use the information for internal purposes or allow the information to be used for survey purposes only. The state environmental agencies or public utilities shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. For purposes of this section:

1. "State environmental agencies" 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, and
g. Department of Environmental Quality;
2. "Public Utility" means any individual, firm, association, partnership, corporation or any combination thereof, municipal corporations or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:
a. producing, generating, transmitting, distributing, selling or furnishing electricity,
b. the conveyance, transmission, reception or communications over a telephone system,
c. transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public, or
d. the transportation, delivery or furnishing of water for domestic purposes or for power.
[55]Added by Laws 2003, c. 166, § 1, emerg. eff. May 5, 2003.
[56]
§51-24A.28. Confidential information.
The following information may be kept confidential:
A. Investigative evidence of a plan or scheme to commit an act of terrorism;
B. Assessments of the vulnerability of government facilities or public improvements to an act of terrorism and work papers directly related to preparing the assessment of vulnerability;
C. Plans for deterrence or prevention of or protection from an act of terrorism;
D. Plans for response or remediation after an act of terrorism;
E. Information technology of a public body or public official but only if the information specifically identifies:
1. Design or functional schematics that demonstrate the relationship or connections between devices or systems;
2. System configuration information;
3. Security monitoring and response equipment placement and configuration;
4. Specific location or placement of systems, components or devices;
5. System identification numbers, names, or connecting circuits;
6. Business continuity and disaster planning, or response plans; or
7. Investigative information directly related to security penetrations or denial of services; or
F. Investigation evidence of an act of terrorism that has already been committed.
For the purposes of this section, the term "terrorism" means any act encompassed by the definitions set forth in Section 1268.1 of Title 21 of the Oklahoma Statutes.
[57]Added by Laws 2003, c. 175, § 2, emerg. eff. May 5, 2003.

NOTE: Editorially renumbered from Title 51, § 24A.27 to avoid a duplication in numbering.

APPENDIX J

SUBJECT: DEQ/OCC Jurisdictional Guidance Document

OBJECTIVE: To provide a guide for which agency has jurisdiction over various aspects of the oil and gas industry, particularly with regard to complaint response and permitting.

BACKGROUND: Both the Department of Environmental Quality (DEQ) and the Oklahoma Corporation Commission (OCC) deal with many aspects of the oil and gas industry. Both agencies have "exclusive jurisdiction" over certain issues. These facts have caused significant confusion, particularly among field personnel for both agencies. When responding to a complaint or environmental incident, they may not have an attorney and a set of statutes handy to make a jurisdictional determination. The DEQ/OCC Jurisdictional Guidance Document is intended to be a reference guide which describes, in understandable terms, where the lines are drawn. It is ***not*** intended to be a formal or legal document which "redraws" the lines of jurisdiction.

PROCEDURE: The DEQ/OCC Jurisdictional Guidance Document, attached, is organized by the following five categories of oil and gas industry-related facility types: I. Oil and Gas Exploration and Production; II. Refining and Marketing; III. Transportation; IV. Oil Field Service; and V. Miscellaneous. It discusses issues related to air quality, wastewater & storm water discharges, and solid and hazardous waste disposal. The document should be referred to whenever a question of jurisdiction arises. Any needed additions or corrections should be forwarded to the Customer Assistance Program.

ADOPTED by:

MSC Date signed: 1/27/99

DEQ/OCC Jurisdictional Guidance Document

Under Oklahoma statutes, the Department of Environmental Quality (DEQ) has responsibilities over many/most of the State's environmental programs, including those dealing with public water supply, air quality, hazardous and solid waste management, and wastewater treatment and disposal. DEQ has also been authorized by the U.S. Environmental Protection Agency (EPA) to implement Federal program requirements under several Federal Acts, including public water supply and underground injection of wastes under the Safe Drinking Water Act (SDWA), air quality under the Clean Air Act (CAA), and hazardous waste management and municipal solid waste landfills under the Resource Conservation and Recovery Act (RCRA). For purposes of this document all references to hazardous waste means hazardous waste as defined in 40 CFR §261.3. DEQ is currently seeking authorization to implement the NPDES Program for wastewater discharges under the Clean Water Act (CWA).

The Oklahoma Corporation Commission (OCC) has been given broad authority under State statutes over the oil and gas industry, including many environmental responsibilities. In particular, OCC has been given responsibility over transportation, treatment, and disposal of "deleterious substances" associated with oil and gas exploration and production. EPA has delegated to OCC responsibility over underground injection of oil field wastes (i.e., Class II injection wells) under the Federal Safe Drinking Water Act (SDWA).

This document is an attempt to clarify "gray" areas of jurisdiction by providing a guidance document for the local offices of the OCC and the DEQ when responding to complaints. The document is organized by the following five categories of oil and gas industry-related facility types: I. Oil and Gas Exploration and Production; II. Refining and Marketing; III. Transportation; IV. Oil Field Service; and V. Miscellaneous.

I. Oil and Gas Exploration and Production ("E&P")

Oil and gas exploration and production, as defined by Oklahoma Statutes, Title 52, Section 139(B)(1) (a) through (k), and brine extraction activities as defined by Title 17, Section 503, are under the jurisdiction of the Oklahoma Corporation Commission, with the following exceptions (See Attachment A, including figure 1, for clarification of what E&P includes):

A. Air emissions or potential for air emissions required or requested to be permitted under the Clean Air Act are under the jurisdiction of the Department of Environmental Quality. All sources of air emissions of regulated pollutants from oil and gas exploration and production which are less than Title V major source thresholds are the jurisdiction of OCC except those which may be covered by NSPS, NESHAPs, PSD, or other applicable federal regulations requiring an air quality permit. Any source under OCC jurisdiction which elects to submit a permit application or applicability determination request to DEQ may do so. (See Attachment B for examples of what activities may require DEQ Air Quality permits.)

B. Disposal of any solid waste, including exempted oil field wastes, at a landfill regulated by the DEQ may require prior approval of the DEQ. (See Attachment C for details.)

C. Spills

OCC has jurisdiction for activities to contain and remediate spills of RCRA exempt oil field waste and certain non-exempt non-hazardous waste, with the exception of that which is disposed of in a DEQ-regulated landfill. DEQ regulates hazardous waste and has approval authority for disposal of certain spill-related wastes in a DEQ-regulated landfill.

Additionally, for purposes of this document the terms exempt waste, RCRA exempt waste and exempt oil field waste refer to waste drilling fluids, production waters, and other waste intrinsically associated at the wellhead with the exploration, development, or production of crude oil, natural gas, or geothermal energy which are specifically exempted from regulation as hazardous waste under 40 CFR § 261.4(b)(5). EPA issued guidance regarding this exemption in a Federal Register notices, Wednesday, July 6, 1988, Volume 53, Number 129, on pages 25453 and 25454 & 58 FR 15284, March 22, 1993. (See Attachment D for examples of RCRA exempted wastes.)

All handling, storage, treatment, recycling and disposal activities associated with *hazardous waste* are under the jurisdiction of the DEQ.

D. Other Related Wastes

Wastes generated at oil and gas facilities that are not associated with exploration, development, or production activities are regulated by DEQ (whether they are hazardous or not). Examples of these wastes are included in Attachment D. (See item I.C. above.)

Non-exempt non-hazardous wastes may be disposed of under OCC regulations unless taken to a DEQ permitted facility, in which case they must meet DEQ non-hazardous industrial waste rules.

E. Permitted wastewater & storm water discharges

The U.S. Environmental Protection Agency (EPA), through its Region 6 office in Dallas, retains authority over wastewater and storm water discharges from E&P sites under its NPDES Program. With certain exceptions, Federal rules generally prohibit the discharge of wastes associated with E&P.

II. Refining and Marketing

Refining and Marketing, as the term is used in this document, includes 1) facilities for processing oil and gas after being transported from the oil field, such as oil refineries and natural gas processing plants, and 2) facilities which market oil and gas products on a retail or wholesale basis, such as gasoline service stations and bulk terminals.

A. Refineries

DEQ has primary jurisdiction over air emissions, wastewater, solid waste, and hazardous waste treatment and disposal and groundwater remediation at refineries. Exceptions include underground fuel or other underground product storage tanks at refineries, which are the responsibility of OCC (see UST discussion under II.D. below).

B. Natural Gas Processing Plants

DEQ has primary jurisdiction over air emissions, wastewater, solid waste, and hazardous waste treatment and disposal created from the processing of natural gas. Specific examples include:

1. contaminated soil, water and snow resulting from leaks, spills, or routine practices,
2. waste mercury from meters and gauges, and
3. pump lube oil.

Exceptions to this include handling of "exempted" oil field waste and "exempted" contamination from the gathering of natural gas prior to reaching the gas processing plant.

C. Natural Gas Liquids Extraction Plants

DEQ has primary jurisdiction over air emissions, wastewater, solid waste, and hazardous waste treatment and disposal at natural gas liquid extraction facilities. Specific examples include:

1. contaminated soil, water and snow resulting from leaks, spills, or routine practices,
2. waste mercury from meters and gauges, and
3. pump lube oil.

Exceptions to this include handling of "exempted" oil field waste and "exempted" contamination created from the gathering of natural gas prior to reaching the liquids extraction plant.

D. Service Stations (Gasoline, Diesel, etc.)

With some exceptions, OCC has primary responsibility for above-ground storage tanks

(ASTs) at retail facilities and underground storage tanks (USTs). The DEQ has jurisdiction over hazardous waste stored in ASTs and USTs. The DEQ also has jurisdiction over contaminated soil, media or debris which is hazardous waste.[1] This responsibility includes implementing requirements for the installation, registration, operation, and removal of the tanks themselves. It also includes overseeing remediation of leaks and spills from the tanks. Exceptions include:

1. While OCC has jurisdiction over on-site disposal or treatment of soils contaminated by such leaks, DEQ has responsibility for contaminated soils which are removed from the site for treatment or disposal. Soils contaminated with refined petroleum products may not be disposed of at OCC disposal sites.

2. The DEQ has responsibility for regulating discharges from underground storage tank-related groundwater remediation projects (e.g., "pump and treat") otherwise regulated by OCC.

3. DEQ regulates the disposal of contaminated material due to spills from any above-ground storage tanks which a) contain motor fuel, gasoline, kerosene, diesel, or aviation fuel, and b) are not used for retail sales, that result in an environmental impact.

4. DEQ has responsibility for (removed) tanks that still contain fluids or sludge and are disposed of improperly.

5. DEQ has jurisdiction over releases from tanks which:

   a. contain hazardous waste,
   b. contain non-hazardous industrial waste, and sumps which receive this waste,
   c. store used oil or non-commercial heating oil for consumptive use on the premises,
   d. are located in underground areas such as basements, mine shafts, or tunnels,
   e. are used to collect storm water or wastewater,
   f. are used as emergency backup tanks, or
   g. are septic tanks for industrial or domestic wastewater.

6. DEQ has responsibility for determination of the need for air emission permits. Examples include VOC or toxic emissions (above de minimis levels) from soil remediation.

III. Transportation

[1] See 40 CFR 261.4(b)(10) regarding certain petroleum contaminated media and debris which is not regulated as hazardous waste.

A. Pipelines (including Booster Stations)

Under 52 O.S. 1994, § 139(B)(1)(h), OCC has exclusive jurisdiction regarding *"...the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes associated with processing at or in any:*

(1) natural gas liquids extraction plant,
(2) refinery,
(3) reclaiming facility other than for those specified within subparagraph e of this subsection,
(4) mineral brine processing plant, and
(5) petrochemical manufacturing plant,..."

[NOTE - "...subparagraph e of this subsection..." referred to in this quote gives OCC exclusive jurisdiction regarding *"...reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,..."*]

Examples of issues within DEQ's authority which are associated with pipeline transportation include:

1. waste mercury from meters and gauges,
2. pump lube oil (e.g., from booster stations, etc.), and
3. air emissions from engines in compressor service, glycol dehydration, storage tanks, other fuel burning sources.
4. transportation pipeline wastes and soil contamination that are hazardous waste or transported off site for disposal.

B. Rail

DEQ has jurisdiction to regulate the transportation, discharge, or release of waste from trains or rail facilities.

C. Highway / Roadway

DEQ has jurisdiction to regulate the transportation, discharge, or release of waste during roadway transit, except "exempted" oil field waste (see NOTE under I.C. above). Roadway transportation of exempted oil field waste is regulated by OCC, including activities to contain and remediate spills of such materials.

D. Bulk Terminals

Under 52 O.S. 1994, § 139(B)(1)(g), OCC has exclusive jurisdiction regarding *"...tank farms for storage of crude oil and petroleum products which are located outside the boundaries of the refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the*

jurisdiction of the Department of Environmental Quality with regard to point source discharges..." Exceptions to this exclusive jurisdiction include tanks which are the responsibility of the DEQ.

1. Storm Water

52 O.S. 1994, § 139(B)(4) states that *"(F)or purposes of the Federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Corporation Commission pursuant to paragraph 1 of [O.S. 52 § 139(B)] and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be the subject to the direct jurisdiction of the United States Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Corporation Commission for such discharge."*

2. Waste

OCC has jurisdiction for all exempt oil field waste and certain non-exempt non-hazardous waste, with the exception of that which is disposed of in a DEQ-regulated landfill. DEQ regulates hazardous waste and has approval authority for disposal of certain wastes in a DEQ-regulated landfill.

E. OTHER TRANSPORTATION

The DEQ has jurisdiction over any spills or contamination by other means of transportation, including barges, which result in the generation of hazardous waste.

IV. Oil Field Service

Oil field service companies handling exempted wastes are the responsibility of OCC. Exceptions to OCC's responsibility over oil field service companies include those listed for E&P (Section I). OCC will notify DEQ when OCC has reason to believe that non-exempted wastes have been co-mingled with exempted wastes.

V. Miscellaneous

A. Open Burning

DEQ prohibits burning of hazardous waste without prior DEQ approval and generally prohibits *open burning of refuse* or other combustible material. Exceptions include:

1. fires set to remove a fire hazard which cannot be safely removed any other way.
2. the burning of hydrocarbons which are spilled or lost as a result of pipeline breaks or other accidents involving the transportation of such materials or which are generated as wastes as the result of oil exploration, development, refining, or processing operations if the following conditions are met:
   a. the material is not hazardous waste and cannot be practicably recovered or otherwise lawfully disposed of in some other manner;
   b. the burning must not be conducted within a city or town or in such proximity thereto that the ambient air of such city or town may be affected by the air contaminants being emitted;
   c. the initial burning may begin only between three hours after sunrise and three hours before sunset and additional fuel may not be intentionally added to the fire at times outside the limits stated above; and,
   d. the burning must be controlled so that a traffic hazard is not created as the result of the air contaminants being emitted.
3. burning of wasted petroleum products in safety release flares when the flares are correctly designed and operated as smokeless atmospheric flares.
4. fires set to remove toxic or hazardous materials when no other safe or legal way is possible. These fires must be approved in advance by DEQ-and must comply with the following requirements:
   a. burning does not begin before 3 hours after sunrise and the fire is put out before sunset, and
   b. smoke or other products of burning do not cause a traffic hazard on nearby roads or highways.
5. fires set during training of fire-fighting personnel, when authorized by the appropriate governmental entity, including the local fire department, and the local DEQ Representative or the Enforcement Section of DEQ's Air Quality Division.

B. Sewage Disposal Systems

Oklahoma law requires sewage disposal systems to be constructed and operated in accordance with DEQ rules and regulations. All septic tank/lateral line sewage disposal systems must have a soil percolation test performed by a qualified person and a final inspection and approval by DEQ prior to backfilling the system. This requirement includes temporary or permanent oilfield sites if sewage disposal facilities are included on site. NOTE: "Rat holes" are not an acceptable means of sewage disposal.

C. Public Water Supplies

Any system which provides drinking water to 25 or more persons is considered a Public Water Supply (PWS) under DEQ regulations. A PWS must be permitted through DEQ's Water Quality Division, and meet its requirements for both construction and operation.

NOTE: Use of groundwater or surface water supplies may require securing water rights through the Oklahoma Water Resources Board.

D. NORM

There are currently no State or Federal regulations which specifically regulate the disposal of Naturally Occurring Radioactive Materials (NORM). Questions regarding disposal of NORMs may be directed to the Waste Management Division at DEQ or Pollution Abatement at OCC.

For the Oklahoma Department of Environmental Quality:

_____

H.A. Caves, Director
Waste Management Division
Oklahoma Department of
Environmental Quality

For the Oklahoma Corporation Commission:

_____

Mike Battles, Director
Oil & Gas Conservation Division
Oklahoma Corporation Commission

As amended this _____ day of January, 1999.

Attachment A

Oil and Gas Exploration and Production

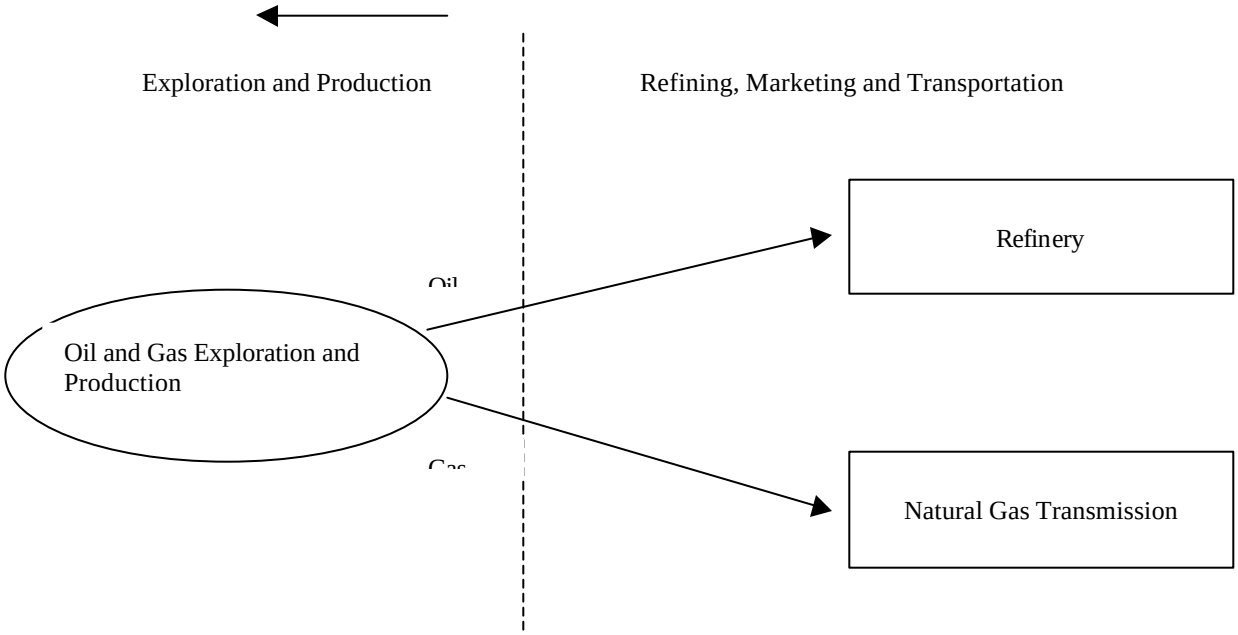

FIGURE 1

The figure above illustrates the distinction between Oil and gas exploration and production (E&P) and other segments of the oil industry, including Transportation and Refining & Marketing. The following table lays out E&P, as it is described by Oklahoma Statutes, Title 52, Section 139 (B) (1) (a) through (k), and 139 (B) (2).

Table 1: Exploration and Production Activities	
Title 52 Section 139 B(1)	**Common Activities Include:**
a. the conservation of oil and gas	oil, gas and salt water disposal well spacing and location
b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells	test borings and seismic survey wells for oil and gas exploration
c. the exploration, drilling, development, producing or processing for oil and gas on the lease site	drilling or producing wells on a lease
d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines produced from geological strata three hundred (300) feet in depth from the surface,	mineral extraction and associated activities from brine wells
e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas	crude oil reclaiming facilities
f. injection wells known as Class II wells under the federal Underground Injection Control Program. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,	oil and gas salt water disposal and enhanced recovery wells
g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of the refineries, petro-chemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges	tank farms located outside refineries and gas processing plants
h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes associated with processing at or in any: (1) natural gas liquids extraction plant, (2) refinery, (3) reclaiming facility other than for those specified within subparagraph e of this subsection, (4) mineral brine processing plant, and (5) petrochemical manufacturing plant	pipelines located outside refineries, gas processing plants
i. the handling, transportation, storage and disposition of salt water, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at: (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and, (2) other oil and gas extraction facilities and activities	disposal, transportation and storage of salt water and all other RCRA exempt substances produced from drilling, repair or producing oil and gas wells
j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities	all spills, excluding spills of hazardous waste, from facilities associated with oil and gas production facilities except for unused products such as unspent acid
k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata	liquefied petroleum gas storage fields and associated surface operations
2. ... the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described ... [above].	Surface and groundwater remediation and abandonment activities, excluding hazardous waste, associated with the activities described above.

