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# OKLAHOMA STATUTES ANNOTATED

## Title 27A. Environment and Natural Resources
## Title 28. Fees

# 2001 Cumulative Annual Pocket Part

*For Use In 2000–2001*

Replacing 2000 pocket part supplementing 1997 main volume

**Includes laws through the 2000 Second Regular and Chapter 9 of the First Extraordinary Sessions of the 47th Legislature**



WEST GROUP

# PREFACE

The 2001 Cumulative Annual Pocket Parts for use in 2000–2001 contain laws of a general and permanent nature through the 2000 Second Regular and Chapter 9 of the First Extraordinary Sessions of the 47th Legislature.

The following table shows the general effective date for measures enacted subsequent to 1951:

| Year | Legislature | Adjournment Date | Effective Date |
|---|---|---|---|
| 1953 | 24th | June 6, 1953 | September 5, 1953 |
| 1955 | 25th | May 27, 1955 | August 26, 1955 |
| 1957 | 26th | May 29, 1957 | August 28, 1957 |
| 1959 | 27th | July 3, 1959 | October 2, 1959 |
| 1961 | 28th | July 28, 1961 | October 27, 1961 |
| 1963 | 29th | June 14, 1963 | September 13, 1963 |
| 1965 | 30th | July 22, 1965 | October 21, 1965 |
| 1967 | 31st (1st Reg.) | May 11, 1967 | August 10, 1967 |
| 1968 | 31st (2nd Reg.) | May 3, 1968 | August 2, 1968 |
| 1969 | 32nd (1st Reg.) | April 29, 1969 | July 29, 1969 |
| 1970 | 32nd (2nd Reg.) | April 15, 1970 | July 15, 1970 |
| 1971 | 33rd (1st Reg.) | June 11, 1971 | September 10, 1971 |
| 1972 | 33rd (2nd Reg.) | March 31, 1972 | June 30, 1972 |
| 1973 | 34th (1st Reg.) | May 17, 1973 | August 16, 1973 |
| 1974 | 34th (2nd Reg.) | May 17, 1974 | August 16, 1974 |
| 1975 | 35th (1st Reg.) | June 6, 1975 | September 5, 1975 |
| 1976 | 35th (2nd Reg.) | June 9, 1976 | September 8, 1976 |
| 1976 | 35th (1st Ex.Sess.) | July 23, 1976 | Emergency act only |
| 1977 | 36th (1st Reg.) | June 8, 1977 | September 7, 1977 |
| 1977 | 36th (1st Ex.Sess.) | June 17, 1977 | September 16, 1977 |
| 1978 | 36th (2nd Reg.) | April 28, 1978 | July 28, 1978 |
| 1979 | 37th (1st Reg.) | July 2, 1979 | October 1, 1979 |
| 1980 | 37th (2nd Reg.) | June 16, 1980 | September 15, 1980 |
| 1980 | 37th (1st Ex.Sess.) | July 11, 1980 | Emergency acts only |
| 1981 | 38th (1st Reg.) | July 20, 1981 | October 19, 1981 |
| 1981 | 38th (1st Ex.Sess.) | Sept. 4, 1981 | Emergency acts only |
| 1982 | 38th (2nd Reg.) | July 12, 1982 | October 11, 1982 |
| 1983 | 39th (1st Reg.) | June 23, 1983 | September 22, 1983 |
| 1983 | 39th (1st Ex.Sess.) | Sept. 23, 1983 | Emergency act only |
| 1984 | 39th (2nd Reg.) | May 31, 1984 | August 30, 1984 |
| 1985 | 40th (1st Reg.) | July 19, 1985 | October 17, 1985 |
| 1986 | 40th (2nd Reg.) | June 12, 1986 | September 11, 1986 |
| 1987 | 41st (1st Reg.) | July 17, 1987 | October 16, 1987 |
| 1987 | 41st (1st Ex.Sess.) | July 7, 1987 | No legislation |
| 1987 | 41st (2nd Ex.Sess.) | July 14, 1987 | No legislation |
| 1988 | 41st (2nd Reg.) | July 13, 1988 | October 12, 1988 |
| 1988 | 41st (3rd Ex.Sess.) | Sept. 2, 1988 | Emergency acts only |
| 1989 | 42nd (1st Reg.) | May 26, 1989 | August 25, 1989 |

