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**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

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SUBCHAPTER 1. GENERAL PROVISIONS

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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 permission of the record's custodian.

(c) **Reproduction.**

(1) **By DEQ.** The DEQ may limit the number of copies made and the time and personnel available for

reproduction of 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.

(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.** The fee for copying letter or legal sized paper is \$0.25 per page.

(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.

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

252:4-3-2. Public forums

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

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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

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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 or 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)]

(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 (Okla. 1993).

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.

(3) **Renewals.** Renewals of operating permits.

(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(c)(8)(B)(i).

(2) Burn approvals.

(3) Plant-wide emission plan approval under 252:100-37-25(b) or 252:100-39-46(j).

(4) Administrative amendments of all air quality permits and other authorizations.

(5) Alternative emissions reduction authorizations. (Also subject to state implementation plan revision procedures in 252:100-11.)

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).

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) Re-permitting of facility with an expiring permit for industrial non-discharging impoundment or septic tank system.
- (3) Re-permitting of expiring permit with minor or no change(s) for land application of sludge and/or wastewater for same site.
- (4) New, modified or renewed authorization under a general permit, including but not limited to general permits for stormwater, underground storage tanks and petroleum storage and treatment facilities.
- (5) Approval of new pretreatment program.
- (6) Closure plan approval.
- (7) Dredge and fill certification.
- (8) Approval of exemption for water line extensions.
- (9) Approval of exemption for water distribution and wastewater collection systems.
- (10) Approval for alternative individual on-site sewage disposal systems.
- (11) Approval for alternative small public on-site sewage disposal systems.
- (12) Residential development approval.

- (13) Transfer of discharge permit.
- (14) Minor modification of discharge permit.
- (15) Minor modification of permit for land application of sludge and/or wastewater.
- (16) Modification of or addition to a municipal wastewater treatment system (including sewer line extensions).
- (17) Modification of or addition to a public water supply treatment and/or distribution system.
- (18) Modification of non-discharging impoundment and/or septic tank system permit.
- (19) Modification of an approved pretreatment program.
- (20) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.

252:4-7-74. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

- (1) Permit for municipal wastewater treatment system.
- (2) Permit for public water supply system.
- (3) Discharge permit for minor facility.
- (4) Individual storm water permit.
- (5) Permit for industrial non-discharging impoundment or septic tank.
- (6) Permit for land application of sludge and/or wastewater at new site system.
- (7) Re-permitting of a facility with expiring discharge permit.
- (8) Re-permitting of facility with expiring individual storm water discharge permit.
- (9) Re-permitting with major change(s) from expiring permit for land application of sludge and/or wastewater for the same site.
- (10) Variance including thermal components of effluent limitations for an individual discharge permit.
- (11) Major modification of discharge permit.
- (12) Major modification of permit for land application of sludge and/or wastewater.
- (13) New, modified or renewed general permit.

252:4-7-75. 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

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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 enforcement matters and requests for a variance from the 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. To be heard by the Council, the request for hearing in response to an Order must include a request that the Council conduct the hearing. The Council may designate an Administrative Law Judge for individual proceedings to be held before the Council. The Council or its designee may perform Administrative Law Judge functions described in Part 3 of this Subchapter.

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
- 252:4-11-2. Receipt of complaints
- 252:4-11-3. Investigation
- 252:4-11-4. Notification
- 252:4-11-5. Referral of complaints
- 252:4-11-6. False complaint

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

252:4-13-2. Amount of grants

252:4-13-3. Criteria

252:4-13-4. Application

252:4-13-5. Cover page

252:4-13-6. Letter of commitment

252:4-13-7. Summary of project

252:4-13-8. Timeline

252:4-13-9. Budget

252:4-13-10. Evaluation procedure

252:4-13-11. Final written report

252:4-13-12. Shared strategies

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.

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.

SUBCHAPTER 15. LOCAL PROJECT FUNDING

Section

- 252:4-15-1. Purpose, authority and applicability
- 252:4-15-2. Criteria
- 252:4-15-3. Proposals
- 252:4-15-4. Funding

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

**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