Attachment B

Air Quality Permitting Issues in the Petroleum E & P Industry

Air emissions or potential for air emissions required or requested to be permitted under the Clean Air Act are under the jurisdiction of the Department of Environmental Quality. All sources of air emissions of regulated pollutants from oil and gas exploration and production which are less than Title V major source thresholds are the jurisdiction of OCC except those which may be covered by NSPS, NESHAPs, PSD, or other applicable federal regulations requiring an air quality permit. Any source under OCC jurisdiction which elects to submit a permit application or applicability determination request to DEQ may do so.

For equipment that currently is in existence, Title V permitting may be required. If a source either (1) has the potential to emit (PTE) over the major source level: 100 tons/year of any regulated pollutant or 10/25 tons/year of any/all hazardous air pollutants (HAPs), (2) is subject to a New Source Performance Standard (NSPS), (3) is subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP), or (4) is an affected acid rain source. Each of these applicability criteria is delineated in OAC 252:100-8-3(a)(1)-(5).

Typical equipment with emissions of criteria or hazardous air pollutants include the following:

- Tanks and Vessels
  - hydrocarbon
  - non-fired separators
  - produced water
- External Combustion Sources
  - line heaters
  - heater treaters
  - glycol dehydrators burners
  - incinerators
  - boilers
- Internal Combustion Engines (reciprocating or turbine)
  - compressors
  - pumps
  - generators
  - pumping units
- Tank Truck Loading
- Fugitive Sources
  - valves
  - flanges
  - compressor seals
  - threaded fittings
  - relief valves
- Flares
- Glycol Dehydrator Reboiler Vents
- Sulfur Recovery Unit
  - sulfur removal units
- Miscellaneous
  - sump tanks
  - waste water ponds
  - bleed-type controllers
  - cooling towers
  - vents not included above

Each of these emission sources would be included or exempt from ~~O~~DEQ jurisdiction and the concurrent Title V permitting process based, not on the type of source, but rather on the emission rate.

The following flow chart shows the permitting path. As mentioned previously, if a source has the potential to emit greater than the major source threshold, it would be subject to Title V. The State of Oklahoma allows sources that can limit their PTE to below major source levels to do so with a synthetic minor or state operating permit. This would avoid subjecting them to the full battery of Title V requirements, if no other criteria applies. If a source cannot achieve emission levels below the major source level or is subject to one of the other requirements listed above, then a synthetic minor permit could not be an option. The flow chart shows that if a source is not subject to Title V in any respect, no permit would be required.

CAUTION! To determine if the listed requirement does apply, you must refer to the referenced regulation, because certain exemptions are availabl e.

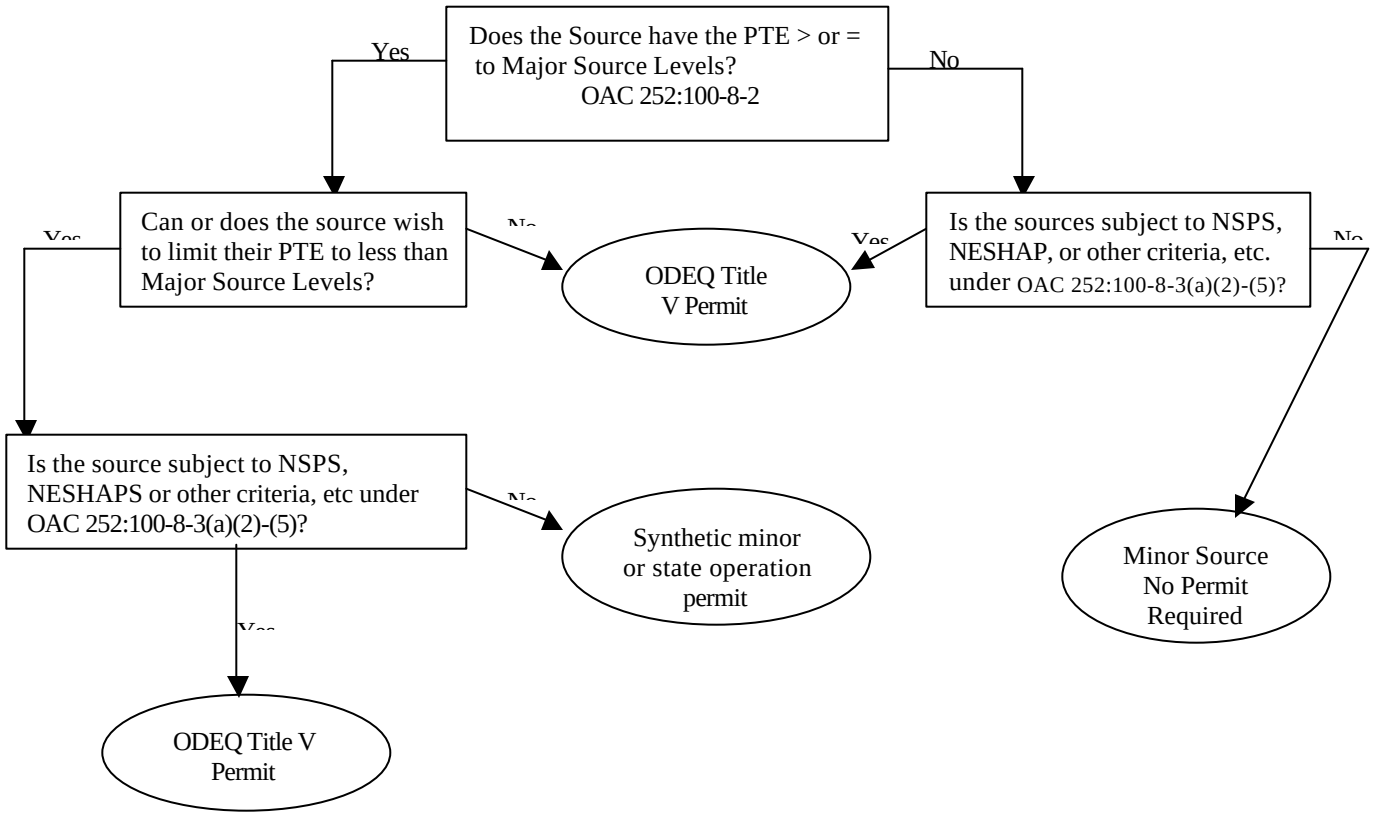

FIGURE 2

The following table lists the common types of oil and gas exploration and production equipment and what permitting requirements could apply. In air quality permitting, the emissions are evaluated from various sources within a facility. Therefore, to determine whether a facility needs a permit or not, the applicant must know what emission sources exist at their facility. One or more of these sources might require the facility to have a permit. For example, if a facility has a stationary gas turbine compressor engine with greater than 10 MMBTU/HR of fuel input, it is subject to an NSPS. Since it is subject to an NSPS, then it must have a permit. Therefore the purpose of the table is to provide a reference for the general types of equipment in the industry that need to be permitted, and what triggers that need. There often may be sources where the determination for the need for a permit is not entirely straightforward. Upon request, the DEQ will make an **applicability determination** for a source based on relevant data submitted by the facility.

Table 2: Air Emissions Sources Associated with E&P

Equipment Type	Equipment Size/Capacity	Type of DEQ Air Quality Permit Required	Citation of Applicable Regulations
Petroleum Liquid Storage Tank	≥251.5 Barrels or ≥10,566 gallons	NSPS	40 CFR Part 60 Subpart K, Ka, or Kb (Production tanks generally qualify for an exemption)
Organic Material* Storage Tank	≥9.5 Barrels or ≥400 gallons, but <10,566 gallons	Minor Source Applicability Determination Permit Optional	OAC 252:100-7 Jurisdictional agreement with OCC
	<9.5 Barrels or <400 gallons	No Permit Required	Below *de minimis* levels
Internal Combustion Compressor Engine (Caution! Potential to emit does vary widely between engines of similar horsepower.)	>75 hp, but <500 hp (approximate)	Minor Source Applicability Determination Permit Optional	OAC 252:100-7 Jurisdictional agreement with OCC
	>500 hp, but <1250 hp (approximate)	Major source (synthetic minor or Title V)	OAC 252:100-8, 40 CFR Part 70
	>1250 hp (approximate)	PSD Source (Major) - Title V	OAC 252:100-8, 40 CFR Part 70
Stationary Gas Turbine Compressor Engine	≥10 MMBTU/hr	NSPS	40 CFR Part 60 Subpart GG
	<10 MMBTU/hr	Minor or Major Applicability Determination	OAC 252:100-7 OAC 252:100-8, 40 CFR Part 70
Glycol Dehydrator	No minimum or maximum	Minor or Major Applicability Determination	OAC 252:100-7 OAC 252:100-8, 40 CFR Part 70
Fugitive Emissions	If the equipment which the fugitives are from is in VOC service (process fluid contains at least 10% VOC by weight)	NSPS	40 CFR Part 60 Subpart VV and KKK (Onshore natural gas processing plants)
	pump or compressor handling organic materials	NSPS, or Minor or Major Applicability Determination	40 CFR Part 60, Subpart GGG OAC 252:100-7 OAC 252:100-8, 40 CFR Part 70
Natural gas treatment vents, SO_2, H_2S emissions	No minimum or maximum	Minor or Major Applicability Determination	OAC 252:100-7 OAC 252:100-8, 40 CFR Part 70
Flares	No minimum or maximum	NSPS, or Minor or Major Applicability Determination	40 CFR Part 60, Subpart Kb OAC 252:100-7 OAC 252:100-8, 40 CFR Part 70

* "Organic Material" means chemical compounds of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, metallic carbonates, and ammonium carbonate.

ATTACHMENT C: DISPOSAL OF OIL AND GAS WASTES				
DESCRIPTION OF WASTE ITEMS	**RCRA EXEMPT STATUS**	**OCC DISPOSAL OPTIONS NOTE: SEE OAC 165:10-7-24 FOR LEGAL REQUIREMENTS**	**TREATMENT OR TESTING REQUIRED BY DEQ FOR LANDFILL DISPOSAL**	**WRITTEN APPROVAL OF DEQ FOR LANDFILL DISPOSAL[1]**
Glycol filters	YES	Recycle; landfill (as approved by DEQ); underground injection	Recommendation: Drain; air dry 48 hrs; TPH**; total benzene*	YES
Dehydration filter media	YES	Recycle; landfill (as approved by DEQ); underground injection; burial	Recommendation: Drain; air dry 48 hrs; TPH**; total benzene*	YES
Gas condensate filters	YES	Recycle; landfill (as approved by DEQ); underground injection	Recommendation: Drain; air dry 48 hrs; TPH**; total benzene*	YES
Molecular sieves	YES	Landfill (as approved by DEQ); burial	Recommendation: Cool in nonhydrocarbon, inert atmosphere; hydrate in ambient air 24 hrs; TPH**; total benzene*	YES
Amine filters	YES	Recycle; landfill (as approved by DEQ); underground injection	Recommendation: Drain; air dry 48 hrs; TPH**; total benzene*	YES
Iron sponge	YES	Landfill (as approved by DEQ); burial	Allow to oxidize completely to prevent threat of combustion.	YES
Saltwater filters	YES	Recycle; landfill (as approved by DEQ); underground injection	Recommendation: Drain; air dry 48 hrs; pH; chlorides**; TPH**	YES
Cooling tower filters	YES	Recycle; landfill (as approved by DEQ); underground injection	Recommendation: Drain; air dry 48 hrs; total chromium*	YES
Ferrous sulfur; elemental sulfur & soil contaminated with sulfur	YES	Recycle; landfill (as approved by DEQ); underground injection; burial	If uncontaminated; recover & sell as raw material. If contaminated; requires case-by-case approval.	YES
Water treatment backwash solids; and filters	YES	Recycle; landfill (as approved by DEQ); underground injection; burial (except filters)	Total metals*; NORM	YES
Produced sand	YES	Landfill (as approved by DEQ); underground injection; burial; land application; bioremediation	TPH**; total benzene*; NORM	YES
Pipe scale and other deposits removed from piping & equipment	YES	Recycle; landfill (as approved by DEQ); underground injection; land application; bioremediation; burial	TPH**; TOX**; total metals*; NORM	YES
Hydrocarbon bearing soils (crude oil)	YES	Recycle; road application; land application; on-site bioremediation	TPH**; total benzene*	YES
Hydrocarbon bearing soils (lube oil)	NO	Determine if hazardous; If hazardous - DEQ regulated; if not hazardous - on-site bioremediation	Determine if hazardous; TPH**; total benzene*; PCB**	YES
Pigging waste from gathering lines	YES	Recycle; landfill (as approved by DEQ); underground injection; burial	TPH**; total benzene *; total metals*; NORM; MSDS sheets for common inhibitors	YES
Pigging waste from transmission lines	NO	Test to determine if hazardous; if hazardous; as approved by DEQ; if not hazardous; on-site bioremediation; bioremediation	Test to determine if hazardous; TPH**; total benzene*; total arsenic*; NORM; MSDS for corrosion inhibitors	YES
Used oil filters: 1) entire unit is inside metal container 2) replaceable inside units (paper/fiber)	NO NO	Recycle; DEQ regulated	Separate & recycle oil & metal parts. Drain thoroughly of oil for 24 hrs; total metals *	YES
Plastic pit liners	YES	Recycle; burial; landfill (as approved by DEQ)	Clean well.	NO
Unused pipe dope	NO	Recycle; DEQ regulated	Recycle if possible. Otherwise; Test to determine if hazardous; MSDS sheets.	YES
Drill cuttings	YES	Water based: commercial disposal Oil based: land fill (DEQ approval); road appl. For BOTH types: recycle; burial; underground injection; land appl.	Only cuttings; no fluids. MSDS sheets for additives; chlorides** may be a problem.	YES

ATTACHMENT C: DISPOSAL OF OIL AND GAS WASTES				
DESCRIPTION OF WASTE ITEMS	**RCRA EXEMPT STATUS**	**OCC DISPOSAL OPTIONS NOTE: SEE OAC 165:10-7-24 FOR LEGAL REQUIREMENTS**	**TREATMENT OR TESTING REQUIRED BY DEQ FOR LANDFILL DISPOSAL**	**WRITTEN APPROVAL OF DEQ FOR LANDFILL DISPOSAL[1]**
Unused mud additives	NO	Recycle; DEQ regulated	Approval only for small quantities. Determine if hazardous; MSDS sheets.	YES
Sacks of unused drilling mud	NO	Recycle	Return to vendor or use at other site if usable. If unusable; determine if hazardous; MSDS sheets.	YES
Sorbent pads (crude oil & other exempt wastes)	YES	Recycle; landfill (as approved by DEQ); burial	TPH**; total benzene,*	YES
Sorbent pads (lube oil & other non-exempt wastes)	NO		Determine if hazardous; TPH**; total benzene* totals for metals of concern	YES
Uncontaminated concrete from production facilities	NO	Burial	None required unless contaminated.	Can be disposed in unpermitted site; if not contaminated
Contaminated concrete from gas plants, compressor stations & other oil & gas facilities	NO	Burial if non-hazardous. If hazardous, DEQ regulated	Testing determined on case-by-case basis.	YES
Asbestos; asbestos - contaminated waste material	YES	DEQ regulated	Comply with federal and state regulations for asbestos materials. Remove asbestos from steel pipe and boilers-recycle steel.	NO dispose only in sites approved to take asbestos
Paper; paper bags	NO		Bags must be empty.	NO
Soiled rags/gloves	NO		If contaminated with nonexempt waste, make hazardous waste determination.	NO
Wooden pallets	NO		None unless contaminated. If contaminated with nonexempt waste, make hazardous waste determination.	NO
Detergent buckets	NO	Recycle; landfill (as app. by DEQ)	Must be empty-recycle if possible.	NO
Grease buckets	NO	Recycle; landfill (as app. by DEQ)	Must be empty-recycle if possible (scrap metal)	NO
Empty containers	NO	Recycle; landfill (as app. by DEQ)	Must be empty-recycle if possible (scrap metal)	NO
Barrels/drums; 5-gallon buckets	NO	Recycle; landfill (as app. by DEQ)	Recycle if possible. Must be RCRA empty. Must comply with DEQ rules.	NO
Metal plate; metal pipe; metal cable	NO	Recycle; landfill (as app. by DEQ)	Recycle as scrap metal. Hazardous waste determination.	NO
Junked pumps; valves; etc.	NO	Recycle; landfill (as app. by DEQ)	NORM; recycle	NO
Uncontaminated brush & vegetation from clearing land	NO		None	NO
Fiberglass tanks	NO		Must be empty; Recommendation: cut up or shred	NO
Unused fracturing fluids or acids	NO	Recycle	Provide MSDS, make hazardous waste determination.	YES[2]
Gas plant cooling tower cleaning wastes	NO		Testing determined case by case, make hazardous waste determination.	YES[2]
Painting wastes	NO		Determine if hazardous; Metals; semi-volatiles; volatiles or MSDS;TCLP	YES
Oil & gas service company wastes such as empty drums; drum rinsate; vacuum truck rinsate; sandblast media; painting wastes; spent solvents; spilled chemicals and waste acid	NO	Determined on a case by case basis	Testing determined case by case, make hazardous waste determination.	YES[2]
Vacuum truck and drum rinsate and drums transporting or containing non-exempt waste	NO		Testing determined case by case. Make hazardous waste determination.	YES[2]
Refinery waste	NO		If not listed; make determination on a case by case basis.	YES

ATTACHMENT C: DISPOSAL OF OIL AND GAS WASTES

DESCRIPTION OF WASTE ITEMS	RCRA EXEMPT STATUS	OCC DISPOSAL OPTIONS NOTE: SEE OAC 165:10-7-24 FOR LEGAL REQUIREMENTS	TREATMENT OR TESTING REQUIRED BY DEQ FOR LANDFILL DISPOSAL	WRITTEN APPROVAL OF DEQ FOR LANDFILL DISPOSAL[1]
Liquid and solid wastes generated by crude oil and tank bottom reclaimers	NO	Recycle; underground injection; road application; land application; on-site bioremediation	Testing determined case by case, make hazardous waste determination.	YES [2]
Used equipment lubrication oils	NO	Recycle	Metals; TPH Make hazardous waste determination.	YES[1]
Waste compressor oil; filters; and blowdown	NO	Recycle; landfill (as app. by DEQ); burial (except filters)	Metals; TPH Make hazardous waste determination.	YES [2]
Used hydraulic fluids	NO		Metals; TPH Make hazardous waste determination.	YES [2]
Waste solvents	NO	Recycle	MSDS; or demonstrate not listed/characteristic Make hazardous waste determination.	YES [2]
Waste in transportation related pits	NO	Determine if hazardous; If hazardous - as app. by DEQ; If non-hazardous - OCC approval	BTEX; TPH; others case by case Make hazardous waste determination.	YES [2]
Caustic or acid cleaners	NO	Recycle	pH; MSDS; others case by case Make hazardous waste determination.	YES
Boiler cleaning wastes	NO		Metals; others case by case Make hazardous waste determination.	YES [2]
Boiler scrubber fluids; sludges; and ash	NO		Metals; others case by case, make hazardous waste determination.	YES [2]
Incinerator ash	NO		Metals; others case by case, make hazardous waste determination.	YES
Laboratory wastes	NO		MSDS; or demonstrate not listed/characteristic, make hazardous waste determination.	YES
Sanitary wastes	NO		Can be landfilled only if treated	YES [2]
Pesticide wastes	NO		MSDS; or demonstrate not listed/characteristic, make hazardous waste determination.	YES [2]
Radioactive tracer wastes	NO		NOT allowed in landfill	N/A
Trash and Debris	NO	Burial as approved by OCC; landfill (as app. by DEQ)	Testing determined case by case	YES

EXPLANATION OF ABBREVIATIONS:

MSDS	Material Safety Data Sheet (s)	TCLP	Toxicity characteristic leaching procedure
NORM	Naturally Occurring Radioactive Materials	TOX	Total organic halogen (halide)
PCB	Polychlorinated biphenyls (or polybrominated biphenyls)	TPH	Total petroleum hydrocarbons (EPA Method 8015 modified)

* If a total analysis (i.e.Total Lead, Total Benzene, etc. exceeds the limits listed below, then TCLP must be performed and TCLP results must not exceed the stated limits:

Analyte	Total Limit	TCLP Limit
Benzene	10 mg/Kg	0.5 mg/L
Arsenic	36 mg/Kg	5.0 mg/L
Barium	2000mg/Kg	100 mg/L
Cadmium	10 mg/Kg	1.0 mg/L
Chromium	100 mg/Kg	5.0 mg/L
Lead	30 mg/Kg	5.0 mg/L
Mercury	4 mg/Kg	0.2 mg/L
Selenium	20 mg/Kg	1.0 mg/L
Silver	100 mg/Kg	5.0 mg/L

** Results of the following analyses must be within the limits stated for disposal in a municipal solid waste landfill:

Analyte	Limit	
TPH	>1000 mg/Kg	-requires disposal on composite liners
PCB's	< 50 mg/Kg	

[1]Original waste generators must complete nonhazardous Industrial Waste Disposal Request Forms, submit appropriate analytical, and sign accompanying certification. The waste is nonhazardous.
[2]Liquids Restriction - Liquid Wastes can only be accepted by landfills which have a Bulking plan specifically approved by the DEQ

~~**Attachment D**~~

RCRA-Exempt Exploration and Production Wastes[1]

Produced water
Drilling fluids
Drill Cuttings
Rigwash
Drilling fluids and cuttings from offshore operations disposed of onshore
Geothermal production fluids
Hydrogen sulfide abatement wastes from geothermal energy production
Well completion, treatment and stimulation fluids
Basic sediment, water, and other tank bottoms from storage facilities that hold product and exempt wastes
Accumulated materials such as hydrocarbons, solids, sands, and emulsion from production separators, fluid treating vessels and production impoundments
Pit sludges and contaminated bottoms from storage or disposal of exempt wastes
Gas plant dehydration wastes, including glycol-based compounds, glycol filters, and filter media, backwash, and molecular sieves
Workover Wastes
Cooling tower blowdown
Gas plant sweetening wastes for sulfur removal, including amines, amine filters, amine filter media, backwash, precipitated amine sludge, iron sponge, and hydrogen sulfide scrubber liquid and sludge
Spent filters, filter media, and backwash (assuming the filter itself is not hazardous and the residue in it is from an exempt waste stream)
Pipe scale, hydrocarbon solids, hydrates, and other deposits removed from piping or equipment prior to transportation
Produced sand
Packing fluids
Hydrocarbon-bearing soil
Pigging wastes from gathering lines
Wastes from subsurface gas storage and retrieval, except for the non-exempt wastes listed below
Constituents removed from produced water before it is injected or otherwise disposed of
Liquid hydrocarbons removed from the production stream but not from oil refining
Gases from the production stream, such as hydrogen sulfide and carbon dioxide, and volatilized hydrocarbons
Materials ejected from a producing well during blowdown
Waste crude oil from primary field operations
Light organics volatilized from exempt wastes in reserve pits, impoundments, or production equipment

Non-Exempt Exploration and Production Wastes[1]

Unused fracturing fluids or acid
Gas plant cooling tower cleaning wastes
Painting wastes
Oil and gas service company wastes such as empty drums, drum rinsate, sandblast media, painting wastes, spent solvents, spilled chemicals, and waste acids
Vacuum truck and drum rinsate from trucks and drums transporting or containing non-exempt waste
Refinery wastes
Liquid and solid wastes generated by crude oil and tank bottom reclaimers
Used equipment lubricating oils
Waste compressor oil, filters, and blowdown
Used hydraulic fluids
Waste in transportation pipeline related pits
Caustic or acid cleaners
Boiler cleaning wastes
Boiler refractory bricks
Boiler scrubber fluids, sludges, and ash
Incinerator ash
Laboratory wastes
Sanitary wastes
Pesticide wastes
Radioactive tracer wastes
Drums, insulation and miscellaneous solids

[1] As listed by EPA guidance in Federal Register notice, Wednesday, July 6, 1988, 53 FR 25453, 25454 & 58 FR 15284, March 22, 1993.