| Year | Legislature | Adjournment Date | Effective Date |
|---|---|---|---|
| 1989 | 42nd (1st Ex.Sess.) | May 2, 1990 | Emergency acts only |
| 1990 | 42nd (2nd Reg.) | May 25, 1990 | August 24, 1990 |
| 1991 | 43rd (1st Ex.Sess.) | Jan. 18, 1991 | Emergency acts only |
| 1991 | 43rd (1st Reg.) | May 31, 1991 | August 30, 1991 |
| 1992 | 43rd (2nd Reg.) | May 29, 1992 | August 28, 1992 |
| 1993 | 44th (1st Reg.) | May 28, 1993 | August 27, 1993 |
| 1994 | 44th (2nd Reg.) | May 27, 1994 | August 26, 1994 |
| 1994 | 44th (1st Ex.Sess.) | May 27, 1994 | No legislation |
| 1995 | 45th (1st Reg.) | May 26, 1995 | August 25, 1995 |
| 1995 | 45th (1st Ex.Sess.) | Expired Nov. 19, 1996 | No legislation |
| 1996 | 45th (2nd Reg.) | May 31, 1996 | August 30, 1996 |
| 1997 | 46th (1st Reg.) | May 30, 1997 | August 29, 1997 |
| 1998 | 46th (2nd Reg.) | May 29, 1998 | August 28, 1998 |
| 1998 | 46th (1st Ex.Sess.) | June 19, 1998 | Emergency acts only |
| 1999 | 47th (1st Reg.) | May 28, 1999 | August 27, 1999 |
| 1999 | 47th (1st Ex.Sess.) | In recess | Emergency acts only |
| 2000 | 47th (2nd Reg.) | May 26, 2000 | August 25, 2000 |
| 2000 | 47th (1st Ex.Sess.) | June 28, 2000 | Emergency acts only |

The laws are classified to Oklahoma Statutes Annotated. The classification is identical with the classification and arrangement in Oklahoma Statutes 1991 and its 2000 Supplement.

Under the same classification will be found the annotations from the decisions of State and Federal Courts construing the laws.

The annotations close with cases published as of August 5, 2000, reported in:

Pacific Reporter, Third Series, and Oklahoma Decisions ---------- 3 P.3d 867
Supreme Court Reporter ---------- 120 S.Ct. 2801
United States Reports ---------- 521 U.S. (part)
Lawyers' Edition, Second Series ---------- 147 L.Ed.2d (part)
Federal Reporter, Third Series ---------- 215 F.3d 1351
Federal Supplement, Second Series -------- 101 F.Supp.2d 838
Federal Rules Decisions ---------- 194 F.R.D. 261
Bankruptcy Reporter ---------- 250 B.R. 464
Federal Claims Reporter ---------- 46 Fed.Cl. 849
Oklahoma Opinions of the Attorney General ---------- Op.Atty.Gen. No. 00–40 (August 1, 2000)

Other Standard Reports

For subsequent judicial constructions, pending the publication of the next supplementary service, see the weekly Advance Sheets of the Reporters listed above.

Library References to Key Number Digests and to Corpus Juris Secundum are included as a convenient aid to research.

Later laws and annotations will be cumulated in subsequent pamphlets and annual pocket parts. For advance copies of laws enacted at subsequent sessions of the Legislature, see Oklahoma Session Law Service and OK–LEGIS.

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OK–LEGIS Legislative Service
OK–ORDERS Court Orders
OK–PUR Oklahoma Public Utility Reporter
OK–REGTRK Regulation Tracking
OK–RULES Court Rules
OK–ST Unannotated Statutes
OK–ST–ANN Annotated Statutes
OK–ST–IDX General Statute Index
OKCLR Oklahoma City Law Review
OKLR Oklahoma Law Review
OKTX–ADG Taxation Administrative Guidance
OKTX–ADMIN Taxation Decisions
TLSLJ Tulsa Law Journal
WLD–OK West's Oklahoma Legal Directory—Private Practice

