

US EPA ARCHIVE DOCUMENT

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, 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 the Administrative Procedures Act,¹ the Code² 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 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. Laws 1994, c. 373, § 11, eff. July 1, 1996; Laws 1995, c. 285, § 19, eff. July 1, 1996.

¹ Title 75, § 250 et seq.

² Title 27A, § 2-1-101 et seq.

§ 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

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are limited to activities under the Tier I and Tier II classifications.
Laws 1997, c. 200, § 1, eff. July 1, 1997.

PART 4. MISCELLANEOUS

§ 2-14-401. Report to legislature

By March 1, 1996, the Department shall prepare and submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives which summarizes the permitting processes and components established by the Board through rulemaking pursuant to the Oklahoma Uniform Environmental Permitting Act¹ and any legislative amendments determined by the Department to be necessary to accomplish the objectives of such act.

Laws 1994, c. 373, § 12, eff. July 1, 1994.

¹ Title 27A, § 2-14-101 et seq.

ARTICLE XV. OKLAHOMA BROWNFIELDS VOLUNTARY REDEVELOPMENT ACT

§ 2-15-101. Short title

Sections 1 through 10 of this act¹ shall be known and may be cited as the "Oklahoma Brownfields Voluntary Redevelopment Act".

Laws 1996, c. 356, § 1, emerg. eff. June 14, 1996.

¹ Title 27A, §§ 2-15-101 to 2-15-110.

§ 2-15-102. Purpose of act—Construction

A. The Oklahoma Legislature hereby declares that the purpose of the Oklahoma Brownfields Voluntary Redevelopment Act¹ is to:

1. Provide for the establishment of a voluntary program by the Department of Environmental Quality;
2. Foster the voluntary redevelopment and reuse of brownfields by limiting the liability of property owners, lenders, lessees, and successors and assigns from administrative penalties assessed by the Department and civil liability with regard to the remedial actions taken by the applicant for environmental contamination caused by regulated substances, as required by a consent order, if the remedial action is not performed in a reckless or negligent manner; and
3. Provide for a risk-based system for all applicable sites based on the proposed use of the site.

B. The Oklahoma Brownfields Voluntary Redevelopment Act shall not be construed to authorize or encourage any person or other legal entity to cause or increase environmental contamination, to avoid compliance with state and federal laws and regulations concerning environmental contamination or to in any manner escape responsibility for maintaining environmentally sound operations.

Laws 1996, c. 356, § 2, emerg. eff. June 14, 1996.

¹ Title 27A, § 2-15-101 et seq.

§ 2-15-103. Definitions

For purposes of the Oklahoma Brownfields Voluntary Redevelopment Act:¹

1. "Applicant" means any person who or entity which:

- a. has acquired the ownership, operation, management, or control of a site through foreclosure or under the terms of a bona fide security interest in a mortgage or lien on, or an extension of credit for, a brownfields site and which forecloses on or receives an assignment or deed in lieu of foreclosure or other indicia of ownership and thereby becomes the owner of a brownfield,
- b. possesses a written expression of an interest to purchase a brownfield and the ability to implement a brownfield redevelopment proposal,
- c. is the legal owner in fee simple of a brownfield,
- d. is a tenant on or lessee of the brownfield site, or
- e. is undertaking the remediation of a brownfield site;

2. "Brownfield" means an abandoned, idled or underused industrial or commercial facility or other real property at which expansion or redevelopment of the real property is complicated by environmental contamination caused by regulated substances;

3. "Certificate of Completion" means a document issued by the Department of Environmental Quality pursuant to Section 6 of this act² upon a determination that an applicant has successfully completed agency-approved risk-based remediation;

4. "Certificate of No Action Necessary" means a document issued by the Department of Environmental Quality pursuant to Section 6 of this act upon a determination that no remediation is deemed necessary for the expansion or redevelopment of the property for a planned use;

5. "Consent order" means an order entered into by the Department of Environmental Quality and an applicant, binding an applicant and the Department to specified authorizations, activities, duties, obligations, responsibilities and other requirements;

6. "Demonstrated pattern of uncorrected noncompliance" means a history of noncompliance by the applicant with state or federal environmental laws or rules or regulations promulgated thereto, as evidenced by past operations clearly indicating a reckless disregard for the protection of human health and safety, or the environment;

7. "Land use disclosure" means the Certificate of Completion or the Certificate of No Action Necessary, issued by the Department of Environmental Quality, which is required to be filed in the office of the county