APPENDIX K

Codification through the 2005 legislative session.
Board adoption - March 4, 2005
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TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

Section

252:205-1-1. Purpose, authority and applicability

(a) **Purpose.** The rules in this Chapter implement the Oklahoma Hazardous Waste Management Act, 27A O.S. ' 2-7-101 *et seq.*, the Hazardous Waste Fund Act, 27A O.S. ' 2-7-301 *et seq.*, the Oklahoma Hazardous Waste Reduction Program, 27A O.S. ' 2-11-201 *et seq.*, and the Recycling, Reuse and Source Reduction Incentive Act, 27A O.S. ' 2-11-301 *et seq.*

(b) **Authority.** OAC 252:205 was promulgated and adopted under the Oklahoma Environmental Quality Code, 27A O.S. ' 2-1-101 *et seq.*, and the laws set forth in paragraph (a) above.

(c) **Applicability.** The rules in this Chapter apply to:

(1) Any person who handles, transports, treats, stores, recycles, and/or disposes of hazardous wastes pursuant to the OHWMA;

(2) Any municipality or county seeking a matching grant for emergency response training and protective equipment pursuant to the Hazardous Waste Fund Act;

(3) Any generator of hazardous waste who voluntarily participates in the Hazardous Waste Reduction Program; and

(4) Any person seeking a tax credit pursuant to the Recycling, Reuse and Source Reduction Incentive Act.

252:205-1-2. Definitions

In addition to the definitions contained in the statutes specified in 252:205-1-1(a) above, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Off-site recycling facility" means any facility which receives off-site shipments of hazardous waste to be recycled or processed for recycling, through any process conducted at the facility including fuel blending or burning;

"OHWMA" means the Oklahoma Hazardous Waste Management Act, 27A O.S. ' 2-7-101 *et seq.*;

"Post closure permit" means the same as "operations permit" for procedural purposes except the assessment of permitting fees;

"RRSIA" means the Recycling, Reuse and Source Reduction Incentive Act, 27A O.S. ' 2-11-301 *et seq.*;

"Reuse" for the purpose of applying for a tax credit under RRSIA, means the introduction of a material into a manufacturing process that, if discarded, would be classified as a hazardous waste. A material is "reused" if it is:

(A) Used as an ingredient (including use as an intermediate) in an industrial process to make a product; or

(B) Used in a particular function or application as an effective substitute for a commercial product;

"Speculative accumulation" is defined at 40 CFR 261.1(b)(8);

"Transfer facility" as used in the following definition of "transfer station", means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation;

"Transfer station" as used in Subchapter 15, means any transfer facility where hazardous waste is transferred from one container or tank to another or where hazardous waste in separate containers or tanks is combined.

252:205-1-3. Consideration of other laws

(a) **Permitting.** All applicants seeking licenses, permits, certificates, registration, approval, charter or similar form of permission by law required by any of the statutes specified in 252:205-1-1(a) are also subject to the Oklahoma Uniform Environmental Permitting Act, 27A O.S. ' 2-14-101 *et seq.*, and the uniform permitting rules found in 252:2-15.

(b) **Zoning.** This Chapter does not abrogate in any way the zoning authority of any duly constituted zoning agency.

(c) **Other.** Persons subject to this Chapter must also comply with all applicable state and Federal laws and rules.

252:205-1-4. Public records and confidential information

(a) **Public record.** Information obtained by the DEQ and copies of official records of the DEQ regarding hazardous waste facilities and sites shall be made available to the public in accordance with the Oklahoma Open Records Act, 51 O.S. ' 24A.1, Procedures of the DEQ (OAC 252:2), and in substantial accordance with 40 CFR Part 2.

(b) **Availability to the public.** Information about facilities and sites for treatment, storage and disposal of hazardous waste shall be made available to the public in substantially the same manner, and to the same degree, as would be the case if the EPA were carrying out the provisions of federal law in Oklahoma. [Also see Procedures of the Department of Environmental Quality, Availability of Records, 252:2-3-2.]

(c) **Availability to EPA.** All records submitted to the DEQ shall be available to the EPA unless they are submitted under a claim of confidentiality separate and distinct from State Program Requirements in 40 CFR Part 271.

(d) **Disclaimer.** The DEQ expressly disclaims and denies any duties, responsibilities or obligations other than as stated in (a) and (b) of this Section. Submitters of records claimed to be confidential are advised that it is their responsibility, not the DEQ's responsibility, to monitor and/or defend claims of confidentiality with the EPA. The DEQ expressly disclaims and denies responsibility or liability for any disclosure by the EPA of records claimed by the submitter to be confidential.

(e) **Hazardous Waste Reduction Plans.** In accordance with 27A O.S. ' 2-11-204(D), information in Hazardous Waste Reduction Plans is not a public record. Certified summary reports are public records.

(f) **Applications for Tax Credit.** An application for a tax credit is a public record. If the applicant demonstrates that the application contains information that is a trade secret, the

applicant shall provide a general summary description that can be made available to the public. Although the detailed financial data contained in the application may be declared confidential, the dollar amount of any tax credit allowed will be public information.

SUBCHAPTER 3. INCORPORATION BY REFERENCE

Section

252:205-3-1. Reference to 40 CFR

When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1, 2004.

252:205-3-2. Incorporation by reference

(a) **Part 124.** Procedures For Decision Making, those sections required by 40 CFR 271.14, with the following additions:

(1) ' 124.19(a) through (c) and (e);

(2) '' 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR Part 271.

(b) **Part 260.** Hazardous Waste Management System: General, except 260.21. In 260.20, "Federal Register" is synonymous with "The Oklahoma Register." In 260.20(e), strike the words "or a denial." In 260.22, references to the lists in subpart D of part 261 and the reference to ' 261.3(a)(2)(ii) or (c) shall mean the lists in subpart D of part 261 and '261.3(a)(2)(ii) or (c) as adopted by reference and applicable in Oklahoma. In the 260.10 definitions of "new tank system" and "existing tank system", the reference to "July 14, 1986" for commencement of tank installation applies only to tank regulations promulgated pursuant to the federal Hazardous and Solid Waste Amendment ("HSWA") requirements. The following categories outline HSWA requirements: (a) Interim status and permitting requirements applicable to tank systems owned and operated by small quantity generators [3001(d)]; (b) Leak detection requirements for all new underground tank systems [3004(o)(4)]; and (c) permitting standards for underground tanks that cannot be entered for inspection [3004(w)]. For tank regulations promulgated pursuant to statutory authority other than HSWA, the date relative to the commencement of installation is November 2, 1987.

(c) **Part 261.** Identification and Listing of Hazardous Waste except 261.4(b)(18) which pertains to Utah only, thus should be excluded. In 261.4(e)(3)(iii) delete "in the Region where

the sample is collected". In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".
(d) **Part 262.** Standards Applicable to Generators of Hazardous Waste except Subpart E and Subpart H. In 262.42(a)(2) and 262.42(b) delete "for the Region in which the generator is located".
(e) **Part 263.** Standards Applicable to Transporters of Hazardous Waste.
(f) **Part 264.** Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The following sections and subsections are not adopted by reference: 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f), and 264.1080(g). In 264.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988. In 264.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987. In 264.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987. In 264.570(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.
(g) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g). In 265.191(a), the compliance date of January 12, 1988 applies only for HSWA tanks. For non-HSWA tanks the compliance date is November 2, 1988. In 265.191(c), the reference to July 14, 1986 applies only to HSWA tanks. For non-HSWA tanks the applicable date is November 2, 1987. In 265.193, the Federal effective dates apply to HSWA tanks only. For non-HSWA tanks January 12, 1987 is replaced with November 2, 1987. In 265.440(a) the dates December 6, 1990 and December 24, 1992 apply only to drip pads where F032 waste is handled. The dates June 22, 1992 and August 15, 1994 respectively, replace the dates December 6, 1990 and December 24, 1992 for drip pads where F034 or F035 wastes are handled.
(h) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities. Due to an early incorporation by reference, for purposes of Part 266 only, HSWA and non-HSWA dates are the same. In 266.325, the reference to 10 CFR 1.5 is changed to 10 CFR 71.5.
(i) **Part 268.** Land Disposal Restrictions, except 268.5, 268.6, 268.13, 268.42(b) and 268.44(a) through (g). In 268.7 (a)(9)(iii) exclude D009 from the list of alternative treatment standards for lab packs.
(j) **Part 270.** Permit Programs, except 270.14(b)(18).
(k) **Part 273.** Universal Waste Rule.
(l) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."
(m) **Excepted CFR Regulations.** Authority for carrying out excepted CFR regulations remains with EPA.

252:205-3-3. Subsequent incorporations [REVOKED]

252:205-3-4. Terminology related to 40 CFR

(a) For purposes of interfacing with 40 CFR, the following terms apply:

(1) **"Administrator"** is synonymous with Executive Director except in **' '** 262.12, 262.55, 262.56, 262.57, 262.87, 263.11, 270.5, 270.10(e)(2) and (3) and (f)(2) and (3), and 270.32(b)(2). In 260.10 and 270.2, the definition of "Administrator" is not synonymous with "Director". The terms as used in the excepted sections retain the meanings as defined in the CFR;

(2) **"Regional Administrator"** and **"EPA Regional Administrator"** are synonymous with Executive Director except in **' '** 124.5(d), 124.10(b), 262.55, 262.56, 262.57, Item 19 of the Appendix to Part 262, 270.5, 270.10(f)(2) and (3)and (g)(1)(i) & (iii), 270.11(3) and 270.14(b)(20). See also **' '** 264.12(a) and 265.12(a) where "Regional Administrator" should be replaced with "Regional Administrator and Executive Director". In 260.10 and 270.2, the definition of "Regional Administrator" is not synonymous with "Executive Director". The terms as used in the excepted sections retain the meanings as defined in CFR;

(3) **"Act"** is synonymous with the Oklahoma Hazardous Waste Management Act;

(4) **"State"** is synonymous with the DEQ;

(5) **"EPA"** is the United States Environmental Protection Agency, except in **'** 124.6 where "EPA" should be replaced with "DEQ", and as otherwise indicated in subparagraph 252:205-3-2(a)(2);

(6) **"Environmental Appeals Board"** is synonymous with Executive Director;

(7) ' ' **3008, 3013 and 7003** of the federal Resource Conservation and Recovery Act when referenced in the CFR should be read as including the analogous state enforcement authority set forth in the Oklahoma Environmental Quality Code; and

(8) "DOT" and "Department of Transportation" is the U.S. Department of Transportation.

(b) **Financial security mechanisms.** The owner shall word the financial assurance instruments as provided in 40 CFR 264.151, except that:

(1) the phrase "Department of Environmental Quality" ("DEQ" or "the Department"), an agency of the State of Oklahoma" shall be used instead of "Environmental Protection Agency";

(2) "Director" shall be used instead of "Regional Administrator";

(3) "DEQ" shall replace "EPA";

(4) "Act" shall replace **'** 3008 of the Resource Conservation and Recovery Act"; and

(5) the certification in each instrument that the language is identical to respective provisions of 40 CFR 264.151 shall include the phrase "United States Environmental Protection Agency approved amendment, for the State of Oklahoma."

252:205-3-5. Inclusion of CFR citations and definitions

When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference.

252:205-3-6. Inconsistencies or duplications

In the event that there are inconsistencies or duplications in the requirements of those rules incorporated by reference in 252:205-3-2, and the rules in this Chapter, the federal rules incorporated by reference shall prevail, except where the state rules in this Chapter are more

stringent.

252:205-3-7. Mercury-containing lamps [REVOKED]

SUBCHAPTER 5. ADDITIONAL GENERATOR REQUIREMENTS

Section

252:205-5-1. Disposal plans

All persons generating hazardous waste in Oklahoma or generating hazardous waste to be stored, treated, recycled or disposed of in Oklahoma shall file a disposal plan with the DEQ on DEQ forms and shall obtain the DEQ's approval prior to offering the waste for transport.

(1) The generator must update the disposal plan as needed and must notify the DEQ at least five working days before any changes are implemented. The DEQ requires a minimum of five (5) working days to process and approve new or amended disposal plans. Changes shall not be implemented until approved by the DEQ.

(2) One-time disposal plans may be issued for emergency clean-up or waste removal.

(3) The DEQ may require supporting documentation including but not limited to, laboratory analyses and Material Safety Data Sheets to verify information submitted. If specific technical process knowledge is provided which the Department determines adequately identifies the waste, laboratory analysis will not be required.

(4) If a disposal plan is canceled for non-payment of fees, the generator must complete a new application and re-submit supporting documentation to the DEQ for approval.

252:205-5-2. SQG exemption from disposal plan requirements

Small quantity generators and conditionally exempt small quantity generators are not required to file disposal plans (252:205-5-1) or quarterly reports (252:205-5-3) with the DEQ.

252:205-5-3. Quarterly reporting requirements

(a) **General.** All persons generating hazardous waste within Oklahoma including on-site treatment, storage, recycling, or disposal facilities, shall submit a report to the DEQ in a prescribed format which may include electronic submissions. The quarterly report shall be submitted no later than 60 days after the end of each quarter.

(b) **Content.** Quarterly reports shall include the total amount of hazardous waste generated and, when applicable, for each hazardous waste generated in a quarter:

(1) The appropriate waste stream number from the generator's disposal plan;

(2) The EPA ID number of all transporters who transported the waste;

(3) The EPA ID number of the receiving facility; and

(4) The handling code(s) corresponding to the method the generator expects the designated receiving facility to use.

(c) **Characteristic hazardous waste.** If characteristic hazardous waste is treated on-site to render it non-hazardous, the quarterly report shall so indicate.
(d) **Reporting exclusions.** This section does not apply to waste which is not subject to the substantive federal regulations adopted by reference by 252:205-3-2. There are many such exclusions, including but not limited to:

(1) Hazardous wastewater which is properly disposed of on-site in facilities permitted under the Clean Water Act;

(2) Hazardous wastewater which is properly disposed of on-site in Class I injection wells permitted under the Safe Drinking Water Act; and

(3) Hazardous wastes which are treated in elementary neutralization units to render them non-hazardous.

252:205-5-4. No endangerment provisions for generators

All generators must comply with 252:205-9-1.

252:205-5-5. Manifest requirements

(a) All large quantity generators shall include the disposal plan number on the Hazardous Waste Manifest before offering hazardous waste for shipment.
(b) Oklahoma large quantity generators shall, on at least a quarterly basis, submit copies of manifests signed by receiving facilities for wastes transported outside the United States.

SUBCHAPTER 7. ADDITIONAL TRANSPORTER RULES

Section

252:205-7-1. Transporters required to register [REVOKED]

252:205-7-2. Leakage, other releases prohibited in transport

The transporter shall insure that the waste will be adequately contained so as to prevent any leakage, spillage, blowing, or dumping of the waste while in transport.

252:205-7-3. Manifest, disposal plan required [REVOKED]

252:205-7-4. Mixing waste prohibited by transporters

Transporters shall not mix or combine incompatible hazardous waste within a common container. Transporters shall not mix or combine hazardous waste from separate containers or transfer waste from one container to another container except at an approved transfer station or in accordance with 252:205-15-1(d).

SUBCHAPTER 9. ADDITIONAL TREATMENT, STORAGE, DISPOSAL AND RECYCLING REQUIREMENTS

Section
252:205-9-1. No endangerment or degradation
252:205-9-2. Monthly reports
252:205-9-3. Buffer zones
252:205-9-4. Provisions for on-site inspectors
252:205-9-5. Additional closure requirements
252:205-9-6. Additional waste analysis requirements
252:205-9-7. Acceptance of waste

252:205-9-1. No endangerment or degradation

(a) Hazardous waste sites and facilities shall be located, constructed, maintained, operated, and closed in a manner to prevent any endangerment of the public health and safety or degradation of the environment.

(b) Degradation of the environment shall be deemed to have occurred if the site or facility causes or may cause a discharge or release to the air, land, or water which statistically increases (or decreases, in the case of pH) the level of a parameter indicative of hazardous waste contamination over what may normally be expected to be found in the environment at that time.

(c) A statistical increase (or decrease) shall be determined by use of the tests specified in 40 CFR Parts 264 and 265.

(d) Discharges in compliance with state or federal permits and rules shall not be deemed as degradation.

252:205-9-2. Monthly reports

(a) **Monthly reports required.** Owners/operators of hazardous waste treatment, storage, disposal, and recycling facilities shall submit reports monthly in a format prescribed by the DEQ, which may include electronic submissions, identifying hazardous waste which is managed at the facility.

(b) **Content.** The report shall be submitted within 30 days of the end of each month and shall include:

(1) The generator EPA ID number;

(2) All EPA waste numbers applicable to the waste;

(3) The appropriate EPA handling codes for storage, treatment, disposal or recycling methods applicable to the waste;

(4) For all waste generated on-site and managed in permitted or interim status units, the amount of waste generated; and

(5) For all waste generated off-site, the amount of waste received and the EPA ID number of all transporters who transported the waste; and

(6) Copies of all hazardous waste manifests for waste generated outside the United States received at the facility during the month.

252:205-9-3. Buffer zones

(a) No treatment, storage or disposal in a land treatment unit shall occur within 50' of the site perimeter. No treatment, storage, or disposal in a surface impoundment, waste pile, or landfill

unit shall occur within 200' of the site perimeter.
(b) Existing units which become newly regulated due to changes in the statutory or regulatory requirements are excluded from the buffer zone restrictions to the extent of the encroachment existing as of the effective date of the statutory or regulatory changes.

252:205-9-4. Provisions for on-site inspectors

The DEQ may add or include provisions for a full-time inspector in the permit conditions of commercial hazardous waste treatment, storage or disposal or recycling facilities. Permittees subject to these conditions shall provide on-site DEQ inspectors with reasonable office facilities.