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# ABBREVIATIONS

| | |
|---|---|
| A.L.R. | American Law Reports |
| A.L.R.2d | American Law Reports, Second Series |
| A.L.R.3d | American Law Reports, Third Series |
| A.L.R.4th | American Law Reports, Fourth Series |
| A.L.R.5th | American Law Reports, Fifth Series |
| A.L.R.Fed. | American Law Reports, Federal |
| App. | Appendix |
| Art. | Article |
| B.R. | Bankruptcy Reporter |
| c. | Chapter of Act |
| Ch. | Chapter |
| Comp.Laws | Compiled Laws |
| Comp.St. | Compiled Statutes |
| Const. | Constitution |
| C.J.S. | Corpus Juris Secundum |
| Eff. | Effective |
| Emerg. | Emergency |
| F.2d | Federal Reporter, Second Series |
| F.3d | Federal Reporter, Third Series |
| F.R.D. | Federal Rules Decision |
| F.Supp. | Federal Supplement |
| F.Supp.2d | Federal Supplement, Second Series |
| H.R. | House Resolution |
| H.C.R. | House Concurrent Resolution |
| H.J.R. | House Joint Resolution |
| ⇐ (Key Number) | State Digest and other units of the American Digest System |
| L.Ed. | Supreme Court Reports, Lawyers' Edition |
| L.Ed.2d | Supreme Court Reports, Lawyers' Ed., Second Series |
| Okl. | Oklahoma Supreme Court Reports |
| Okl.App. | Court of Appeals |
| Okl.Cr. | Court of Criminal Appeals |
| Okl.St.Ann. | Oklahoma Statutes Annotated |
| Okla.B.J. | Oklahoma Bar Journal |
| Okla.B.J.Supp.Q. | Oklahoma Bar Journal Supplement Quarterly |
| Okla.City U.L.Rev. | Oklahoma City University Law Review |
| Okla.L.Rev. | Oklahoma Law Review |
| O.S.Supp. | Oklahoma Statutes Supplement |
| Op.Atty.Gen. | Opinion of the Attorney General |
| P. | Pacific Reporter |
| P.2d | Pacific Reporter, Second Series |
| P.3d | Pacific Reporter, Third Series |
| p. | Page |
| par. | Paragraph |
| PEB | Permanent Editorial Board for the Uniform Commercial Code |
| R.L. | Revised Laws |
| Sec. | Section of Act |
| S.R. | Senate Resolution |
| S.C.R. | Senate Concurrent Resolution |
| S.J.R. | Senate Joint Resolution |
| St. | Statutes |
| Subs. | Subsection |

## ABBREVIATIONS

| | |
|---|---|
| Subd. | Subdivision |
| S.Ct. | Supreme Court Reporter |
| Tulsa L.J. | Tulsa Law Journal |
| U.L.A. | Uniform Laws Annotated |
| U.S.C.A. | United States Code Annotated |
| U.S. | United States Reports |

# CITE THIS BOOK

Thus: _____ Okl.St.Ann. § _____

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# OKLAHOMA STATUTES ANNOTATED

## TITLE 27A

## ENVIRONMENT AND NATURAL RESOURCES



## CHAPTER 1

## OKLAHOMA ENVIRONMENTAL QUALITY ACT

ARTICLE I. ENVIRONMENTAL OFFICES AND AGENCIES

PART 2. GENERAL DEFINITIONS, POWERS AND DUTIES



ARTICLE I. ENVIRONMENTAL OFFICES AND AGENCIES

PART 2. GENERAL DEFINITIONS, POWERS AND DUTIES

### § 1-1-201. Definitions

As used in the Oklahoma Environmental Quality Act:

1. "Clean Water Act" means the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;

2. "Discharge" includes but is not limited to a discharge of a pollutant, and means any addition of any pollutant to waters of the state from any point source;

3. "Environment" includes the air, land, wildlife, and waters of the state;

4. "Federal Safe Drinking Water Act" means the federal law at 42 U.S.C., Section 300 et seq., as amended;

5. "Groundwater protection agencies" include the:

a. Oklahoma Water Resources Board,
b. Oklahoma Corporation Commission,
c. State Department of Agriculture,
d. Department of Environmental Quality,
e. Conservation Commission, and
f. Department of Mines;

6. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined and includes but is not limited to agricultural storm water runoff and return flows from irrigated agriculture;

