

US EPA ARCHIVE DOCUMENT

APPENDIX F

Oklahoma Uniform Environmental Permitting Act
[27A O.S. § 2-14-101, *et seq.*, as amended through June 2007]

§27A-2-14-101. Short title.

Sections 1 through 12 of this act shall be known and may be cited as the "Oklahoma Uniform Environmental Permitting Act". Added by Laws 1994, c. 373, § 1, eff. July 1, 1994.

§27A-2-14-102. Intent.

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

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

§27A-2-14-103. Definitions.

For the purposes of the Oklahoma Uniform Environmental Permitting Act:

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

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

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

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

- a. specific types of permits and other Department authorizations including certifications, registrations, licenses and plan approvals, and
- b. an approved variance from a promulgated rule; however, for existing facilities the Department may require additional notice and public participation opportunities for variances posing the potential for increased risk;

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

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

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

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

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

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

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

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

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

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

- a. the Tier II process except the notice of filing shall also include an opportunity for a process meeting,
- b. preparation of the Department's response to comments, and
- c. denial of application, or

- d. preparation of a proposed permit, published notice of availability of proposed permit and response to comments and of opportunity for an administrative permit hearing; and administrative permit hearing if any.

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

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

§27A-2-14-104. Applicability.

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

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

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

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

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

1. Enable applicants to follow a consistent application process;
2. Ensure that uniform public participation opportunities are offered;
3. Provide for uniformity in notices required of applicants; and
4. Set forth procedural application requirements.

B. Such rules shall:

1. Designate applications as Tier I, II or III. In making such determinations, the Board and each recommending Council shall consider information and data offered on:
 - a. the significance of the potential impact of the type of activity on the environment,
 - b. the amount, volume and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted or land applied,
 - c. the degree of public concern traditionally connected with the type of activity,
 - d. the federal classification, if any, for such proposed activity, operation or type of site or

facility, and

e. any other factors relevant to such determinations;

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

C. Such rules shall for each tier:

1. Set forth uniform procedures for filing an application;

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

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

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

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

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

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

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

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

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

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

3. Consider timely and relevant comments received;

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

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

6. Consolidate processes related to multiple, pending

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

7. Otherwise exercise all incidental powers as necessary and proper to implement the provisions of the Oklahoma Uniform Environmental Permitting Act and rules promulgated thereunder. Added by Laws 1994, c. 373, § 6, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 15, eff. July 1, 1996.

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

§27A-2-14-301. Notice requirements.

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

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

C. The provisions of this section shall not stay the Department's review of the application. Added by Laws 1994, c. 373, § 8, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 16, eff. July 1, 1996.

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

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

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

2. Notice of the draft denial or draft permit shall be published as legal notice in one newspaper local to the proposed new site or existing facility. The notice shall identify places

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

B. Upon the publication of notice of a draft permit, the applicant shall make the draft permit and the application, except for proprietary provisions otherwise protected by law, available for public review at a location in the county where the proposed new site or existing facility is located. Added by Laws 1994, c. 373, § 9, eff. July 1, 1996. Amended by Laws 1995, c. 285, § 17, eff. July 1, 1996.

§27A-2-14-303. Public meeting - Procedure.

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

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

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

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

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

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

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

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

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

A. For draft permits or draft denials for Tier II

applications on which no comment or public meeting request was timely received and on which no public meeting was held, the final permit shall be issued or denied.

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

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

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

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

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

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

D. When an administrative hearing is timely requested on a proposed permit in accordance with subsection C of this section, all timely requests shall be combined in a single hearing. The

hearing shall be a quasi-judicial proceeding and shall be conducted by an Administrative Law Judge in accordance with Article 2 of the Administrative Procedures Act, the Code and rules promulgated by the Environmental Quality Board.

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

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

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

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

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

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

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

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

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

§27A-2-14-305. General permits.

For common and routine permit applications, the Department of Environmental Quality may expedite the permitting process by issuing permits of general applicability, hereafter identified as "general permits". General permits shall be subject to all the Tier II administrative procedures including the public participation requirements. The administrative process for rulemaking shall not be applicable to the issuance of general permits. Individual applicants may obtain authorization through the Tier I process to conduct an activity covered by a general permit. General permits are limited to activities under the Tier I and Tier II classifications.

Added by Laws 1997, c. 200, § 1, eff. July 1, 1997.

§27A-2-14-401. Repealed by Laws 2002, c. 227, § 4, emerg. eff. May 9, 2002.