252:205-9-5. Additional closure requirements

(a) The provisions of 40 CFR 264 or 265, Subparts G and H, shall apply to all areas where hazardous waste is handled, including all recycling units, staging and processing areas, and temporary hazardous waste storage areas.
(b) The closure cost estimate may not incorporate any value that may be realized by the sale of recycled products.

252:205-9-6. Additional waste analysis requirements

(a) Prior to receipt of a hazardous waste for storage, treatment, disposal or recycling, the owner/operator of a treatment, storage or disposal facility or off-site recycling facility must obtain detailed chemical and physical analyses of a representative sample of the waste. The analyses must contain all information necessary to appropriately treat, store, dispose, or recycle the waste.
(b) Prior to receipt of any industrial waste not identified as hazardous waste at a treatment, storage or disposal facility or off-site recycling facility, the owner/operator must obtain the following records and maintain them in the facility operating record:

(1) Information regarding the chemical and physical nature of the waste which reasonably, considering the source, establishes that the waste does not exhibit any characteristic of hazardous waste as described by 40 CFR Subpart C. This information may include laboratory analyses, material safety data sheets, and analysis of raw materials, feedstocks, and process descriptions; and

(2) An affidavit by the original waste generator stating that the waste does not include any listed waste.

252:205-9-7. Acceptance of waste

No hazardous waste treatment, storage, disposal, or recycling facility shall accept hazardous waste from a large quantity generator unless the generator's disposal plan number is included on the manifest.

SUBCHAPTER 11. ADDITIONAL PERMIT PROCEDURES

Section

252:205-11-3. Upgrades of county roads and bridges

252:205-11-1. Emergency plans relating to affected property owners

(a) In addition to the plans required by 40 CFR 264 Subpart D (contingency plans and emergency procedures), applicants for new proposed off-site treatment, storage, recycling or disposal sites shall also prepare a separate Emergency Plan to minimize hazards to the health and property of affected property owners from emergency situations or from sudden or nonsudden releases of hazardous waste or its constituents. This Emergency Plan shall follow the criteria of 40 CFR 264 Subpart D but shall specifically relate to each parcel.

(b) For purposes of these rules, a parcel of land owned by one or more affected property owners is a present possessory fee simple estate in land, excluding future interests.

(1) All discrete parcels, regardless of size, as specified in the county land records on the day the permit application is submitted, shall be counted equally, regardless of the number of affected property owners who may own concurrent interests in such parcel.

(2) The owner who is occupying a parcel, if there is only one owner in occupancy, or a majority of the owners, or the executor, administrator or trustee on behalf of a parcel undergoing probate or otherwise, shall represent the approval or disapproval of the Emergency Plan on behalf of the parcel for purposes of the OHWMA.

(3) A calculation of approval or disapproval by a majority of the affected property owners shall be made by summing the numbers of parcels whose owners approve or disapprove the Emergency Plan. A majority is a simple majority of the parcels.

(4) Approval or disapproval of the Emergency Plan by an affected property owner does not signify approval or disapproval of the technical aspects of the facility, nor limit the right under the Act of any affected property owner to oppose the permit.

(c) If an applicant has obtained the written approval of the Emergency Plan from the affected property owners of all or a majority of the parcels, the applicant shall certify this to the Department. When the DEQ determines that all necessary approvals have been obtained, it shall then proceed with the process of issuance or denial of the permit.

(d) Affected property owners of a parcel of land who do not approve the Emergency Plan must specify reasons for non-approval which are based solely upon minimization of hazards to their health and property within forty five days of notice of the application being filed. Failure to do so shall cause the DEQ to exclude those affected property owners from a calculation of a majority of affected property owners.

(e) For a determination of affected property owners, the area considered to be within one mile of the facility shall be measured from the outer perimeter of the site as specified in the permit application.

252:205-11-2. Exclusionary siting criteria

(a) **Ground water resources and recharge areas.**

(1) **Presumption of unapprovable site.** The DEQ shall presume that the proposed location is unapprovable if it lies wholly or partially within an area designated as an actual or potential unconsolidated alluvial aquifer or terrace deposit aquifer or bedrock aquifer or recharge area, as shown on the maps described as "Sheet 1 - Unconsolidated Alluvium and Terrace Deposits" and "Sheet 2 - Bedrock Aquifers and Recharge Areas" of the "Maps Showing Principal Ground Water Resources and Recharge Areas in Oklahoma,"

compiled by Kenneth S. Johnson, Oklahoma Geological Survey (1983), or any successor map(s) compiled by the Oklahoma Geological Survey.

(2) **Rebuttal of presumption.** The applicant may rebut the presumption by submitting site-specific hydrological and geological data and other information sufficient to demonstrate clearly and convincingly that the proposed location does not lie in a prohibited area.

(3) **DEQ reliance upon Oklahoma Geological Survey.** In making a determination whether a proposed location is within a prohibited area, the DEQ shall request and rely upon review and conclusions by the Oklahoma Geological Survey.

(4) **Site-Specific Information.** The Department may require site-specific hydrological and geological information for proposed facility locations outside a designated principal groundwater resource or recharge area where there is reason to believe that the proposed location may be unsuitable due to localized groundwater conditions.

(5) **Groundwater protection plan.** In determining whether a groundwater protection plan with financial assurance is required for an on-site facility pursuant to 27A O.S. ' 2-7-111(B), the procedures used in subsections (1)-(4) of this section shall be used.

(6) **Existing facilities.** Existing facilities in these areas may continue to operate and may modify or expand their operations to the extent permitted by 27A O.S. ' 2-7-111.

(b) **Water wells.** The DEQ shall not grant a permit for a new hazardous waste disposal facility proposed to be located within one-quarter mile of any public or private water supply well except private water supply wells on the applicant's property. Water supply wells that are demonstrated by the applicant to be permanently abandoned may be plugged upon a demonstration that the applicant has the right to plug them. The applicant shall notify the DEQ that the abandoned water wells have been plugged. If abandoned water wells are identified by the applicant during the preparation of his application or during the permit process, the applicant shall notify the DEQ so that these wells can be included in the Class V well inventory.

(c) **Flood plain.** No permit or modification of an existing permit which includes disposal of hazardous waste within a one-hundred year flood plain shall be granted, except for post-closure, corrective action or remedial activities conducted under the direction of the DEQ. For existing facilities, this modification prohibition applies only to land disposal units and to modifications of such units which would increase disposal rates or designate new areas for disposal.

(d) **Surface water.** No permit shall be granted for a new hazardous waste disposal facility proposed to be located within one mile of the conservation pool elevation of any reservoir which supplies water for a public water supply or within one mile of any scenic river.

(e) **Air pollution.** No permit shall be granted for a new off-site hazardous waste disposal facility proposed to be located within one mile of any public school, educational institution, nursing home, hospital or public park.

(f) The Hazardous Waste Management Act also contains exclusionary siting criteria. See 27A O.S. ' 2-7-111(B) and (C)(1) and ' 2-7-114, as amended.

252:205-11-3. Upgrades of county roads and bridges

The owner/operator shall submit a certificate of acceptance of the completed upgrades by the appropriate board(s) of county commissioners or the Oklahoma Department of Transportation, as appropriate, pursuant to 27A O.S. ' 2-7-115(B)(2).

SUBCHAPTER 13. MISCELLANEOUS

Section
252:205-13-1. Incidents

252:205-13-1. Incidents

(a) **Release of hazardous waste.** Upon release of materials that are or become hazardous waste whether by spillage, leakage, or discharge to soils or to air or to surface or ground waters (outside the limits of a discharge permit), or by other means, and which could threaten human health or the environment, the owner or operator shall immediately notify the DEQ and take all necessary action to contain, remediate, and mitigate hazards from the release.
(b) **Contained releases.** The owner/operator is not required to notify the DEQ of a release if it is completely contained in a secondary containment area.
(c) **National Response Center.** When a report is required to be made to the National Response Center pursuant to 40 CFR 262.34 (a) (4), 262.34 (d) (5), or 264.56 (d) (2) or 265.56 (d) (2), a report must also be made immediately to the DEQ at 1-800-522-0206.
(d) **Determination of waste category.** Spilled or leaked materials and soils and other matter that may be contaminated with such materials shall be tested by the responsible person to determine whether they are hazardous waste, nonhazardous industrial waste or solid waste.
(e) **Proper disposal of waste from release.** Waste materials resulting from a release shall be properly disposed of in accordance with the applicable rules.
(f) **Recyclable materials.** Materials that are to be recycled shall be collected and properly stored to prevent further contamination of the environment.
(g) **Remediation plan.** The DEQ may require submission of a remediation plan that meets the closure requirements of 40 CFR 265.111 and 265.114.
(h) **Costs.** The Executive Director may assess costs relating to expenses and damages incurred by the DEQ in responding to a release and overseeing its remediation. Costs shall be borne by the responsible person(s).

SUBCHAPTER 15. TRANSFER STATIONS

Section
252:205-15-1. Applicability and consideration of other laws
252:205-15-2. Development and Operations Plan
252:205-15-3. Design and operation
252:205-15-4. Modifications
252:205-15-5. Exclusionary siting criteria
252:205-15-6. No endangerment

252:205-15-1. Applicability and consideration of other laws

(a) **Types of waste handled.** The owner/operator of a transfer station which handles hazardous waste or both hazardous and solid wastes must comply with this Subchapter.
(b) **Solid waste permits.** The owner/operator of a hazardous waste transfer station

operating or proposing to operate under an approved Plan which includes compliance with 252:205-15-2(c) is not subject to solid waste permitting rules.

(c) **RCRA permits.** The rules in this Subchapter do not supersede any obligations to obtain a hazardous waste permit.

(d) **Exempt activities.** The following are exempt from this Subchapter:

(1) Activities of hazardous waste generators to consolidate waste on-site prior to shipment;

(2) Activities regulated by hazardous waste permits which specifically address compliance with the plan requirements identified in 252:205-15-2(b); and

(3) Activities immediately responding to a discharge of hazardous waste or material which becomes a hazardous waste when discharged or an imminent and substantial threat of a discharge of hazardous waste.

252:205-15-2. Development and Operations Plan

(a) **Plan required.** No person may construct or operate a hazardous waste transfer station without DEQ approval of a Transfer Station Development and Operations Plan (Plan).

(b) **Content.** The owner/operator of a transfer station shall identify and discuss all of the hazardous wastes which may be managed at the Transfer Station and the handling of any solid wastes to be managed as non-hazardous. The following shall be submitted:

(1) Engineering plans for the construction design and a detailed description of all buildings, ramps, on-site roads, waste transfer and holding areas, and equipment used on-site;

(2) A description of all proposed Transfer Station solid and hazardous waste handling activities including:

(A) estimations of waste holding capacities;

(B) description of wastes, tanks and containers;

(C) hours of operation;

(D) waste transfer and bulking procedures including associated compatibility analyses;

(E) provisions to assure that solid wastes destined for disposal in non-hazardous waste facilities are not co-mingled with hazardous waste; and

(F) truck and equipment cleaning and decontamination procedures.

(3) A description of all safety, training and security provisions including site access and security provisions, site inspections, and personnel training in accordance with 40 CFR 264.14 through 264.17. The Plan shall also include a contingency and site safety plan that meets the requirements of 40 CFR 264, Subparts C and D;

(4) A description of spill control, containment, and remediation measures;

(5) A design and operations plan for waste transfer and unloading activities demonstrating that those activities are limited to areas with adequate secondary containment structures to prevent releases to soil, surface water or groundwater; and

(6) Information on closure and mechanisms to meet the financial assurance and liability requirements of 40 CFR 264, Subparts G and H.

(c) The owner/operator of a hazardous waste transfer station which handles solid waste destined for management at a solid waste facility must also demonstrate compliance with applicable rules in OAC 252:520, including location standards, if the hazardous waste Transfer Station Development and Operations Plan is to be used in lieu of a solid waste

permit.

252:205-15-3. Design and operation

All transfer stations shall be designed and operated to minimize releases to the air from waste transfer and unloading activities. Activities shall be conducted only in areas protected by secondary containment structures approved in the Plan.

252:205-15-4. Modifications

(a) A proposed modification to an approved Plan which would alter the design or operation of a transfer station shall be requested in writing and shall not be implemented without the DEQ's prior approval.
(b) The DEQ may modify an approved Plan to require compliance with current rules.
(c) Modification to approved Plans shall be according to 40 CFR 270.42.

252:205-15-5. Exclusionary siting criteria

(a) The siting criteria for locating hazardous waste Transfer Stations are the same as those for any hazardous waste treatment, disposal, recycling, or storage facility in 252:205-11-2 and 27A O.S. ' 2-7-111.
(b) The siting criteria for locating hazardous waste Transfer Stations which also handle solid wastes destined for management at a solid waste facility include those listed in Subchapter 11 and, in addition, those in OAC 252:520.

252:205-15-6. No endangerment

All owners/operators of Transfer Stations shall comply with 252:205-9-1.

SUBCHAPTER 17. TAX CREDIT AND WASTE REDUCTION INCENTIVES

PART 1. TAX CREDITS

Section
252:205-17-1. Certification
252:205-17-2. Tax credit limitations
252:205-17-3. Application procedures for tax credit
252:205-17-4. Criteria for approval of tax credit
252:205-17-5. Special conditions: new and unproven technologies
252:205-17-6. Required information in tax credit application

PART 3. WASTE REDUCTION INCENTIVES [REVOKED]

252:205-17-20. Applicability [REVOKED]
252:205-17-21. Incentives [REVOKED]
252:205-17-22. Refund for volume reduction [REVOKED]
252:205-17-23. Refund for toxicity reduction [REVOKED]
252:205-17-24. Refund for elimination of a waste stream [REVOKED]
252:205-17-25. Maximum total refund [REVOKED]

252:205-17-26. Limitations [REVOKED]
252:205-17-27. Application for fee reduction [REVOKED]

PART 1. TAX CREDITS

252:205-17-1. Certification

(a) **Net investment cost.** Upon evaluation by the DEQ of an application in accordance with 27A O.S. ' 2-11-304(A)(1)-(4) the DEQ will issue a certificate to the Oklahoma Tax Commission specifying the actual or estimated agreed net investment cost of approved recycling, reuse, or source reduction processing operations.

(b) **Energy recovery.** Energy recovery from the destruction of a hazardous waste may be considered as recycling, and the equipment or devices needed to effectuate such recovery may be eligible under this Subchapter. In order to claim energy recovery, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel, and at least seventy-five percent of this recovered energy must be exported and utilized on an annual basis. Credit will not be allowed for internal use of recovered heat in the same unit.

(c) **Remedial action.** Equipment installed for the purpose of recycling or reuse of hazardous waste recovered as a result of the clean-up of spills and/or remedial action at hazardous waste sites may be eligible.

(d) **Replacement of equipment.** Replacement of existing equipment is eligible for consideration only if the equipment being replaced has exceeded its design lifetime as specified at the time of installation. Replacement of existing equipment with equipment that will allow more complete recycling or increased source reduction will be considered, regardless of age.

(e) Any particular piece of equipment, plant, or property shall only be eligible for one tax credit allowance. Sale or transfer of that item to a new owner shall not recreate the eligibility for a tax credit.

(f) Trucks, trailers, containers, portable storage units or similar items that are necessary for the installation of processes used for the recycling, reuse or source reduction of hazardous waste may be considered. Equipment purchased or leased but not used solely for the recycling, reuse or source reduction of hazardous waste will be prorated based on use. Only equipment that is physically used in Oklahoma will be considered.

252:205-17-2. Tax credit limitations

The following are not eligible for consideration for a tax credit under this Subchapter:

(1) Storage facilities used for the purpose of speculative accumulation;

(2) Recycling of materials in a manner constituting disposal as described in 40 CFR Part 266;

(3) Recycling, reuse or source reduction of materials that are not hazardous waste;

(4) Operating expenses, interest charges, design costs and permit application costs; and

(5) Dilution of a hazardous waste because dilution is not considered recycling, reuse or source reduction.

252:205-17-3. Application procedures for tax credit

(a) An application for a tax credit must be submitted separately from other permit applications. Application forms are available from the DEQ. Applicants must comply with the Oklahoma Uniform Environmental Permitting Act (27A O.S. ' 2-14-101 *et seq.*) and rules 252:2-15).
(b) The applicant must include the actual or estimated capital expenditures required to purchase and install the facility. Estimates must show all unit costs and bid quotations from equipment suppliers. The applicant must list names, addresses, telephone numbers and other relevant contact numbers, i.e. telefacsimile and internet, of all suppliers, contractors, and related participants in the installation of the facility.
(c) After the equipment is installed, the applicant shall notify the DEQ that the facility is ready to be inspected. The applicant must point out any deviations from the approved application. Deviations will be evaluated by the DEQ to determine if a new application will be required. The DEQ will verify that the specified equipment has been installed and that it is operational. If so, the DEQ will issue the certification to the Oklahoma Tax Commission.

252:205-17-4. Criteria for approval of tax credit

To qualify for approval of a tax credit under this subchapter:
(1) The tax credit must be taken within three years of the installation and initial use of the facility.
(2) The proposed facility or equipment must have been previously demonstrated to be effective and to perform as specified unless unproven technology procedures are followed in accordance with 252:205-17-5.
(3) The facility must be physically located in the State of Oklahoma.

Agency note: There is no minimum amount of a hazardous waste which must be recycled, reused or reduced.

252:205-17-5. Special conditions: new and unproven technologies

In addition to the requirements of 252:205-17-4, the following apply to persons who wish to use technologies that have not been proven to be effective or workable:
(1) If the review and evaluation of an application for a tax credit using unproven technologies indicates that the proposed facility has a high likelihood of being successful, but supporting data is not available to allow final approval by the DEQ, the DEQ may issue an Approval in Principle in lieu of the formal approval and certification to the Tax Commission. The Approval in Principle shall list the assumptions made in deciding upon its issuance and the conditions the facility is expected to meet before a formal approval and certification to the Oklahoma Tax Commission can be made.
(2) The Approval in Principle will automatically expire two years from the date of its issuance. It may be reissued if a new application is submitted to the DEQ and a determination made that the conditions under which the first approval was issued are still applicable and that a high likelihood of success is still feasible.
(3) Once the owner/operator of the facility has satisfactorily demonstrated that the technology performs as specified and has supplied documentation to the DEQ showing that the conditions of the Approval in Principle have been satisfied, the DEQ shall issue a formal approval and provide certification to the Oklahoma Tax Commission showing eligibility for a tax credit.

(4) The applicant must notify the DEQ of any significant change in the design of the facility or in the equipment actually installed, or if there is an increase in costs of more than twenty percent from that specified in the application. Any significant change from the original application shall be cause for the DEQ to reevaluate the application and make a new determination whether or not the project should be approved.

252:205-17-6. Required information in tax credit application

The applicant must submit the following information in an application:

(1) A description of the current or proposed plant process, as it relates to the recycling, reuse or source reduction operations, including flow diagrams and engineering drawings.

(2) A description of the proposed recycling, reuse or source reduction facility, including flow diagrams and engineering design drawings, the exact equipment necessary for the facility to perform as specified either by brand name and serial number, or by design specifications and drawings, and the estimated life expectancy and the vendor's name for each piece of equipment.

(3) The amount and character of waste streams prior to use of the facility and the amount and character of waste streams after use of the facility. If there is no current plant process, the applicant should provide information on the amount of hazardous waste expected to result from the proposed facility.

(4) A justification for the process decisions made, including a description of the recycling, reuse, or source reduction alternatives considered.

(5) A certification that the facility will be used in Oklahoma to process hazardous waste generated in Oklahoma. If the facility will be processing waste generated in other states, the applicant must specify the percentage of waste generated in Oklahoma.

(6) Income or savings that will be generated from the installation and operation of the facility.

(7) Actual invoices of installed unit costs or estimates of costs if the facility has not been built.

(8) If the facility to be installed uses a proven technology. If it is not a proven technology, the application must specify when supporting documentation will be available to determine if the technology will perform as specified.

(9) The date that construction or installation of the facility is scheduled to begin and the date the facility is scheduled to begin operations.

PART 3. WASTE REDUCTION INCENTIVES [REVOKED]

252:205-17-20. Applicability [REVOKED]

252:205-17-21. Incentives [REVOKED]

252:205-17-22. Refund for volume reduction [REVOKED]

252:205-17-23. Refund for toxicity reduction [REVOKED]

252:205-17-24. Refund for elimination of a waste stream [REVOKED]

252:205-17-25. Maximum total refund [REVOKED]

252:205-17-26. Limitations [REVOKED]

252:205-17-27. Application for fee reduction [REVOKED]

SUBCHAPTER 19. ADDITIONAL RULES FOR RECYCLING

PART 1. REQUIREMENTS FOR OFF-SITE RECYCLERS

Section

PART 3. MOBILE RECYCLING UNITS

PART 5. TANK AND CONTAINER RECYCLERS

PART 1. REQUIREMENTS FOR OFF-SITE RECYCLERS

252:205-19-1. Permit required

(a) Owners/operators of off-site recycling facilities with units operational:

(1) Before July 1, 1990, are not required to obtain a permit for those units, but must comply with the rules in this Subchapter.