7. "N.P.D.E.S." or "National Pollutant Discharge Elimination System" means the system for the issuance of permits under the Federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;

8. "Point source" means any discernible, confined and discrete conveyance or outlet including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure container, rolling stock or vessel or other floating craft from which pollutants are or may be discharged into waters of the state. The term "point source" shall not include agricultural storm water runoff and return flows from irrigated agriculture;

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

10. "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

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

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

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

13. "State environmental agency" includes the:

a. Oklahoma Water Resources Board,
b. Oklahoma Corporation Commission,
c. State Department of Agriculture,
d. Oklahoma Conservation Commission,
e. Department of Wildlife Conservation,
f. Department of Mines, and
g. Department of Environmental Quality;

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

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

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

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

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

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

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

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

Amended by Laws 1999, c. 413, § 1, eff. Nov. 1, 1999.

## § 1-1-202. State environmental agencies—Powers, duties and responsibilities

A. Each state environmental agency shall:

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

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

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

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

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

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

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

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

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

3. Each Water Quality Standards Implementation Plan shall:

a. describe, generally, the processes, procedures and methodologies the state environmental agency will utilize to ensure that programs within its jurisdictional areas of environmental responsibility will comply with anti-degradation standards and lead to:

(1) maintenance of water quality where beneficial uses are supported,

(2) removal of threats to water quality where beneficial uses are in danger of not being supported, and

(3) restoration of water quality where beneficial uses are not being supported,

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

c. list and describe programs affecting water quality,

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

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

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

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

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

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

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

D. 1. Each state environmental agency with groundwater protection authority pursuant to Article III of the Oklahoma Environmental Quality Act shall be the groundwater protection agency for activities within its jurisdictional areas of environmental responsibility.

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

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

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

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

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

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

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

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

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

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

E. Each state environmental agency and each state agency with limited environmental responsibilities shall participate in the information management system developed by the Department of Environmental Quality, pursuant to Section 6 of this act, [1] with such information as the Department shall reasonably request.

F. In each even-numbered year, in cooperation with other state environmental agencies participating in the monitoring of water resources, the Oklahoma Water Resources Board shall provide a report on the status of water quality monitoring to the Legislature for review.

Amended by Laws 1999, c. 413, § 2, eff. Nov. 1, 1999.

[1] Title 27A, § 1-4-107.

## § 1-1-203. State environmental agencies—Establishment of rules for issuance or denial of permits or licenses and complaint resolution

A. Each state environmental agency and each state agency with limited environmental responsibilities, within its areas of environmental jurisdiction, shall promulgate, by

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

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

2. Complaints received by any state environmental agency or state agency with limited environmental responsibilities concerning a site or facility permitted by or which clearly falls within the jurisdiction of another state environmental agency or state agency with limited environmental responsibilities shall be immediately referred to the appropriate agency for investigation and resolution. Such investigation shall be made by the appropriate division and employees of the appropriate agency.

Amended by Laws 1999, c. 413, § 15, eff. Nov. 1, 1999.

## § 1-1-204. State environmental agencies—Complaint investigation and response process—Rules—False complaints

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

1. Of the resolution of the complaint; and

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

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

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

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

Amended by Laws 1999, c. 413, § 16, eff. Nov. 1, 1999.

## § 1-1-207. Kyoto Protocol—Implementation—Ratification by United States Senate

A. Neither the legislative or executive branch of the State of Oklahoma shall take actions to implement the Kyoto Protocol until such time as the Kyoto Protocol has been ratified by the United States Senate or otherwise enacted into law.

B. Nothing in this section shall:

1. Be construed to limit or to impede state or private participation in any ongoing voluntary initiatives to reduce greenhouse gases, including, but not limited to, the United States Environmental Protection Agency's Green Lights program, the United States Department of Energy's Climate Challenge program and similar state and federal initiatives relying on voluntary participation; provided, however, that such

participation does not involve any allocation or other distribution of greenhouse gas emission entitlements pursuant to or under color of the Kyoto Protocol; or

2. Prohibit industry from complying with the Oklahoma Clean Air Act as it exists or may be amended, or prohibit the Department of Environmental Quality from carrying out its duties under the Oklahoma Clean Air Act [1] as it exists or may be amended, or prohibit the Environmental Quality Board from promulgating rules to maintain or achieve compliance with the Federal Clean Air Act [2] as it exists or may be amended.