(2) After July 1, 1990 must obtain a permit for those units. Owners/operators of post-1990 off-site recycling facilities must also comply with the permit requirements of 40 CFR 270 and OAC 252:2. The owner/operator must include hazardous waste recycling units, staging and process areas, and permanent and temporary storage areas for recycled products and wastes in the permit application.

(b) **Subchapter 9.** Owners/operators of off-site recycling facilities shall comply with

Subchapter 9.

252:205-19-2. Federal rules

Owners/operators of off-site recycling facilities must comply with the following provisions of 40 CFR 264 for all hazardous waste recycling units, staging and process areas, and permanent and temporary storage areas for recycled products and wastes:

(1) Subpart B- General Facility Standards
(2) Subpart C- Preparedness & Prevention
(3) Subpart D- Contingency Plan & Emergency Procedures
(4) Subpart E- Manifest System, Recordkeeping & Reporting
(5) Subpart G- Closure & Post-Closure
(6) Subpart H- Financial Requirements
(7) Subpart I- Use & Management of Containers
(8) Subpart J- Tank Systems

252:205-19-3. Replacement of recycling units

(a) The owner/operator may replace recycling units which are not required to be permitted with functionally equivalent units not more than 10% difference in capacity upon prior approval of the DEQ.
(b) The owner/operator must apply for a permit modification to increase the capacity of the recycling units or to add new or different recycling units.

Agency note: The application for permit modification is a Tier I under state rules (252:2-15-43) and a Class I under federal rules (40 CFR ' 270.42).

252:205-19-4. Operating record

(a) **Operating record required.** The owner or operator of an off-site recycling facility must keep a written operating record at the facility.
(b) **Content.** The following information must be recorded as it becomes available and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received;
(2) The method(s) and date(s) of treatment, storage, or recycling of each hazardous waste received;
(3) The location of all hazardous waste within the facility;
(4) The quantity of hazardous waste at each location, including cross-references to specific manifest document numbers if the waste was accompanied by a manifest; and
(5) Complete documentation of the fate of all hazardous wastes received from off-site or generated on-site including records of the sale, reuse, off-site transfer, or disposal of all products and waste materials.

252:205-19-5. Blending low-Btu fuel prohibited

Blending of low fuel value hazardous waste (containing less than 5,000 Btu/pound) with other materials or waste to create a hazardous waste fuel is prohibited as a form of recycling. This waste can not be burned in any hazardous waste recycling unit in Oklahoma.

252:205-19-6. Fees [REVOKED]

252:205-19-7. Processed hazardous waste to be recycled

Owners/operators who demonstrate to the DEQ that units containing hazardous wastes which have been processed for recycling have a demonstrable market and no longer contain constituents which pose a hazard to human health or the environment are not required to obtain a permit for those units, but must still comply with 252:205-19-1(b) and 19-4.

PART 3. MOBILE RECYCLING UNITS

252:205-19-15. Mobile units

(a) **Applicability.** This Part applies to mobile recycling units that process hazardous waste at any facility which generates in excess of 1000 kilograms of hazardous waste in any calendar month. The requirements of this Part shall not apply to mobile recycling units when:

(1) The recycling is performed at the generator's site;

(2) The generator retains responsibility for proper management of the waste and any residues;

(3) No waste generated by any other person is brought onto the site for treatment by the unit; and,

(4) The generator and the recycler meet all applicable requirements for hazardous waste management.

(b) **Permits.** Mobile recycling units subject to this Part shall obtain a Recycling Permit for a Mobile Unit. Application for such permit shall include the application fee and three copies of the following:

(1) A detailed description of the proposed recycling unit(s). This should include flow diagrams and engineering design drawings, specifying either by brand name and serial number, or by design specifications and drawings, the exact equipment necessary for the unit(s) to perform as specified.

(2) The amount and nature (including waste codes and available laboratory analyses) of current hazardous waste streams able to be processed and the amount and nature of waste streams expected to result from operation of the proposed unit(s).

(3) A description and quantification of any releases to the air, sewer, water, or ground that will result from operation of the recycling unit(s).

(4) A description of the procedures used to decontaminate the unit, and including disposal of all contaminated residuals, after completion of the on-site processing.

(5) Evidence of compliance with personnel training requirements equivalent to 40 CFR 265.16 for all personnel dealing with waste handling or processing.

(6) A generic contingency and safety plan which meets all applicable provisions of 40 CFR 265, Subparts C and D.

PART 5. TANK AND CONTAINER RECYCLERS

252:205-19-29. Applicability

(a) This part applies to facilities which receive tanks or containers from off-site for cleaning or reconditioning which are empty as described at 40 CFR 261.7 and which contain a chemical residue. Tanks or containers hold a chemical residue if such residue is visible and/or the tank

or container requires cleaning to assure that it is free of residue.
(b) Containers as described in 40 CFR 261.7 are assumed to contain a chemical residue until processed by the receiving facility to assure that such units are ready for resale.
(c) This part does not apply to:
(1) Facilities permitted pursuant to 40 CFR 264;
(2) Facilities which only receive containers or tanks for filling with product or waste without on-site cleaning or reconditioning; or,
(3) Companies, their affiliates and subsidiaries which receive back only their own containers and, as applicable:
(A) Remove residues of unused commercial chemical product for use at their facilities;
(B) Remove residues and manage such residues and wash wastes as hazardous or non-hazardous solid waste as determined per 40 CFR 261; or,
(C) Treat removed residues and wash wastes in units permitted pursuant to sections 402 and 307(b) of the Clean Water Act.

252:205-19-30. Incidents

Facilities subject to this part shall comply with 252:205-13-1.

252:205-19-31. Handling of tank and container residues, and cleaning wash solutions

(a) Chemical residues and wash solutions containing chemical residues generated by cleaning or reconditioning of tanks or containers shall be evaluated in accordance with 40 CFR 261 to determine if they are to be handled as hazardous wastes or as non-hazardous solid wastes.
(b) Chemical residues and wash solutions containing chemical residues generated by cleaning or reconditioning of tanks and containers are not exempted from 252:205-19-31(a) by 40 CFR 261.7. However, no hazardous waste listings in 40 CFR 261 Subpart D shall apply to residues removed from containers regulated pursuant to this part. Wastes generated from using solvents listed in 40 CFR 261.31 during the cleaning or reconditioning process and which meet the listing definition are hazardous waste.
(c) As determined, the following shall apply:
(1) 40 CFR 261-279 and OAC 252:205 shall apply to residues removed from containers regulated pursuant to this part unless exempted therein (e.g., exclusions for waste treated under '' 402 and 307(b) of the Clean Water Act); however, the exemption found at 261.7 is modified pursuant to this part.
(2) For all non-hazardous solid waste, the generator is not exempt from applicable Oklahoma Regulations as specified by OAC 252:520.

252:205-19-32. Storage Requirements

(a) Facilities regulated pursuant to this part may not speculatively accumulate, as defined at 40 CFR 261.1(c)(8), tanks or containers awaiting cleaning or reconditioning. Tanks and containers which have not completed the full cleaning or reconditioning process must be so marked or placed into an area so marked and stored separately from containers or tanks which have been cleaned or reconditioned.
(b) All tanks and containers shall be stored under cover, or in a manner which will prevent the

accumulation of precipitation in the tank or container or release to the environment of chemical residue. Any precipitation which may accumulate shall be considered a chemical residue requiring handling as described in 252:205-19-31.
(c) All tanks and containers shall be stored in such a manner that visual inspections can determine if spillage has occurred.
(d) Tanks and containers shall be inspected weekly for compliance with this section.

252:205-19-33. Notification Requirements

(a) Facilities shall notify the Department of activities regulated pursuant to this part in the following manner:
(1) Provide a general description of site utilization and processes; and,
(2) Provide a general description of how processes and activities will be conducted in a manner that minimizes releases to soil, air, and water.
(b) Facilities in operation on the effective date of this Part must submit the information required by 252:205-19-33(a) no later than January 1, 1999. New facilities must submit the information required by 252:205-19-33(a) prior to initiation of cleaning or reconditioning operations. Facilities shall submit a new notification to the Department if operations significantly change from those described in the original notification. This new notification must be submitted prior to making significant changes in operations.

252:205-19-34. Recordkeeping

(a) Facilities regulated pursuant to this part must maintain the following records on-site:
(1) Documentation of waste determinations and analyses, as appropriate, for hazardous wastes generated;
(2) Records of inspections performed pursuant to 252:205-19-32(d);
(3) Records of remedial actions performed on-site in accordance with 252:205-13-1; and,
(4) Records demonstrating that the facility is not speculatively accumulating under 252:205-19-32(a).
(b) Records required by paragraph 252:205-19-34(a) shall be kept for a period of three (3) years.

SUBCHAPTER 21. FEES

Section

252:205-21-1. General fee provisions

Fees are payable to the DEQ. Monitoring fees and renewal fees are due and payable and must be postmarked within sixty days from the invoice date. Ranges of fees for generator disposal plans, transporter registration, permit application and application resubmittals, and facility monitoring are set by law. See 27A O.S. ' 2-7-119. A late fee of 20% of the renewal

fee will be charged as a penalty for late renewal of fees less than $10,000. For fees of $10,000 or more, see the penalty clause of 27A O.S. ' 2-3-301. The DEQ will not re-assess fees at time of transfer of ownership if units and EPA I.D. number remain unchanged.

252:205-21-2. Generator fees

(a) **Disposal plan.** The fee for a disposal plan for one or two waste streams is $100 per generator per year. Each additional waste stream is $50 per year. There is no disposal plan fee for emergency incidents under 252:205-13-1. Disposal plans shall be canceled if the fees are not paid after the second notification.

(b) **Annual monitoring and inspection fee.** Oklahoma generators shall pay an annual fee of $100, except small quantity generators who pay $25. There is no monitoring fee for generators who obtain one-time disposal plans issued under 252:205-5-1 for emergency cleanup or waste removal.

252:205-21-3. Transporter fees [REVOKED]

252:205-21-4. Treatment, storage, off-site recycling, and disposal facility fees

(a) **Permit fees.**

(1) New permit application fees are listed in Appendix B.

(2) Renewal and post closure application fees shall be 1/2 of the fees listed in Appendix B, subject to the statutory minimum.

(3) Fees for re-submission of an application shall be the minimum amount established by 27A O.S. ' 2-7-119(B). Re-submission is deemed to occur when an applicant, at the request of the Department, provides additional information to make an application complete, which constitutes substantial recomposition of the application.

(4) Fees for Tier 3 modifications are the application fees listed in Appendix B.

(5) Application fees for an off-site recycling facility shall be the statutory minimum established for permit applications by 27A O.S. ' 2-7-119(B).

(b) **Refund of permit fees.** Ninety percent (90%) of the fee is refundable for any applications withdrawn within 30 days.

(c) **Monitoring and inspection fees.**

(1) All hazardous waste facilities shall be charged annual fees for monitoring and inspection by the Department. These fees are in addition to the $100 monitoring fee for generators.

(2) Facilities that treat, store, or dispose of hazardous waste, or receive off-site hazardous waste for recycling, are subject to the fee provisions of ' 2-7-121(A) of the Act, except as provided by 27A O.S. ' 2-7-121(B). The fee amounts and applicability are depicted in Appendix C of this Chapter. Facilities not subject to Appendix C of this Chapter shall be charged the minimum annual monitoring fee established at 27A O.S. ' 2-7-119(B). (Appendix C of this Chapter is included for convenience and is subject to adjustment of the fees by statutory amendment.)

252:205-21-5. Fees for waste exclusion

(a) **Submittal fees.**

(1) Application fees for waste exclusion are listed in Appendix D of this chapter.

(2)Payment of the appropriate fee must be made at the time of the submission of the petition to exclude the waste stream(s). The DEQ will not consider said petition(s) until the appropriate fee(s) are paid in full.

(b) **Refund of waste exclusion fees.** Ninety percent (90%) of the fee is refundable to the applicant for any application withdrawn within 30 days of submission.

(c) **Monitoring and inspection fees.** All facilities generating a waste that has been excluded pursuant to 252:205 Subchapter 25 shall pay the monitoring fees set forth in Appendix D of this chapter. Monitoring and inspection fees will not be refunded.

(1) **First year of application**. After the effective date of the rule excluding the waste, the generating facility must pay a prorated portion of the annual monitoring fee listed in Appendix D for the remainder of the year in which the successful petition was approved.

(2) **Subsequent years**. Each facility generating a waste that has been excluded must pay the annual monitoring fees as in Appendix D on or before January 1 of the year following the year the petition was approved.

SUBCHAPTER 23. HAZARDOUS WASTE FUND ACT PROJECTS

Section

252:205-23-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Subchapter is to implement the Oklahoma Hazardous Waste Fund Act, 27A O.S. ' ' 2-7-301 through 2-7-307, inclusive.

(b) **Authority.** This Subchapter is adopted pursuant to 75 O.S. ' 302, Executive Order 98-37 and 27A O.S. ' 2-7-306.

(c) **Applicability.** The rules in this Subchapter apply to DEQ funding of local projects authorized by 27A O.S. ' ' 2-7-121(F), 2-7-304 and 2-7-305.

252:205-23-2. Use of Hazardous Waste Fund

(a) The DEQ shall fund the following before providing financial assistance to municipalities or counties:

(1) Required state contributions under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for remediation or related action at a CERCLA site (27A O.S. ' 121(F)(1));

(2) Response to emergency situations and/or remediation of sites involving hazardous waste or hazardous waste constituents when the responsible party cannot be timely identified or found or compelled to take appropriate action in accordance with 27A O.S. ' 2-7-121(F)(2) & (3); and

(3) Costs incurred in undertaking an enforcement action against responsible parties to compel response or remedial action or to recover monies expended by the state for a response or remedial action in accordance with 27A O.S. ' 2-7-121(F)(4).

(b) Local projects are eligible for funding on a first-come, first-served basis if monies are

available. Applicants are encouraged to contact the DEQ to arrange a preapplication conference prior to submitting an application. If funds are not available, applicants will be notified in writing.

252:205-23-3. Criteria for matching grants

(a) **Eligible grantees.** A municipality or county which has a DEQ-approved emergency response plan and a significant potential for initiating emergency response to an incident involving hazardous waste is eligible for a matching grant not to exceed Fifty Thousand Dollars ($50,000).

(b) **Purpose of grant funds.** Grant funds shall be used for basic emergency response training and purchase of protective equipment to be used by the grantee in responding to incidents involving hazardous waste.

(c) **Priority grantees.** Priority will be given to proposals submitted by those eligible municipalities or counties in which off-site hazardous waste facilities are located.

(d) **Proposal content.** Proposals for matching grants for funding of proposed emergency response training and/or purchase of protective equipment must contain the following information:

(1) Identifying information of the grant applicant, including name, address, phone number, fax number, and e-mail address (if any);

(2) Contact person and identifying information;

(3) Explanation of eligibility, including a copy of the DEQ-approved emergency response plan and supporting documentation demonstrating that the applicant has a significant potential to respond to a hazardous waste incident;

(4) Names, addresses and contact persons of off-site hazardous waste facilities located within the jurisdiction of the municipality or county;

(5) Narrative explaining the proposed emergency response training program and/or protective equipment to be purchased.

(6) Documentation of local funding commitment by municipality or county, i.e. proposed budget and local match.

(e) The term "protective equipment", as used in this section, is not limited to personal protective equipment.

252:205-23-4. Annual report

Applicants who are awarded funds under this subchapter shall submit a written report, outlining accomplishments and expenditures, on or before December 15 of each year until the funds awarded are fully expended.

SUBCHAPTER 25. ADDITIONAL REQUIREMENTS FOR EXCLUDING A WASTE FROM A PARTICULAR FACILITY

Section

252:205-25-1. General

(a) **Purpose, scope and applicability.** The Environmental Quality Board has adopted 40 CFR 260.22 by reference. The federal rule is intended to allow persons to exclude a waste at a particular generating facility from the lists in subpart D of 40 CFR 261. When excluded by EPA, the exclusion is applicable in all States that do not have delisting delegation. Wastes excluded by Oklahoma are excluded in Oklahoma only. Excluded wastes may still be hazardous waste by characteristic under subpart C of 40 CFR 261.

(b) **Procedure for petitions to exclude a waste.** All persons seeking to exclude a waste from some or all requirements under OAC 252:205 must submit a Petition to the DEQ pursuant to 40 CFR 260.20 and 260.22, incorporated by reference at 252:205-3-2, and this subchapter. Additionally, the exclusion of a waste pursuant to a DEQ approved Petition shall be a rulemaking and shall follow the procedures specified in 252:4-5. The person submitting the Petition ("Petitioner") shall follow the exclusion procedure described below:

(1) A pre-petition letter of interest must first be submitted to the DEQ;

(2) A pre-petition scoping meeting must be held with the DEQ;

(3) A pre-petition sampling and analysis plan for data gathering must be submitted for DEQ review and approval;

(4) At least three (3) copies of an approvable waste exclusion petition must be submitted to the DEQ.

252:205-25-2. Conditions applicable to approved petitions

Any Petition to exclude a waste approved by the Environmental Quality Board shall apply only to the particular waste described in the Petition.

252:205-25-3. Conditions of exclusion

The Environmental Quality Board may establish any additional conditions for the waste exclusion either at the time of granting the exclusion or any time thereafter as necessary to protect public health and the environment. Additional conditions for the exclusion will be set forth in Appendix E of this chapter.

252:205-25-4. Reconsideration of an approved petition

The DEQ may request the reopening of a previously approved Petition. If at any time after initial exclusion approval, the generator comes into possession or is otherwise made aware of any data or other information relevant to the excluded waste that is inconsistent with information provided to the DEQ pursuant to the exclusion petition procedure, the generator must report such information, in writing, to the DEQ within thirty(30) days of first obtaining or being made aware of the data.

252:205-25-5. Monitoring of waste approved for exclusion

The approval of a Petition to exclude a waste may include but is not limited to, requirements for periodic monitoring and sampling of the waste, reporting of monitoring

results, quantities handled, and similar information to assure that the approval remains valid and continues to be followed.

252:205-25-6. Failure to follow approval conditions

If at any time the DEQ determines that the provisions of the approved Petition are not being followed, appropriate enforcement actions may be taken, including but not limited to, loss of exclusion status.

252:205-25-7. Effective date

The waste for which an exclusion is approved will not be excluded until the rulemaking process is complete and the rule is effective.

APPENDIX A. Refund For Volume Reduction

	1-25% Increase in Employees	26-50% Increase in Employees	51-75% Increase in Employees	76-100% Increase in Employees
21-50% waste reduction	$ ÷ 3.5	$ ÷ 2.8	$ ÷ 2.3	$ ÷ 2
11-20% waste reduction	$ ÷ 4.6	$ ÷ 3.5	$ ÷ 2.8	$ ÷ 2.3
1-10% waste reduction	$ ÷ 6.8	$ ÷ 4.6	$ ÷ 3.5	$ ÷ 2.8

$ = Applicable fee at time of treatment or disposal

"Percent Waste Reduction" equals the amount of waste generated in the previous state fiscal year minus the amount of waste generated in the application year, divided by the amount of waste generated in the baseline year, times 100.

"Percent Increase in Employees" equals the number of employees in the application year minus the number of employees in the baseline year, divided by the number of employees in the baseline year, times 100.

APPENDIX B. PERMIT APPLICATION FEES

The statutory minimum fee established for permit applications by 27A O.S. ' 2-7-119(b) is $5,000.

Basic Application Fee	**Fee for Submission**
All facilities	$3,000
Facility or Regulated Unit Description	**Fee for Submission** For each type of permit requested, add the following amounts to the basic application fee to determine the total fee due.
Tanks & Containers	$2,000
Waste Piles	$2,500
Misc. Thermal unit	$2,000
Incineration; Boiler & Ind. Furnaces; thermal treatment	$12,000
Deep Well	$15,000
Land Treatment Unit	$6,000
Landfill, Surface Impoundment	$20,000
Research	$2,000
Recyclers	$2,000

APPENDIX C. ANNUAL FACILITY MONITORING FEES

Disposition of Waste	On-site	Off-site
Waste Storage, Treatment, or Land Disposal	$9.00/ton (minimum $20,000/yr per facility)	$9.00/ton (minimum $50,000/yr per receiving treatment or land disposal facility, minimum $20,000/yr per storage facility*)
Waste Recycling	---------	$4.00/Ton (minimum $20,000/yr per receiving facility, excluding receiving facilities which consistently receive or recycle fewer than ten (10) tons of hazardous waste per month)
Underground Injection	$0.03 per gallon	$0.03 per gallon
Facilities Conducting Research & Design Tests	_____	$9.00/ton treatment, storage, or disposal $4.00/ton recycling (minimum $10,000/yr per receiving facility)

* For the purpose of the $20,000/yr per receiving facility minimum fee only, storage includes physical separation or combining of wastes solely to facilitate efficient storage at the facility and/or efficient transportation. Any off-site facility which is permitted for treatment or land disposal in addition to storage will be subject to the $50,000/yr per receiving facility minimum fee.

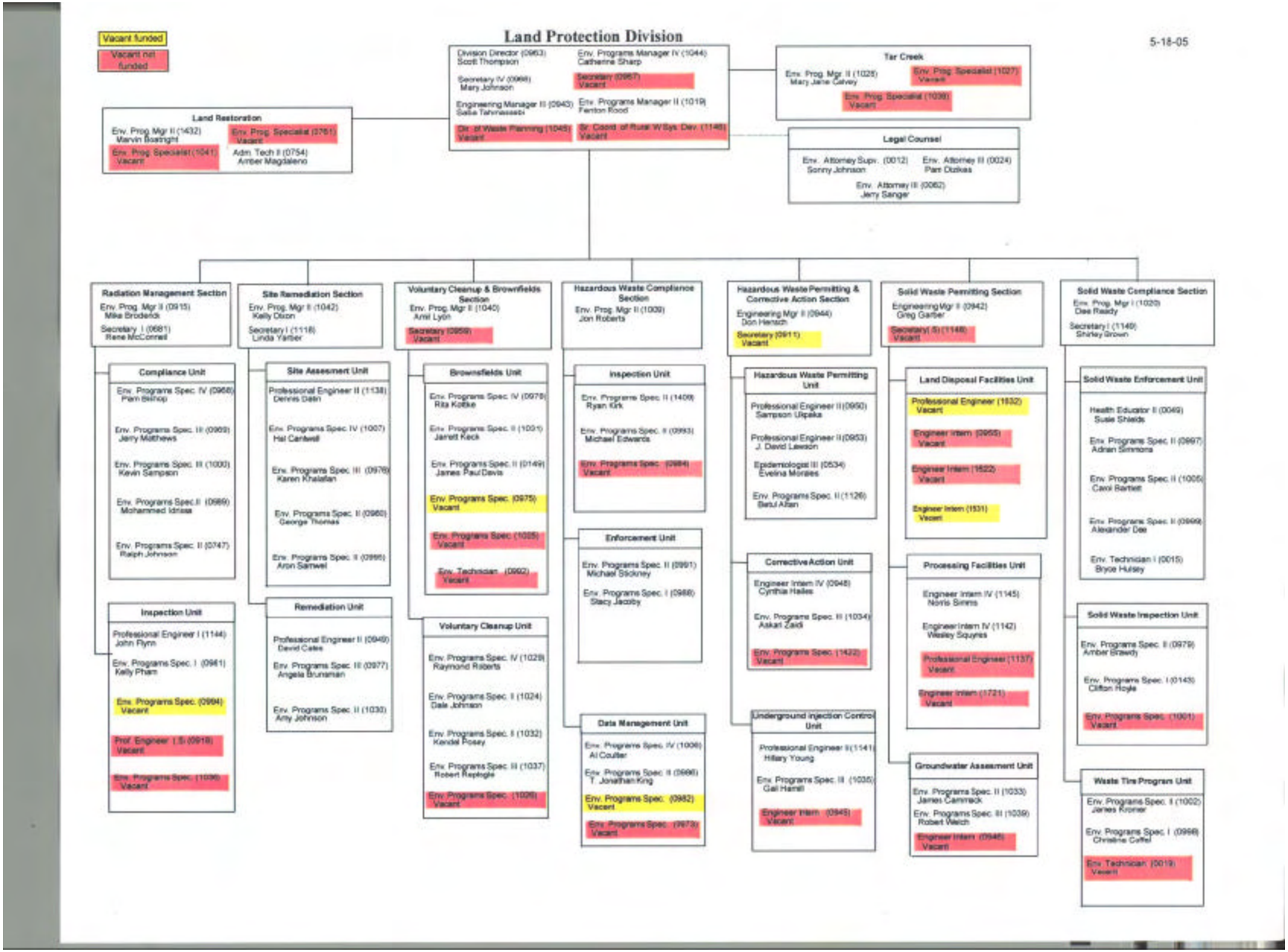
APPENDIX D. WASTE EXCLUSION FEES

Basic Application Fee	Annual Monitoring Fee
$20,000.00 for the first Petition submitted by a facility; $15,000.00 for each subsequent Petition submitted by the same facility at the same time the first Petition is submitted	$1,200.00 per each excluded waste

APPENDIX E. WASTES EXCLUDED FROM THE LISTS IN SUBPART D OF 40 CFR PART 261 AS APPLICABLE IN OKLAHOMA

Facility Name and EPA Identification Number	Physical Address of Generating Facility	Description of Excluded Waste	Additional Conditions of Exclusion
[NAME]	[ADDRESS]	[DESCRIPT]	[ADD'L COND]

APPENDIX L



APPENDIX M

Codification through the 2005 legislative session.
Board adoption - March 4, 2005
Gubernatorial approval - April 20, 2005
Legislative approval and final adoption - May 6, 2005
Effective date - June 15, 2005

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER 1. GENERAL PROVISIONS

252:4-1-1. Purpose and authority

(a) **Purpose.** This Chapter describes the practices and procedures of the Environmental Quality Board, Advisory Councils, and the Department of Environmental Quality.

(b) **Authority.** This Chapter is authorized by the Administrative Procedures Act, 75 O.S. § 302, and the Environmental Quality Code, 27A O.S. § 2-2-101.

252:4-1-2. Definitions

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

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

"Administrative hearing" is defined at 27A O.S. § 2-1-102 and is synonymous with "individual proceeding" as that term is defined in the Administrative Procedures Act, 75 O.S. § 250.1 *et seq.*

"Administrative Law Judge" is synonymous with "hearing examiner" as that term is defined in the Administrative Procedures Act.

"Advisory Councils or Council" means any of the following Councils: the Air Quality Advisory Council, the Hazardous Waste Management Advisory Council, the Laboratory Services Advisory Council, the Radiation Management Advisory Council, the Solid Waste Management Advisory Council, the Water Quality Management Advisory Council, and the Waterworks and Wastewater Works Operator Certification Advisory Council.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 *et seq.*

"Application" means *"a document or set of documents, filed with the [DEQ], for the purpose of receiving a permit or the modification, amendment or renewal thereof from the [DEQ]... any subsequent additions, revisions or modifications submitted to the [DEQ] which supplement, correct or amend a pending application."* [27A O.S. § 2-14-103(1)]

"Board" means the Environmental Quality Board.

"Code" means the Oklahoma Environmental Quality Code, 27A O.S. § 2-1-101 *et seq.*

"Complaint" means any written or oral information submitted to DEQ alleging site-specific environmental pollution except information gained from facility inspections, or self-reported incidents.

"Department or DEQ" means the Department of Environmental Quality.

"Enforcement action" means:

(A) a written communication from the DEQ to an alleged violator that identifies the alleged violations and directs or orders that the violations be corrected and/or their effect remedied;

(B) an administrative action to revoke or suspend a permit or license;

(C) a consent order or proposed consent order;

(D) a civil petition, a complaint in municipal court, or a complaint in federal district court;

(E) a referral by the DEQ to the Oklahoma Attorney General's office, a state District Attorney's office, a U.S. Attorney's office, or a state or federal law enforcement agency for investigation.

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

"False complaint" means any written or oral information submitted to DEQ alleging site-specific environmental pollution by a person who knowingly and willfully gives false information or misrepresents material information.

"Individual proceeding" is defined in the APA [75 O.S. § 250.3(7)]. It includes an administrative evidentiary hearing to resolve issues of law or fact between parties, resulting in an order.

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

"Notice of deficiencies" means a written notice to an applicant, describing with reasonable specificity the deficiencies in a permit application and requesting supplemental information.

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

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

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

"Respondent" means a person or legal entity against whom relief is sought.

"Submittal" means a document or group of documents provided as part of an application.

"Supplement" means a response to a request for additional

information following completeness and technical reviews, and information submitted voluntarily by the applicant.

"Technical review" means the evaluation of an application for compliance with applicable program rules.

252:4-1-3. Organization

(a) **Environmental Quality Board.** The Environmental Quality Board consists of thirteen (13) members, appointed by the Governor with the advice and consent of the Senate, selected from the environmental profession, general industry, hazardous waste industry, solid waste industry, water usage, petroleum industries, agriculture industries, conservation districts, local city or town governments, rural water districts, and statewide nonprofit environmental organizations. (See further 27A O.S. § 2-2-101.)

(b) **Advisory Councils.** There are seven advisory councils, each consisting of nine (9) members appointed by the Speaker of the House of Representatives, the President Pro Tempore of the Senate or the Governor. (See further 27A O.S. § 2-2-201 and 59 O.S. § 1101 *et seq.*)

(c) **DEQ.** The DEQ consists of the following divisions: Administrative Services, Air Quality, Land Protection, Water Quality, Environmental Complaints and Local Services, Customer Services and the State Environmental Laboratory.

252:4-1-4. Office location and hours; communications

(a) **Office location and hours.** The principal office of the DEQ is 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677. Office hours are from 8:00 a.m. to 4:30 p.m., Monday through Friday except state holidays.

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

(1) **Board.** Communications to the Board may be made through the Executive Director.

(2) **Council.** Communications to a Council may be made through the Division Director of the program with which the Council works.

252:4-1-5. Availability of a record

(a) **Availability.** Records of the Board, Advisory Councils, and DEQ, not otherwise confidential or privileged from disclosure by law, shall be available to the public for inspection and copying at the DEQ's principal office during normal business hours. Information, data or materials required to be submitted to the DEQ in a permit application process shall be made available to the public in accordance with the Oklahoma Uniform Environmental Permitting Act (27A O.S. § 2-14-101 *et seq.*) and the rules in this Chapter. The DEQ may take reasonable precautions in order to ensure the safety and integrity of records under its care.

(b) **Removal.** A record may be removed from the DEQ's offices or storage areas only with prior authorization from and under the supervision of the Records Coordinator or his/her designee.

(c) **Reproduction.**

(1) **By DEQ.** The DEQ may limit the number of copies made and the time and personnel available for reproduction of records requested by a member of the public.

(2) **Commercial reproduction.** With advance notice to the DEQ, a person may arrange for the pick-up, reproduction and return of records by a commercial copying service at his/her own expense, only if the Records Coordinator or his/her designee determines that the DEQ's staff or equipment is inadequate to perform all or part of the project.

(3) **Other.** With prior DEQ approval, a person may bring in and use his/her own copy machine.

(d) **Confidentiality.** Any person asserting a claim of confidentiality for any document submitted to the Board, Council or DEQ must substantiate the claim upon submission. The DEQ will make a determination on the claim and notify the person asserting the claim within a reasonable time. Each program may have more specific requirements, as required by state law or federal rule. [See 27A O.S. § 2-5-105(18) and 40 CFR § 2 Subpart B, particularly § 2.301 (Clean Air Act), § 2.302 (Clean Water Act), § 2.304 (Safe Drinking Water Act), § 2.305 (Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act), and § 2.310 (Comprehensive Environmental Response, Compensation, and Liability Act, as amended by Superfund Amendments and Reauthorization Act)].

(e) **Certification.** Copies of official records of the Board, Advisory Councils or DEQ may be certified by the Executive Director or his/her designees.

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

252:4-1-6. Administrative fees

(a) **Photocopying and faxing.** The fee for copying or faxing letter or legal sized paper is $0.25 per page after the first ten pages.

(b) **Certified copy.** The fee for a certified copy of a document is $1.00 per document.

(c) **Search fee.** When the request is solely for commercial purpose or clearly would cause excessive disruption of the DEQ's essential functions, the document search fee is as follows:

(1) 0 - 15 minutes, no charge;

(2) 16 - 30 minutes, $5.00;

(3) every subsequent 30-minute increment or portion thereof, $5.00.

(d) **Regular mail or overnight carrier.** The fee for mailing eleven or more sheets of reproduced DEQ records by regular mail is the cost of postage. The fee for sending a package of reproduced DEQ records by overnight carrier is the cost of delivery.

(e) **Compact Disc.** If the DEQ provides the compact disc ("CD"), the fee for copying from CD to CD or from database to CD is $1.00 per CD, plus an additional $1.00 per CD for ink-jet labeling.

252:4-1-7. Fee credits for regulatory fees
(a) The Executive Director may authorize Divisions of the DEQ which have programs that collect recurring fees to apply a credit towards certain future invoices for those fees. The credit must be applied only within the program from which the carryover fees are derived. Only the amount that is projected to exceed three months of funding beyond the upcoming budget year for that program can be credited. A summary of any credit applied shall be reported to the Environmental Quality Board. For a credit to be applied:
(1) there must be a projected balance in the fee account carried over from the previous year;
(2) the credit must be distributable pro rata among the fee payers;
(3) the credit must be large enough to justify its administrative cost; and
(4) the Division must be unaware of a longer-range need, such as match for a superfund clean-up project.
(b) The DEQ shall explain on the invoices that a carryover exists and that an identified one-time credit is being applied.

252:4-1-8. Board and Councils
(a) **Officers.** A chair of the Board shall not serve as chair for more than three (3) consecutive years. Officers of a Council may succeed themselves as officers at the discretion of a Council.
(b) **Committees.** Ad hoc committees may be appointed to assist the Board or a Council for any lawful purpose.

252:4-1-9. Severability
The provisions of OAC 252 are severable, and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of OAC 252.

SUBCHAPTER 3. MEETINGS AND PUBLIC FORUMS

Section

252:4-3-1. Meetings
(a) **Board.** The Board shall hold quarterly meetings and may hold other meetings as it deems necessary.
(b) **Council.** Each council shall hold at least one regularly scheduled meeting per calendar year, except the Air Quality Advisory Council which shall hold at least two regularly scheduled meetings.
(c) **Location.** The Board or a Council may meet at any location convenient and open to the public in this state to encourage public participation in the environmental rulemaking process.
(d) **Agenda.** The proposed agenda of a meeting may be developed with the advice of members and modified by the Chair. Time permitting, a copy of the proposed agenda shall be sent to each

Board or Council member at least ten (10) calendar days before a regularly scheduled meeting. The Board or Council may, by majority vote during a meeting, continue an agenda item to or specify a new agenda item for another meeting or forum.
(e) **Public comment.** The agenda shall reserve time during the meeting for public comment on agenda action items. The DEQ shall provide sign-in sheets at each meeting for persons who wish to present written or oral comment on an agenda action item. The Chair reserves the right to rearrange the agenda items during the meeting to accommodate public comment. The Chair may set reasonable time limits on oral comment and may accept written submittals on behalf of the Council or the Board.

252:4-3-2. Public forums
(a) **Generally.** A public forum for receiving public comments and dissemination of information may be held in conjunction with a Council or Board meeting but shall be a separate meeting.
(b) **Location.** Each forum may be held at a different location in the state.
(c) **Format.** The forum shall be conducted by the Chair or the Chair's designee.
(d) **Public comment.** The DEQ shall provide sign-in sheets at each meeting for persons who wish to present written or oral comments. The Chair may set reasonable time limits on oral comment and may accept written submittals on behalf of the Council or the Board.

SUBCHAPTER 5. RULEMAKING

Section

252:4-5-1. Adoption and revocation
The Board has the authority to adopt new or amended emergency or permanent rules and revoke existing rules within its jurisdiction.

252:4-5-2. Rule development
(a) **DEQ.** The DEQ may begin the development of rules at the request of or on behalf of the Board or a Council or upon petition by an interested person. The DEQ may appoint committees to assist in the development of rules.
(b) **Public.** Any person may informally discuss proposed rules with the DEQ or may suggest proposed rules during a council meeting. Also, any person may file a petition with the DEQ formally requesting the adoption, amendment, or revocation of

one or more rules.

252:4-5-3. Petitions for rulemaking

(a) **Form and content of petition.** Rulemaking petitions shall be in writing and filed with the DEQ. The petition shall include the information and follow the format in Appendix A of this Chapter. The DEQ shall provide a copy of the filed petition to the Board.

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

(c) **Status.** The DEQ shall advise the Board of the status of rulemaking petitions.

252:4-5-4. Notice of permanent rulemaking

The DEQ shall submit notices of proposed permanent rulemaking to the Office of Administrative Rules for publication in accordance with the APA and the Administrative Rules on Rulemaking (OAC 655:10).

252:4-5-5. Rulemaking hearings

(a) **Hearing.** Hearings before a Council or the Board shall be conducted by the Chair or the Chair's designee.

(b) **Public comments.** The public may make comments orally at the hearing or submit comments in writing by the end of the specified public comment period, or both. Persons wishing to comment orally may be required to fill out a written request form. The person conducting the hearing may set reasonable time limits on oral presentations, may exclude repetitive or irrelevant comments and may require that oral presentations be submitted in writing.

(c) **Public comment period.** The comment period shall end at the conclusion of the hearing if the agenda indicates that the Council intends to make a final recommendation on the rules or that the Board intends to take a final action on the rules. Otherwise, the comment period may be extended by the person conducting such hearing for no more than thirty (30) calendar days after the hearing or until the close of the hearing, if continued.

(d) **Summary of comments.** The DEQ shall maintain a summary of comments received on proposed rules during written comment periods. The summary shall be provided to the Council or Board prior to taking final action on the rule.

(e) **Hearing continuation.** A Council or the Board may continue the hearing by majority vote. Notice of the continuation shall be announced at the hearing and shall not require publication.

252:4-5-6. Council actions

(a) **Contents of recommendation.** On behalf of a Council, the DEQ shall prepare a recommendation submittal on proposed permanent rules, which shall include the text of the proposed rules, a summary of pertinent minutes of Council meetings, and a summary of comments received. Recommendations may also be made for

rules with a finding of emergency. The Council may recommend that any proposed rule be adopted by the Board on a permanent and emergency basis simultaneously.
(b) **On remand.** The Council shall reconsider any rulemaking recommendation remanded by the Board.

252:4-5-7. Presentation to Board
(a) **Compliance with APA.** When proposed rules are presented to the Board, the DEQ shall indicate the rulemaking procedures which have been followed.
(b) **Board packets.** The DEQ shall prepare a board packet consisting of the text of proposed rules, an executive summary, a rule impact statement, an economic impact/environmental benefit statement (if applicable), a summary of comments received on proposed rules at rulemaking hearings and during written comment periods, the Council's recommendations and a summary of pertinent Council meeting minutes (if applicable). The Board packets shall be sent to members with the proposed agenda of the Board meeting at which rules are to be considered. Board packets for emergency rules may vary.

252:4-5-8. Board actions
(a) **Referral.** The Board may refer any rulemaking matter to the DEQ or an appropriate Council for review, comment or recommendation.
(b) **Proposed permanent rules.** The Board will not consider proposed permanent rules for adoption without the appropriate Council's recommendation except those rules for which no council has jurisdiction.
(c) **Proposed emergency rules.** The Board may adopt emergency rules without the advice of a Council in accordance with 27A O.S. § 2-2-101.
(d) **Final language of rules.** The rules adopted or repealed by the Board may vary from the Council recommendation except for rules recommended by the Air Quality Council. (See further, Oklahoma Clean Air Act at 27A O.S. § 2-5-106.)
(e) **Remand.** The Board may remand a Council's rulemaking recommendation for reconsideration.
(f) **Notice to Council.** The DEQ shall provide each Council with copies of emergency rules adopted by the Board without the Council's recommendation and of any rules adopted by the Board which vary from that Council's recommendation.

252:4-5-9. Rulemaking record
The DEQ shall maintain a rulemaking record on all rules adopted or revoked by the Board.

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 1. THE PROCESS

Section

PART 3. AIR QUALITY DIVISION TIERS AND TIME LINES

PART 5. LAND PROTECTION DIVISION TIERS AND TIME LINES

PART 7. WATER QUALITY DIVISION TIERS AND TIME LINES

PART 1. THE PROCESS

252:4-7-1. Authority

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

252:4-7-2. Preamble

The Uniform Environmental Permitting Act requires that DEQ licenses, permits, certificates, approvals and registrations fit into an application category, or Tier, established under the uniform environmental permitting rules. Tier I is the category for those things that are basically administrative decisions which can be made by a technical supervisor with no public participation except for the landowner. Tier II is the category for those permit applications that have some public participation (notice to the public, the opportunity for a public meeting and public comment), and the administrative decision is made by the Division Director. Tier III is the category for those permit applications that have extensive public participation (notice to the public, the opportunity for a public meeting and public comment, and the opportunity for an administrative evidentiary hearing), and the administrative decision is made by the Executive Director.

252:4-7-3. Compliance

Applicants and permittees are subject to the laws and rules of the DEQ as they exist on the date of filing an application and afterwards as changed.

252:4-7-4. Filing an application

(a) **Tier I.** The applicant shall file (2) copies of a Tier I application unless the application form or instructions specifies that only one (1) copy is needed. Applicants seeking permits for alternative individual on-site sewage disposal systems and alternative small public on-site sewage disposal systems (OAC 252:641) shall file one copy with the local DEQ office for the county in which the real property is located.

(b) **Tier II & III.** The applicant shall file three (3) copies of Tier II and Tier III applications with the DEQ and place one (1) copy for public review in the county in which the site, facility or activity is located.