C. This section shall remain in full force and effect until repealed by the Legislature of the State of Oklahoma, or until such time as the Kyoto Protocol is ratified by the United States Senate.

Added by 1999 S.J.R. No. 6, § 1, emerg. eff. April 26, 1999.

[1] Title 27A, § 2-5-101 et seq.

[2] 42 U.S.C.A. § 7401 et seq.

## ARTICLE II. SECRETARY OF ENVIRONMENT

### § 1-2-101. Secretary of Environment or successor cabinet position—Powers, duties and responsibilities

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

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

2. The recipient of federal funds disbursed pursuant to the Federal Water Pollution Control Act, [1] provided the Oklahoma Water Resources Board is authorized to be the recipient of federal funds to administer the State Revolving Fund Program. The federal funds received by the Secretary of Environment shall be disbursed to each state environmental agency and state agency with limited environmental responsibilities based upon its statutory duties and responsibilities relating to environmental areas. Such funds shall be distributed to the appropriate state environmental agency or state agency with limited environmental responsibilities within thirty (30) days of its receipt by the Secretary or as otherwise provided by grant or contract terms without any assessment of administrative fees or costs. Disbursement of other federal environmental funds shall not be subject to this section;

3. Coordinate pollution control and complaint management activities of the state carried on by all state agencies to avoid duplication of effort including but not limited to the development of a common data base for water quality information with a uniform format for use by all state agencies and the public; and

4. Act on behalf of the public as trustee for natural resources under the federal Oil Pollution Act of 1990, [2] the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, [3] the federal Water Pollution Control Act and any other federal laws providing that a trustee for the natural resources is to be designated. The Secretary is authorized to make claims against federal funds, receive federal payments, establish and manage a revolving fund in relation to duties as the natural resources trustee consistent with the federal enabling acts and to coordinate, monitor and gather information from and enter into agreements with the appropriate state environmental agencies or state agencies with limited environmental responsibilities in carrying out the duties and functions of the trustee for the natural resources of this state.

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

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

2. The procedures shall provide for the documents to be submitted for formal public review with a published notice consistent with the Administrative Procedures Act,[4] providing for a thirty-day comment period and the preparation of a responsiveness summary by the applicable state environmental agency.

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

Amended by Laws 1999, c. 413, § 3, eff. Nov. 1, 1999.

[1] 33 U.S.C.A. § 1251 et seq.

[2] 33 U.S.C.A. § 2701 et seq.

[3] 42 U.S.C.A. § 9601 et seq.

[4] Title 75, § 250 et seq.

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

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

B. No person may discharge wastewaters from a point source within or outside of this state which will foreseeably enter a lake in this state which has been identified as eutrophic by the Oklahoma's Water Quality Standards without subjecting such wastewaters to the best available technology as identified in the federal Clean Water Act[1] for nitrogen and phosphorous. The Office of the Secretary of the Environment shall coordinate the monitoring of all lakes it identifies as eutrophic and notify by certified mail any person who discharges wastewater which enters such lakes in violation of this section of the provisions of this section and shall order such person to immediately cease and desist from any further violation of this section.

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

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

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

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

[1] 33 U.S.C.A. §1251 et seq.

ARTICLE III. JURISDICTION OF ENVIRONMENTAL AGENCIES

## § 1-3-101. State environmental agencies—Jurisdictional areas of environmental responsibilities

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

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

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

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

3. Technical lead agency for point source, non-point source and storm water pollution control programs funded under Section 106 of the federal Clean Water Act, [1] for areas within the Department's jurisdiction as provided in this subsection;

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

5. Waterworks and wastewater works operator certification;

6. Public and private water supplies;

7. Underground injection control pursuant to the federal Safe Drinking Water Act [2] and 40 CFR Parts 144 through 148, except for Class II injection wells, Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission, and those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act [3] regulated by the Corporation Commission;

8. Air quality under the Federal Clean Air Act [4] and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act [5] and by Chapter 11 of Title 40 of the Oklahoma Statutes; [6]

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

10. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto [7], except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986; [8]

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

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

13. Emergency response as specified by law;

14. Environmental laboratory services and laboratory certification;

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

16. Freshwater wellhead protection;

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

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

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

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

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

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

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

2. Weather modification;

3. Dam safety;

4. Flood plain management;

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

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

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the Federal Clean Water Act [9] or other applicable sections of the Federal Clean Water Act [10] or other subsequent state and federal clean lakes programs; administration of a state program for assessing, monitoring, studying and restoring Oklahoma lakes with administration to include, but not be limited to, receipt and expenditure of funds from federal, state and private sources for clean lakes and implementation of a volunteer monitoring program to assess and monitor state water resources, provided such funds from Federal Clean Water Act sources are administered and disbursed by the Office of the Secretary of Environment;

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

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

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

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

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

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

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

D. State Department of Agriculture. 1. The State Department of Agriculture shall have the following jurisdictional areas of environmental responsibility except as provided in subsection B of this section and paragraphs 2 and 3 of this subsection:

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

2. In addition to the jurisdictional areas of environmental responsibility specified in subsection B of this section, the Department of Environmental Quality shall have environmental jurisdiction over:

a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
(2) slaughterhouses, but not including feedlots at such facilities, and
(3) aquaculture and fish hatcheries,

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

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

3. Any point source discharge related to agriculture from sources specified in paragraph 1 of this subsection which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 2 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

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

a. the conservation of oil and gas,
b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,
e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks,

pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,

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

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

h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:

(1) natural gas liquids extraction plant,

(2) refinery,

(3) reclaiming facility other than for those specified within subparagraph e of this subsection,

(4) mineral brine processing plant, and

(5) petrochemical manufacturing plant,

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

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

(2) other oil and gas extraction facilities and activities,

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

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

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

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

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

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

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

4. For purposes of the Federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Corporation Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States

shall be subject to the direct jurisdiction of the federal Environmental Protection Agency and shall not be required to be permitted by the Department of Environmental Quality or the Corporation Commission for such discharge.

5. The Corporation Commission shall have jurisdiction over:

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

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

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

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

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

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

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

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

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

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the Federal Clean Air Act as amended. [11]

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

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

2. Monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. In carrying out this area of responsibility, the Conservation Commission shall serve as the technical lead agency for nonpoint source categories as defined in Section 319 of the Federal Clean Water Act [12] or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal stormwater or as otherwise provided by state law;

3. Wetlands strategy;

4. Abandoned mine reclamation;

5. Cost-share program for land use activities;

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

7. Complaint data management;

8. Coordination of environmental and natural resources education;

9. Federal upstream flood control program;

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

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

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

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

1. Mining regulation;

2. Mining reclamation of active mines;

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

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

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

1. Investigating wildlife kills;

2. Wildlife protection and seeking wildlife damage claims; and

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

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

1. Vehicle inspection for air quality;

2. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; [13] and

3. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act. [14]

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

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

2. Asbestos monitoring in public and private buildings; and

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

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

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

1. Coordination of all emergency resources and activities relating to threats to citizens' lives and property pursuant to the Oklahoma Civil Defense and Emergency Resources Management Act; [15]

2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 and develop such other emergency operations plans that will enable the state to prepare for, respond to, recover from and mitigate potential environmental emergencies and disasters pursuant to the Oklahoma Hazardous Materials Planning and Notification Act; [16]

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

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

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

Amended by Laws 1997, c. 217, § 1, eff. July 1, 1997; Laws 1999, c. 413, § 4, eff. Nov. 1, 1999; Laws 2000, c. 364, § 1, emerg. eff. June 6, 2000.

[1] 33 U.S.C.A. § 1256.
[2] 42 U.S.C.A. § 300F et seq.
[3] Title 17, § 500 et seq.
[4] 42 U.S.C.A. § 7401 et seq.
[5] 29 U.S.C.A. § 651 et seq.
[6] Title 40, § 450 et seq.
[7] 42 U.S.C.A. § 9601 et seq.
[8] 42 U.S.C.A. § 11001 et seq.
[9] 33 U.S.C.A. § 1324.
[10] 33 U.S.C.A. § 1251 et seq.
[11] 42 U.S.C.A. § 7661 et seq.
[12] 33 U.S.C.A. § 1329 et seq.
[13] 49 App. U.S.C.A. § 1801 et seq. (repealed; see, now, 49 U.S.C.A. 5101 et seq.).
[14] Title 40, § 401 et seq.
[15] Title 63, § 683.1 et seq.
[16] Title 27A, 4-2-101 et seq.