252:4-7-5. Fees

Fees shall be submitted with the application and, except as herein provided, will not be refunded.

252:4-7-6. Receipt of applications

When an application and appropriate fee are received, each program shall:

(1) file stamp the application with the date of receipt, the Division and/or program name and an identification number;
(2) assign the application to a permit reviewer; and
(3) enter this information in a database or log book.

252:4-7-7. Administrative completeness review

The reviewer shall have 60 calendar days from the file-stamped date of filing to determine if the application is administratively complete.

(1) **Not complete.** If the reviewer decides that the application is not complete, he/she shall immediately notify the applicant by mail, describing with reasonable specificity the deficiencies and requesting supplemental information. The reviewer may continue to ask for specific information until the application is administratively complete. If the reviewer does not notify the applicant of deficiencies, the period for technical review shall begin at the close of the administrative completeness review period.

(2) **Complete.** When the application is administratively complete, the reviewer shall enter the date in the database or log book and immediately notify the applicant by mail. The period for technical review begins.

252:4-7-8. Technical review

(a) Each program shall have the time period specified in Parts 3 through 5 of this Subchapter to review each application for technical compliance with the relevant rules and to reach a final determination. If the data in the application does not technically comply with the relevant rules or law, the reviewer may notify the applicant by mail, describing with reasonable specificity the deficiencies and requesting supplemental information.

(b) Any environmental permit that is not described in this Subchapter shall be reviewed with all due and reasonable speed.

252:4-7-9. When review times stop

The time period for review stops during:

(1) litigation;

(2) public review and participation, including waiting periods, comment periods, public meetings, administrative hearings, DEQ preparation of response to comments and/or review by state or federal agencies;

(3) requests for supplemental information; and

(4) the time in which an applicant amends his/her application of his/her own accord.

252:4-7-10. Supplemental time

The Notice of Deficiencies and request for supplemental information may state that up to 30 additional calendar days may be added to the application processing time. Requests for supplemental information may also state that additional days for technical review equal to the number of days the applicant used to respond may be added to the review time.

252:4-7-11. Extensions

Extensions to the time lines of this Subchapter shall only be made by agreement or when the Executive Director certifies that circumstances outside the DEQ's control, including acts of God, a substantial and unexpected increase in the number of

applications filed, or additional review duties imposed on the DEQ from an outside source, prevent the reviewer from meeting the time periods.

252:4-7-12. Failure to meet deadline

Where failure to meet a deadline is imminent, then:

(1) At least thirty (30) calendar days prior to the deadline the DEQ shall reassign staff and/or retain outside consultants to meet such deadline; or

(2) The applicant may agree to an extension of time for a specific purpose and period of time with refund of the entire application fee, unless a refund is prohibited by law.

252:4-7-13. Notices

(a) **Statutory requirements for notice.** The Uniform Environmental Permitting Act requires an applicant to give notice in accordance with 27A O.S. § 2-14-301.

(b) **Notice to landowner.** Applicants shall certify by affidavit that they own the real property, have a current lease or easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.

(c) **Notice content.** The applicant shall provide DEQ with a draft notice for approval prior to publication. All published legal notice(s) shall contain the:

(1) Name and address of the applicant;

(2) Name, address and legal description of the site, facility and/or activity;

(3) Purpose of notice;

(4) Type of permit or permit action being sought;

(5) Description of activities to be regulated;

(6) Locations where the application may be reviewed;

(7) Names, addresses and telephone numbers of contact persons for the DEQ and for the applicant;

(8) Description of public participation opportunities and time period for comment and requests; and

(9) Any other information required by DEQ rules.

(d) **Proof of publication.** Within twenty (20) days after the date of publication, an applicant shall provide the DEQ with a written affidavit of publication for each notice published. In case of a mistake in a published notice, the DEQ shall require a legal notice of correction or republication of the entire notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.

(e) **Exception to notice requirement.** Applicants for solid waste transfer station permits may be exempt from public meeting requirements under 27A O.S. § 2-10-307.

(f) **Additional notice.**

(1) Applicants for a NPDES, RCRA or UIC permit are subject to additional notice provisions of federal requirements adopted by reference as DEQ rules.

(2) Applicants for a proposed wastewater discharge permit that may affect the water quality of a neighboring state must give written notice to the environmental regulatory agency of

that state. [27A O.S. § 2-5-112(E)]

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

(g) **Additional notice content requirements for Clean Air Act Permits.** In addition to the notice provisions of 27A O.S. §§ 2-14-301 and 2-14-302 and other provisions of this section, the following requirements apply.

(1) Applicants shall give notice by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the DEQ, including those who request in writing to be on the list; and by other means if determined by the Executive Director to be necessary to assure adequate notice to the affected public.

(2) All published notice(s) for permit modification shall identify the emissions change involved in the modification.

(3) An applicant for a Part 70 permit that may affect the air quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]

(4) An operating permit may be issued to an applicant for a new Part 70 operating permit without public review if the operating permit is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B) and the public notice for the construction permit contains the following language.

(A) This permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 252:100-8-8 and 40 CFR § 70.8.

(B) If the operating permit has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2), the operating permit will be issued without public notice and comment; and,

(C) The public will not receive another opportunity to provide comments when the operating permit is issued.

252:4-7-14. Withdrawing applications

(a) **By applicant.** An applicant may withdraw an application at any time with written notice to the DEQ and forfeiture of fees.

(b) **By DEQ.** Except for good cause shown, when an applicant fails to supplement an application within 180 days after the mailing date of a Notice of Deficiencies, or by an agreed date, the DEQ shall void the application. The DEQ shall notify the applicant of an opportunity to show cause why this should not occur.

252:4-7-15. Permit issuance or denial

(a) **Compliance required.** A new, modified or renewed permit or other authorization sought by the applicant shall not be issued until the DEQ has determined the application is in substantial compliance with applicable requirements of the Code and DEQ rules.

(b) **Conditions for issuance.** The Department may not issue a new, modified or renewed permit or other authorization sought by the applicant if:

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

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

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

252:4-7-16. Tier II and III modifications

For Tier II and III permit modification actions, only those issues relevant to the modification(s) shall be reopened for public review and comment.

252:4-7-17. Permit decision-making authority

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

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

252:4-7-18. Pre-issuance permit review and correction

(a) **Applicant review.** The DEQ may ask an applicant to review its permit for calculation and clerical errors or mistakes of fact or law before the permit is issued.

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

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

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

252:4-7-19. Consolidation of permitting process

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

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

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

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

(3) Final permits may be issued together.

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

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

PART 3. AIR QUALITY DIVISION TIERS AND TIME LINES

252:4-7-31. Air quality time lines

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

(1) Construction permits:

(A) PSD and Part 70 Sources - 365 days.

(B) Minor Facilities - 180 days.

(2) Operating permits:

(A) Part 70 Sources - 540 days.

(B) Minor Facilities - 365 days.

(3) Relocation permits - 30 days.

252:4-7-32. Air quality applications - Tier I

(a) **Minor facility permits.** The following air quality authorizations for minor facilities require Tier I applications.

(1) **New permits.** New construction, operating and relocation permits.

(2) **Modifications of permits.**

(A) Modification of a construction permit for a minor facility that will remain minor after the modification.

(B) Modification of an operating permit that will not change the facility's classification from minor to major.

(C) Extension of expiration date of a construction permit.

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier I applications.

(1) **New permits.**

(A) New construction permit for an existing Part 70 source for any change considered minor under 252:100-8-7.2(b)(1).

(B) New operating permit that:

(i) is based on a construction permit that was processed under Tier II or III, and 252:100-8-8, and

(ii) has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2).

(2) **Modifications of permits.**

(A) Modification of any operating permit condition that:

(i) is based on the operating conditions of a construction permit that was processed under Tier II or III, and 252:100-8-8, and

(ii) does not differ from those construction permit conditions in any way considered significant under 252:100-8-7.2(b)(2).

(B) A construction or operating permit modification that is minor under 252:100-8-7.2(b)(1).

(C) Extension of expiration date of a Part 70 source's construction permit with no or minor modifications.

(c) **Other authorizations.** The following air quality authorizations require Tier I applications.

(1) New, modified and renewed individual authorizations under general operating permits for which a schedule of compliance is not required by 252:100-8-5(e)(8)(B)(i).

(2) Burn approvals.

(3) Administrative amendments of all air quality permits and other authorizations.

252:4-7-33. Air quality applications - Tier II

(a) **Minor facility permit actions.** Any minor facility seeking a permit for a modification that when completed would turn it into a Part 70 source is required to apply under subsection (b) of this section.

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier II applications.

(1) **New permits.**

(A) New construction permit for a new Part 70 source not classified under Tier III.

(B) New construction permit for an existing Part 70 source for any change considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

(C) New operating permit for a Part 70 source that did not have an underlying construction permit processed under Tier II or III, and 252:100-8-8.

(D) New operating permit with one or more conditions that differ from the underlying Tier II or III construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).

(E) New acid rain permit that is independent of a Part 70 permit application.

(F) New temporary source permit under 252:100-8-6.2.

(2) **Modifications of permits.**

(A) Significant modification, as described in 252:100-8-7.2(b)(2), of an operating permit that is not based on an underlying construction permit processed under Tier II or III, and 252:100-8-8.

(B) Modification of an operating permit when the conditions proposed for modification differ from the

underlying construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).

(C) A construction permit modification considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

(3) **Renewals.** Renewals of operating permits.

(c) **Other authorizations.** The following air quality authorizations require Tier II applications.

(1) New, modified and renewed general operating permits.

(2) Individual authorizations under any general operating permit for which a schedule of compliance is required by 252:100-8-5(c)(8)(B)(i).

(3) Plant-wide emission plan approval under 252:100-37-25(b) or 252:100-39-46(j).

(4) Alternative emissions reduction authorizations. (Also subject to state implementation plan revision procedures in 252:100-11.)

252:4-7-34. Air quality applications - Tier III

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

(1) Any of the following sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation:

(A) carbon black plants (furnace process),
(B) charcoal production plants,
(C) chemical process plants,
(D) coal cleaning plants (with thermal dryers),
(E) coke oven batteries,
(F) fossil-fuel boilers (or combustion thereof),totaling more than 250 million BTU per hour heat input,
(G) fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input,
(H) fuel conversion plants,
(I) glass fiber processing plants,
(J) hydrofluoric, sulfuric or nitric acid plants,
(K) iron and steel mill plants,
(L) kraft pulp mills,
(M) lime plants,
(N) incinerators, except where used exclusively as air pollution control devices,
(O) petroleum refineries,
(P) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels,
(Q) phosphate rock processing plant,
(R) portland cement plants,
(S) primary aluminum ore reduction plants,
(T) primary copper smelters,
(U) primary lead smelters,
(V) primary zinc smelters,
(W) secondary metal production plants,
(X) sintering plants,

(Y) sulfur recovery plants, or
(Z) taconite ore processing plants, and

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

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

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

PART 5. LAND PROTECTION DIVISION TIERS AND TIME LINES

252:4-7-51. Waste management time lines

The Land Protection Division shall technically review applications and issue or deny permits within the following periods of time:

(1) Hazardous waste applications, including new RCRA permits or renewals, new state recycling permits, Class 3 modifications, closure and post-closure plans, transfer station plans and plan modifications - 300 days;

(2) Brownfields applications and each submittal or resubmittal - 60 days;

(3) Solid waste applications and each submittal or resubmittal - 90 days;

252:4-7-52. Hazardous waste management applications - Tier I

The following hazardous waste management authorizations require Tier I applications.

(1) Class 1 modification of any hazardous waste permit requiring prior Department approval as specified in 40 CFR § 270.42.

(2) Modification to a recycling permit in accordance with 27A O.S. § 2-7-118(A).

(3) Class 2 permit modification as defined in 40 CFR § 270.42.

(4) Emergency hazardous waste disposal plan approval.

(5) Hazardous waste generator disposal plan approval.

(6) Technical plan approval.

(7) Hazardous waste transporter license.

(8) Hazardous waste transfer station plan modification which is not related to capacity.

(9) Emergency permit issued in accordance with 40 CFR § 270.61.

(10) Interim status closure plan approval in accordance with 40 CFR § 265.113(d)(4).

(11) Minor administrative modification of all permits and other authorizations.

(12) Renewal of disposal plan approval and transporter license.

(13) New, modified or renewed authorization under a general

permit.
(14) Approval of temporary authorizations in accordance with 40 CFR § 270.42.

252:4-7-53. Hazardous waste management applications - Tier II

The following hazardous waste management authorizations require Tier II applications.

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

252:4-7-54. Hazardous waste management applications - Tier III

The following hazardous waste management authorizations require Tier III applications.

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

252:4-7-55. Radiation management applications - Tier I

The following radiation management authorizations require Tier I applications:

(1) New, amended and renewed operating permits for radiation machines;
(2) New, amended and renewed permits for x-ray fluorescence

spectroscopy instruments used to detect lead in paint;
(3) New and renewed specific licenses under the state agreement program not classified under Tiers II or III;
(4) Industrial radiography certifications;
(5) Approvals of license termination plans that require no decommissioning or remediation;
(6) Decommissioning and remediation plans required for remediation due to the use, storage or disposal of one or more radioactive materials with a half-life of 120 days or less;
(7) DEQ approvals of documentation showing residual radioactivity levels for a site or property are within acceptable limits as set by Chapter 410;
(8) Minor amendments of all authorizations classified under Tiers I, II or III; and
(9) Major amendments of all authorizations classified under Tier I.

252:4-7-56. Radiation management applications - Tier II

The following radiation management authorizations require Tier II applications:
(1) Decommissioning and remediation plans required for on-site remediation due to the use, storage or disposal of one or more radioactive materials with a half-life of more than 120 days, except for those facilities described in 252:4-7-57(3)(A);
(2) New or renewed permits for the non-commercial treatment or disposal of radioactive waste, generated by the applicant, by incineration or the amendment of the incinerator permit for a capacity increase or for any expansion beyond permitted boundaries for the purpose of expanding operations or storage; and
(3) Major amendments of all authorizations classified under Tier II.

252:4-7-57. Radiation management applications - Tier III

The following radiation management authorizations require Tier III applications:
(1) New or renewed permits for the land disposal of low-level radioactive waste received from others and the major amendment thereof;
(2) New or renewed permits for the commercial treatment or disposal of radioactive waste by incineration and the major amendment thereof; and
(3) Decommissioning and remediation plans and the major amendment thereof:
(A) for nuclear fuel cycle facilities or facilities and sites involved in the manufacturing or processing of licensed quantities of radioactive materials; and
(B) for sites that require both on- and off-site remediation due to the use, storage or disposal of one or more radioactive materials with a half-life of more than 120 days.

252:4-7-58. Solid waste management applications - Tier I

The following solid waste management authorizations require Tier I applications.

(1) **New permits.**

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

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

(i) consolidation of sealed containers; and/or

(ii) transfer of sealed containers from one vehicle or mode of transportation to another.

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

(2) **Modifications.**

(A) **All facilities.**

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

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

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

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

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

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

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

(A) Plans for composting of yard waste only.

(B) Permit transfers.

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

(D) Technical plans.

(E) County solid waste management plans.

(F) Individual authorizations under a general permit.

(G) All other administrative approvals required by solid waste rules.

252:4-7-59. Solid waste management applications - Tier II

The following solid waste management authorizations require Tier II applications.

(1) **New permits.**

(A) **On-site solid waste processing facilities with exception.** Permit for an on-site solid waste processing facility except yard waste composting as listed under Tier I.

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

(i) a transfer station permit with county commissioner approval as listed under Tier I, or

(ii) a biomedical waste transfer station permit listed under Tier I.

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

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

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

(2) **Modifications.**

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

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

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

(i) Modification of any off-site solid waste permit involving a request for more than twenty-five percent (25%) but less than fifty percent (50%) increase in permitted capacity for storage, processing or disposal (excluding incineration) when the request is for equivalent methods, units or appurtenances as those permitted, except those listed under Tier I.

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

(D) **Incinerators.**

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

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

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

252:4-7-60. Solid waste management applications - Tier III

The following solid waste management authorizations require Tier III applications.

(1) **New permits.**

(A) **Off-site processing facilities with exceptions.** Permit for an off-site processing facility, unless otherwise specified in Tier I or Tier II.

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

site solid waste land disposal site.

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

(2) **Modifications.**

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

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

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

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

252:4-7-61. Brownfields applications - Tier I

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

252:4-7-62. Brownfields applications - Tier II

A Tier II application shall be required for all Certificates.

252:4-7-63. Brownfields applications - Tier III

None.

PART 7. WATER QUALITY DIVISION TIERS AND TIME LINES

252:4-7-71. Water quality time lines

The Water Quality Division shall technically review applications and issue or deny permits within the following periods of time:

(1) Discharges, 401 Certifications, industrial wastewater other than discharge, pretreatment trust users, and sludge management plan - 180 days;

(2) Public water supply and water pollution control construction - 90 days; and

(3) UIC applications - 300 days.

252:4-7-72. Laboratory certification applications - Tier I

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

252:4-7-73. Water quality applications - Tier I

The following water quality authorizations require Tier I applications.

(1) Permit for flow-through impoundment(s) as part of the pretreatment process.

(2) Permit renewal for a facility with an expiring permit for industrial non-discharging impoundment or industrial septic tank system.

(3) Permit renewal for an expiring permit with minor or no change(s) for land application of sludge and/or wastewater for same site.
(4) New, modified or renewed authorization under a general permit.
(5) Approval of new pretreatment program.
(6) Closure plan approval.
(7) Certifications issued pursuant to Section 401 of the Clean Water Act.
(8) Approval of exemption for water line extensions.
(9) Approval of exemption for water distribution and wastewater collection systems.
(10) Approval for alternative individual on-site sewage treatment systems.
(11) Approval for alternative small public on-site sewage treatment systems.
(12) Residential development approval.
(13) Transfer of discharge permit.
(14) Minor modification of discharge permit.
(15) Modification of an individual municipal permit for land application of biosolids and/or wastewater.
(16) Modification of or addition to a municipal wastewater treatment system (including sewer line extensions).
(17) Modification of or addition to a public water supply treatment and/or distribution system (including line extensions).
(18) Modification of industrial non-discharging impoundment and/or industrial septic tank system permit.
(19) Modification of an approved pretreatment program.
(20) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.
(21) New, modified or renewed individual categorical or significant industrial user pretreatment permit.

252:4-7-74. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

(1) Permit to construct a new municipal wastewater treatment, and/or collection system, excluding line extensions.
(2) Permit to construct a new public water supply treatment and/or distribution system, excluding water line extensions.
(3) New discharge permit for minor facility.
(4) Individual storm water permit.
(5) New permit for industrial non-discharging impoundment or industrial septic tank.
(6) New individual permit for land application of sludge, biosolids and/or wastewater.
(7) Permit renewal for a facility with expiring discharge permit.
(8) Permit renewal for a facility with expiring individual storm water discharge permit.

(9) Variance including thermal components of effluent limitations for an individual discharge permit.
(10) Major modification of discharge permit.
(11) Modification of an individual industrial permit for land application of sludge and/or wastewater.
(12) New, modified or renewed general permit.

252:4-7-75. Water quality applications - Tier III

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

252:4-7-76. UIC applications-Tier I

The following underground injection control authorizations require Tier I applications.

(1) Minor modification of a permit for Class I, III, and V wells in accordance with 40 CFR § 144.41.
(2) Modification of an approved closure and/or post-closure plan for a Class I hazardous waste injection well.
(3) Modification of an approved plugging and abandonment plan for Class I nonhazardous and Class III injection wells.
(4) Modification of an approved corrective action plan for a Class I injection well.
(5) Emergency permit in accordance with 40 CFR § 144.34.
(6) Minor administrative modification of all permits and other authorizations.

252:4-7-77. UIC applications - Tier II

The following underground injection control authorizations require Tier II applications.

(1) On-site Class I nonhazardous waste injection well permit.
(2) Class III and V injection well permits except Class V permits issued under Tier III.
(3) Modification and/or renewal of all DEQ-issued underground injection control well permits.
(4) Work plan authorizations for the construction and testing of geological reconnaissance test wells intended to demonstrate compliance with UIC siting criteria.

252:4-7-78. UIC applications - Tier III

The following underground injection control authorizations require Tier III applications.

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

SUBCHAPTER 9. ADMINISTRATIVE PROCEEDINGS

PART 1. ENFORCEMENT

Section

PART 3. INDIVIDUAL PROCEEDINGS

PART 5. AIR QUALITY ADVISORY COUNCIL HEARINGS

PART 1. ENFORCEMENT

252:4-9-1. Notice of Violation ("NOV")

Unless otherwise provided by the particular enabling legislation, administrative enforcement proceedings shall begin with a written notice of violation (NOV) being served upon the Respondent. The NOV shall set forth Respondent's action or omission and the specific provision of the Code, rules, license or permit alleged to be violated. An NOV may be a letter, inspection sheet, consent order or final order, if it meets the requirements of this Section.