## ARTICLE IV. COMPUTERIZED WATER QUALITY DATA

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

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

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

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

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

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

## CHAPTER 2

## OKLAHOMA ENVIRONMENTAL QUALITY CODE

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ARTICLE III. DEPARTMENT OF ENVIRONMENTAL QUALITY AND EXECUTIVE DIRECTOR

PART 3. PERMITS

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

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

B. Permits and other authorizations required pursuant to the Oklahoma Environmental Code may contain provisions requiring that operations shall be in compliance with municipal and other local government ordinances, rules and requirements. A determination or certification that the operations under the requested permit or

authorization conform or comply with such ordinances, rules or requirements, the enforcement of which are not within the jurisdiction or authority of the Department, shall not be considered by the Department in their review and approval or denial of a permit or authorization.

Amended by Laws 1999, c. 381, § 4, emerg. eff. June 8, 1999.

[1] Title 27A, § 2–1–101 et seq.

PART 5. GENERAL REGULATION AND ENFORCEMENT

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

A. If upon inspection or investigation, or whenever the Department determines that there are reasonable grounds to believe that any person is in violation of this Code [1] or any rule promulgated thereunder or of any order, permit or license issued pursuant thereto, the Department may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct such violation immediately or within a set time period or both and that the failure to do so will result in the issuance of a compliance order.

B. In addition to any other remedies provided by law, the Department may, after service of the notice of violation, issue a proposed compliance order to such person. A proposed compliance order shall become a final order unless, no later than fifteen (15) days after the order is served, any respondent named therein requests an administrative enforcement hearing.

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

   a. assess an administrative penalty for past violations of this Code, rules promulgated thereunder, or the terms and conditions of permits or licenses issued pursuant thereto, and

   b. propose the assessment of an administrative penalty for each day the respondent fails to comply with the compliance order.

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

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

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

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

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

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

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

the Department within ten (10) days after receipt of the request. On the basis of the hearing record, the Executive Director shall sustain or modify such order.

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

G. Every certificate or affidavit of service made and filed shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

H. 1. The administrative hearings provided for in this section shall be conducted as individual proceedings in accordance with, and a record thereof maintained pursuant to, Article II of the Administrative Procedures Act, [2] this Code and rules promulgated thereunder. When a hearing is timely requested by a respondent pursuant to this section, the Department shall promptly conduct such hearing.

2. Such hearing shall be conducted by an Administrative Law Judge or by the Executive Director. When an Administrative Law Judge holds the hearing, such Judge shall prepare a proposed order and shall:

a. serve it on the parties, by regular mail, and may offer an opportunity for parties to file exceptions to the proposed order before a final order is entered in the event the Executive Director does not review the record, and

b. present the proposed order, the exceptions, if any, and the record of the matter to the Executive Director, or

c. present the proposed order and the record of the matter to the Executive Director for review and entry of a final order for any default, failure to appear at the hearing or if the parties by written stipulation waive compliance with subparagraph a of this paragraph.

3. For administrative proceedings conducted by an Administrative Law Judge pursuant to this section, the Executive Director may adopt, amend or reject any findings or conclusions of the Administrative Law Judge or exceptions of any party and issue a final order accordingly, or may in his discretion remand the proceeding for additional argument or the introduction of additional evidence at a hearing held for the purpose. A final order shall not be issued by the Executive Director until after:

a. the opportunity for exceptions has lapsed without receiving exceptions, or after exceptions, briefs and oral arguments, if any, are made, or

b. review of the record by the Executive Director.

4. Any order issued by the Department shall become final upon service.

I. Any party aggrieved by a final order may petition the Department for rehearing, reopening or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order, including the Attorney General on behalf of the state, may, pursuant to the Administrative Procedures Act, [3] petition for a judicial review thereof.

J. If the Attorney General seeks redress on behalf of the state, as provided for in subsection I of this section, the Executive Director is empowered to appoint a special counsel for such proceedings.

K. 1. Unless specified otherwise in this Code, any penalty assessed or proposed in an order shall not exceed Ten Thousand Dollars ($10,000.00) per day of noncompliance.