252:4-9-2. Administrative compliance orders

(a) **When issued.** The Executive Director, upon the request of a Division, may issue an administrative order requiring compliance, assessing penalties for past violations and specifying penalties for continuing noncompliance.

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

Order shall advise the Respondent that it shall become final unless an administrative hearing is requested in writing in accordance with 252:4-9-32 within fifteen (15) days of service of the Order.
(c) **Service.** An Order shall be served in accordance with 252:4-9-35.
(d) **Order following hearing.** Based on the hearing and record, a proposed order will be sustained, modified, or dismissed by the Executive Director. If the hearing process extends beyond any compliance deadline specified in the Order, fines specified in the Order for violations of the Order will continue to accrue during the hearing process unless the Administrative Law Judge stays the penalty upon request for good cause shown.

252:4-9-3. Determining penalty

In determining the amount of penalty specified in an administrative penalty order, the DEQ may consider the following:

(1) the factors specified by 27A O.S. § 2-3-502(K)(2); and

(2) the extent and severity of environmental degradation or adverse health effects caused by the violation.

252:4-9-4. Assessment orders

(a) **Issuance of assessment order.** Any time the DEQ believes the Order has been violated, the Executive Director may issue an order assessing an administrative penalty pursuant to 27A O.S. § 2-3-502. In determining an appropriate administrative penalty, the Executive Director may consider Respondent's efforts to comply after being served with the Order.
(b) **Content of assessment orders.** An assessment order must state the nature and period of the violation and must determine the amount of the fine. The fine is due and payable immediately upon issuance of the assessment order, unless a hearing is requested within seven (7) days. See also 27A O.S. § 2-3-502.
(c) **Continuing violations.** If the DEQ believes that violations of the administrative compliance or penalty order continue after the issuance of an assessment order, the Executive Director may issue additional assessment orders covering periods of violation since the period covered by the issuance of a previous assessment order.

252:4-9-5. Considerations for self-reporting of noncompliance

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

(1) The regulated entity voluntarily, promptly and fully discloses the apparent failure to comply with applicable state environmental statutes or rules to the appropriate DEQ Division in writing before the Division learns of it or is likely to learn of it imminently;

(2) The failure is not deliberate or intentional;

(3) The failure does not indicate a lack or reasonable question of the basic good faith attempt to understand and comply with applicable state environmental statutes or rules through environmental management systems appropriate to the size and nature of the activities of the regulated entity;
(4) The regulated entity, upon discovery, took or began to take immediate and reasonable action to correct the failure (i.e., to cease any continuing or repeated violation);
(5) The regulated entity has taken, or has agreed in writing with the appropriate Division to take, remedial action as may be necessary to prevent recurrence of such failure. Any action the regulated entity agrees to take must be completed;
(6) The regulated entity has addressed, or has agreed in writing with the appropriate Division to address, any environmental impacts of the failure in an acceptable manner;
(7) The regulated entity has not realized and will not realize a demonstrable and significant economic or competitive advantage as a result of non-compliance; and
(8) The regulated entity cooperates with the DEQ as the DEQ performs its duties and provides such information as the DEQ reasonably requests to confirm the entity's compliance with these conditions.

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

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

(d) **Applicability.** This section applies to all enforcement cases arising from violations discovered by or brought to the attention of the DEQ after June 2, 1997.

PART 3. INDIVIDUAL PROCEEDINGS

252:4-9-31. Individual proceedings filed by DEQ

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

(b) **Content.** Each order shall name the Respondent(s), contain a brief statement of the facts, refer to the specific provision of the Code, rules, license or permit alleged to be violated, state the relief requested and include notice to the Respondent(s) of the opportunity to request an administrative hearing.

(c) **Style.** The style of the case shall be in accordance with the format in Appendix D.

252:4-9-32. Individual proceedings filed by others

(a) **Request for administrative hearing in response to Order.** A request for an individual proceeding initiated by the Respondent named in an Order shall be in writing and shall specifically set forth the Respondent's objections to the Order.

(b) **Administrative hearing on Tier III permits.** An individual proceeding on a proposed permit for a Tier III application may be requested in accordance with 27A O.S. § 2-14-304(C)(1).

(c) **Style.** The style of the case shall be in accordance with the format in Appendix D.

(d) **Content.** All requests for individual proceedings must be in writing, contain a brief statement of the basis of the request and the name and address of each requester, and be signed by the requester or an authorized representative.

(e) **Declaratory ruling.** Any person who alleges that any DEQ rule or order interferes with or impairs, or threatens to interfere with or impair, his/her legal rights may petition the DEQ, formally requesting a declaratory ruling on the applicability of the rule or order. After the petition is filed, the DEQ shall provide a copy to the Board.

(1) **Form and content of petition.** All petitions shall be in writing and filed with the Administrative Law Clerk. The petition shall include the information and follow the format in Appendix B.

(2) **Determination.** Petitions for declaratory rulings shall be decided by the DEQ. Rulings shall state the findings of fact and conclusions of law upon which they are based. If the DEQ refuses to make a ruling or begin an individual proceeding within 30 days, the petition shall be deemed to have been denied. If the DEQ begins an individual proceeding on the petition, it shall offer an opportunity for a hearing to the petitioner. After the DEQ issues a ruling or the Executive Director issues a final order, the DEQ shall provide a copy of the ruling or final order to the Board at its next available meeting.

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

252:4-9-33. Scheduling and notice of hearings

The DEQ shall schedule an administrative hearing after receipt of a proper and timely request. The Administrative Law Clerk shall notify the parties of the date, time and place of the hearing. Notice shall satisfy the requirements of the APA and shall be made at least fifteen (15) days prior to the hearing unless otherwise provided by law or agreed by the parties.

252:4-9-34. Administrative Law Judges and Clerks

(a) **Administrative Law Judge.** The Executive Director may designate an Administrative Law Judge for any administrative hearing in accordance with 27A O.S. § 2-3-103. Administrative Law Judges shall not have had prior involvement in the matter

other than as an Administrative Law Judge, unless the parties waive this requirement.

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

(c) **Authority.** Administrative Law Judges have complete authority to conduct individual proceedings and may take any action consistent with the APA and the rules of this subchapter. Administrative Law Judges may:

(1) arrange and issue notice of the date, time and place of hearings and conferences;

(2) establish the methods and procedures to be used in the presentation of the evidence;

(3) hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(4) administer oaths and affirmations;

(5) regulate the course of the hearing and govern the conduct of participants;

(6) examine witnesses;

(7) rule on, admit, exclude and limit evidence, at or before hearings;

(8) establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions, and hold the record open for such purposes;

(9) rule on motions and pending matters;

(10) divide the hearing into stages or join claims of parties whenever the number of parties is large or the issues are numerous and complex;

(11) restrict attendance by persons not parties to the hearing in appropriate cases;

(12) admit attorneys from other jurisdictions to practice law before the DEQ in accordance with Rules of the Oklahoma Bar Association, 5 O.S. Chapter 1, Appendix 1, Article II, § 5, and administer the oath required by 5 O.S. § 2.

(13) require briefs on any relevant issues;

(14) request proposed findings of fact, conclusions of law and a proposed order from all parties; and

(15) restrict testimony to the facts alleged in an assessment order.

(d) **Technical assistance.** At the request of the Administrative Law Judge, the Executive Director may designate a DEQ representative, who has had no assigned responsibilities related to the matter at issue, to serve as technical adviser to the Administrative Law Judge.

252:4-9-35. Service

(a) **Generally.** Service shall be made in accordance with the Oklahoma Pleading Code, 12 O.S. § 2001 *et seq.*, and 27A O.S. § 2-3-502 unless otherwise allowed by this section.

(b) **By the DEQ.** Where the DEQ is serving notice, personal service may be made by a person designated by the Executive

Director for that purpose.
(c) **By certified mail.** Service by certified mail shall be effective on the date of receipt or, if refused, on the date of refusal by the Respondent.

252:4-9-36. Responsive pleading

A Respondent may file, and the Administrative Law Judge may direct a Respondent to file, a responsive pleading to the initiated action.

252:4-9-37. Prehearing conferences

(a) **General.** The Administrative Law Judge may schedule and conduct prehearing conferences as necessary. The Administrative Law Clerk shall notify the parties of the scheduling of a prehearing conference. The Administrative Law Judge may hold a prehearing conference by telephone. On request, prehearing conferences shall be on the record.
(b) **Subjects.** Prehearing conferences may address:
(1) identification and simplification of issues, including the elimination of frivolous claims or defenses;
(2) amendments to the pleadings;
(3) the plan and schedule of discovery and limitations to be placed thereon;
(4) identification of admissions of fact to avoid unnecessary proof and cumulative evidence;
(5) the identification of witnesses and substance of testimony, exhibits, and documents;
(6) the use of prehearing briefs and prefiled testimony in the form of sworn affidavits;
(7) settlement of all or some of the issues before the hearing;
(8) adoption of special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, novel or difficult legal questions, or evidence problems;
(9) scheduling; and
(10) such other matters as may aid disposition.
(c) **Schedules and orders.** A prehearing conference may result in a scheduling or other prehearing order. Subsequent changes to any prehearing or scheduling order may be made by the Administrative Law Judge by modifying the order upon good cause shown.

252:4-9-38. Discovery

Discovery shall be conducted in accordance with the Oklahoma Discovery Code (12 O.S. § 3224 *et seq.*) unless otherwise ordered by the Administrative Law Judge for good cause.

252:4-9-39. Subpoenas

(a) **Issuance.** Subpoenas for the attendance of witnesses, the furnishing of information required by the Administrative Law Judge and the production of evidence shall be issued in accordance with the APA and the Oklahoma Pleading Code.
(b) **Failure to obey.** The Executive Director may seek an

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

252:4-9-40. Record

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

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

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

(d) **Contents.** The administrative record of all individual proceedings shall contain documents required by the APA, 75 O.S. § 309. An individual proceeding on a proposed permit for a Tier III application shall also include the following:

(1) the permit application on file with the DEQ, as amended;
(2) all written comments received during the public comment period;
(3) the tape or transcript of the public meeting;
(4) documents resulting from the DEQ's review of the permit application and public comments;
(5) the draft permit, fact sheet and response to comments, if any, issued by the DEQ; and
(6) all published notices.

252:4-9-41. Motions

(a) **Filing.** All requests for action in a matter already before the DEQ shall be made in a motion, signed by the party or his/her attorney, and filed with the Administrative Law Clerk.

(b) **Service.** Copies of motions shall be served on other parties in accordance with 252:4-9-35.

(c) **Response.** Within fifteen (15) days after service of any written motion, any party to the proceedings may file a response to the motion. The time for response may be extended or shortened by the Administrative Law Judge for good cause shown.

252:4-9-42. Continuances

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

252:4-9-43. Summary judgment

The Administrative Law Judge may grant a motion for summary judgment, subject to 252:4-9-46.

252:4-9-44. Default

(a) **Generally.** Any Respondent who fails to appear, after receipt of notice, may be determined to have waived the right to appear and present a defense. A Final Order may be issued by the Executive Director granting the relief requested by default.

(b) **Tier III application.** The Executive Director may enter a default judgment against any party who fails to participate in an administrative hearing on a proposed permit for a Tier III application.

252:4-9-45. Withdrawal and dismissal

Parties may withdraw from a case and cases may be dismissed by the Administrative Law Judge in accordance with the Oklahoma Code of Civil Procedure.

252:4-9-46. Orders in administrative hearings

Proposed and final orders in administrative hearings shall be prepared and issued in accordance with the APA.

PART 5. AIR QUALITY ADVISORY COUNCIL HEARINGS

252:4-9-51. In general

The Air Quality Advisory Council is authorized to conduct individual proceedings on requests for a variance from the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 through 2-5-118, or the Air Pollution Control Rules, OAC 252:100.

252:4-9-52. Individual proceedings

Individual proceedings before the Air Quality Advisory Council will be conducted in accordance with the requirements in Part 3 of this Subchapter. The Council may designate an Administrative Law Judge for individual proceedings to be held before the Council.

252:4-9-53. Variance

It is within the discretion of the Air Quality Advisory Council to decide whether or not an individual proceeding is necessary in granting a variance.

252:4-9-54. State implementation plan hearings

A state implementation plan (SIP) hearing may be initiated by an applicant for an alternative emissions reduction authorization under 252:100-11 by filing a request for a SIP hearing with the Administrative Law Clerk. A request that the hearing be conducted by the Air Quality Advisory Council must be included in the request for hearing. Additional requirements for a SIP hearing request are contained in 252:100-11-6.

SUBCHAPTER 11. COMPLAINT PROCESSING

Section

252:4-11-1. Purpose

This Subchapter establishes procedures used to process environmental complaints received from the public.

252:4-11-2. Receipt of complaints

(a) Complaints may be made by any of the following:
(1) the toll-free hotline;
(2) mail, including electronic transmission;
(3) telephone to any DEQ telephone number; or
(4) in person at any office of the DEQ.

(b) Complainants may request to be anonymous or to remain confidential.

252:4-11-3. Investigation

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

252:4-11-4. Notification

(a) **Potential actions.** Within two (2) working days of receipt of a complaint, the DEQ shall notify the complainant of the potential actions which may occur to resolve the complaint.

(b) **Course of action.** Within seven (7) working days of the receipt of a complaint, the DEQ shall notify the complainant, in writing, of the action to be taken by the DEQ.

(c) **Final letter.** Within seven (7) working days of determining that there is no longer a DEQ violation, the DEQ shall notify the complainant in writing.

(d) **Enforcement.** Complainants shall be notified of enforcement actions taken in response to a complaint in accordance with 27A O.S. § 2-3-503.

252:4-11-5. Referral of complaints

(a) **To appropriate agency.** If the DEQ receives a complaint for which DEQ has no authority and which clearly falls within the jurisdiction of another governmental entity, the complaint shall be referred to that governmental entity.
(b) **To mediation.** DEQ may notify a complainant and persons named in the complaint (Respondents), by mail, of the opportunity to mediate the complaint in accordance with 27A O.S. § 2-3-104.

252:4-11-6. False complaint
When the DEQ has a reasonable suspicion that a complainant has filed a false complaint, the Executive Director may refer all investigation materials, including but not limited to, reports, notes, initial data collection forms and letters to the District Attorney's office in the area where the complainant resides.

SUBCHAPTER 13. ENVIRONMENTAL EDUCATION GRANTS

Section

252:4-13-1. Authority and eligibility
(a) **Authority.** This subchapter is adopted pursuant to 75 O.S. § 302, 27A O.S. § 2-2-101, 47 O.S. § 1104.2 and Executive Order 98-37.
(b) **Eligibility.** Oklahoma teachers and youth group leaders are eligible to apply for environmental education grants provided by the DEQ.

252:4-13-2. Amount of grants
The DEQ will award the following amounts to successful applicants:
(1) Up to and including $ 200.00 for field trips;
(2) Up to and including $ 500.00 for environmental education projects; and
(3) Up to and including $1000.00 for outdoor classrooms.

252:4-13-3. Criteria
The following will be considered by the DEQ in determining grant awards:
(1) Project proposed, including how the project accomplishes the following factors:
(A) Promotes enthusiasm to learn more about the

environment;
(B) Fits in the school curriculum or youth group program;
(C) Involves community partnerships and/or outreach, if applicable.
(2) Number of students/youth participating;
(3) Grade level of students/youth; and
(4) Geographic location.

252:4-13-4. Application

(a) **Complete application.** A complete application consists of a cover page, a letter of commitment, a summary of the project, a projected timeline, a proposed budget and a procedure for evaluation of the project.

(b) **Attachments.** Photographs, clippings, diagrams and other graphic materials, not to exceed five (5) pages double sided, may be attached to the application.

(c) **Document submission.** An original and two (2) copies, double sided, of the application and attachments must be submitted to the DEQ, date-stamped or postmarked on or before the published deadline. The DEQ will not accept applications submitted by telecopy/facsimile or e-mail.

252:4-13-5. Cover page

The cover page must include the following information:
(1) Title of the project;
(2) Name of contact person, position held and relationship to project;
(3) Name of school or youth group organization;
(4) Grade level(s) and number of youth targeted;
(5) Federal Employer Identification number (tax ID#);
(6) Street address;
(7) Mailing address, if different from street address;
(8) E-mail address, if any;
(9) Daytime and evening telephone numbers; and
(10) Telecopy/facsimile number, if any.

252:4-13-6. Letter of commitment

The grant application must be accompanied by a letter from the applicant's principal or supervisor stating the organization's support for the performance of the grant objectives.

252:4-13-7. Summary of project

The applicant must submit a project summary, with a maximum length of one page, double sided. The project summary shall include the following:
(1) **Synopsis.** Provide one paragraph summarizing the project;
(2) **Description.** Give a clear concise description of the proposed project, indicating how the project promotes enthusiasm to learn more about the environment, fits in the school curriculum or youth group program and involves community partnerships and/or outreach, if applicable;
(3) **Goals and objectives.** Clearly define realistic goals and objectives. Include information outlining where these goals address specific needs.

(4) **Implementation.** Describe how the project will be implemented and whether it emphasizes a hands-on learning approach. Include the project's potential for broad implementation.

252:4-13-8. Timeline

The applicant must present target dates for project objectives.

252:4-13-9. Budget

The applicant must provide an itemized budget with specific project expenditures of grant funds.

252:4-13-10. Evaluation procedure

The applicant must provide a description of the methods to be used to measure project effectiveness, including how the evaluation method will improve the project's strength. The applicant must indicate in the evaluation method how the project will be continued after grant funds are expended.

252:4-13-11. Final written report

Applicants who are awarded environmental education grants under this subchapter shall submit a final written report, outlining accomplishments of the grant objectives and expenditures on or before December 15 following the award.

252:4-13-12. Shared strategies

Strategies from applicants who are awarded environmental education grants under this subchapter will become the property of the Environmental Quality Education Committee and may be shared with other interested environmental educators.

SUBCHAPTER 15. LOCAL PROJECT FUNDING

Section

252:4-15-1. Purpose, authority and applicability

(a) **Purpose.** The purpose of this Subchapter is to implement Executive Order 98-37, mandating state agencies to establish criteria for local project funding contracts.
(b) **Authority.** This subchapter is adopted pursuant to 75 O.S. § 302, 27A O.S. § 2-2-101 and Executive Order 98-37.
(c) **Applicability.** The rules in this Subchapter apply to any private entity, political subdivision, and unit of local government, including municipal and county governments and school districts.

252:4-15-2. Criteria

(a) The DEQ will consider the following criteria in determining funding priorities for local projects:

(1) Criteria established by relevant statutory authority; and
(2) Criteria established by rules adopted for the specific Division pursuant to relevant statutory authority.

(b) If relevant statutory authority and program-specific rules do not establish criteria, the DEQ will consider the following in determining funding priorities for local projects:
(1) Potential of the project to effectively promote environmental health and safety or environmental education and awareness;
(2) Potential to enhance related programs or efforts by the recipient;
(3) Number of persons benefitted; and
(4) Equitable geographic distribution.

252:4-15-3. Proposals

(a) The applicant must submit a proposal in accordance with the rules implementing the statutory program and/or forms provided by the DEQ.

(b) Proposals must demonstrate that the proposed project will implement and be consistent with relevant statutes and rules of the specific program area.

252:4-15-4. Funding

Within the priority criteria, funds shall be granted on a first-come first-served basis until funds are depleted.

APPENDIX A. PETITION FOR RULEMAKING
BEFORE THE ENVIRONMENTAL QUALITY BOARD

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

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

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

1. Nature of request:
( ) Adoption of new rule(s)
( ) Amendment of existing rule(s)
( ) Repeal of existing rule(s)
Identified as Rule Number(s):
_____
(OAC number if known)

2. Attach a brief statement of the issues raised by the rule(s) which cause such a request to be made, a statement of your personal interest in the ruling, and how the proposed rulemaking would affect those interests and would affect others.

3. If this request has been discussed with the Department of Environmental Quality, please indicate the name of the Division and employee consulted; otherwise, state "n/a."

_____

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

_____

5. Attachment(s): ( ) suggested language ( ) further explanation

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

or Name of Individual (print):
_____

Signature: _____

Address: _____
_____

Phone: _____

APPENDIX B. PETITION FOR DECLARATORY RULING

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY

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

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

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

1. Rule Number(s): _____
(OAC number if known)

2. Attach a brief statement of the issues raised by the rule(s) which cause such a request to be made and a statement of your personal interest in the ruling.

3. If this request has been discussed with the Department of Environmental Quality, please indicate the name of the Division and employee consulted; otherwise, state "n/a."

_____

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

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

or Name of Individual (print):_____

Signature: _____

Address: _____

_____

Phone: _____

APPENDIX C. PERMITTING PROCESS SUMMARY

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

APPENDIX D. STYLE OF THE CASE IN AN INDIVIDUAL PROCEEDING

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
NAME OF DIVISION

IN THE MATTER OF:	)	
	)	
	)	
	)	Case No.
	)	
	)	

NAME OF DOCUMENT