2. The determination of the amount of an administrative penalty shall include, but not be limited to, the consideration of such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the respondent from the violation, the history of such violations and respondent's degree of culpability and good faith compliance efforts. For purposes of this section, each day, or part of a day, upon which such violation occurs shall constitute a separate violation.

L. Notwithstanding the provisions of subsections A and B of this section, the Department may, within three (3) years of discovery, apply for the assessment of an administrative penalty for any violation of this Code, or rules promulgated thereunder or permits or licenses issued pursuant thereto.

M. Any order issued pursuant to this section may require that corrective action be taken. If corrective action must be taken on adjoining property, the owner of such adjoining property shall not give up any right to recover damages from the responsible party by allowing corrective action to occur.

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

Amended by Laws 1999, c. 381, § 5, emerg. eff. June 8, 1999.

[1] Title 27A, § 2–1–101 et seq.

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

[3] Title 75, § 250 et seq.

## § 2–3–504. Violation of Code, order, permit or license or rule—Penalties and remedies

A. Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Oklahoma Environmental Quality Code or who violates any order, permit or license issued by the Department of Environmental Quality or rule promulgated by the Environmental Quality Board pursuant to this Code: [1]

1. Shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than Two Hundred Dollars ($200.00) for each violation and not more than Ten Thousand Dollars ($10,000.00) for each violation or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment;

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

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

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

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

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

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

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

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

a. the district attorney of the appropriate district court of the State of Oklahoma,

b. the Attorney General on behalf of the State of Oklahoma, or

c. the Department on behalf of the State of Oklahoma.

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

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

a. the defendant's actions or omissions constitute a violation of the Code or a rule, order, license or permit, and

b. the actions or omissions present an imminent and substantial endangerment to health or the environment if allowed to continue during the pendency of the action,

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

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

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

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

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

Amended by Laws 1998, c. 186, § 1, eff. Nov. 1, 1998.

[1] Title 27A, § 2-1-101 et seq.

## § 2-3-507. Compliance schedules

Political subdivisions may, when compliance with environmental standards would create excessive debt, enter into compliance schedules with the Department of Environmental Quality to prioritize compliance based on their greatest environmental or other public health and safety needs. Excessive debt is indicated when the work needed for compliance would require a capital cost or user charge significantly beyond the per-household cost for similar sized communities within the state. Penalties shall not be assessed if a political subdivision complies with the schedule authorized by the Department.

Added by Laws 1997, c. 53, § 1, emerg. eff. April 8, 1997.

# ARTICLE IV. LABORATORY SERVICES AND CERTIFICATION

## PART 1. DEFINITIONS

## § 2-4-101. Definitions

As used in this article:

1. "Acceptable results" means a result within limits determined on the basis of statistical procedures as prescribed by the Department;

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

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

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

5. "Evaluation" means a review of the quality control and quality assurance procedures, recordkeeping, reporting procedures, methodology, personal qualifications, equipment, facilities and analytical technique of a laboratory for measuring or establishing specific parameters;

6. "Laboratory" means a facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, or soil or subsoil materials or performs any other analyses related to environmental quality evaluations; and

7. "Parameter" means the characteristics of a laboratory sample determined by an analytic laboratory testing procedure.

Amended by Laws 1998, c. 109, § 1, emerg. eff. April 13, 1998.

PART 3. LABORATORY CERTIFICATION SERVICES

## § 2–4–301. Duties of Department

The Department is hereby designated as the administrative agency for national environmental laboratory accreditation programs and shall:

1. Establish and administer the state water quality and environmental laboratory certification programs for laboratories which apply; and

2. Issue, modify, renew, reinstate, revoke, or suspend the certification of a laboratory or deny a new or renewal certification application.

Amended by Laws 1998, c. 109, § 2, emerg. eff. April 13, 1998.

## § 2–4–302. Promulgation of rules—Fee schedule—Disposition of fees

A. The Board of Environmental Quality shall promulgate rules for certification of privately and publicly owned laboratories for performance of environmental analyses and for certification of laboratory operators for municipal wastewater works and municipal waterworks. The Board may also promulgate rules which adopt standards of a national environmental laboratory accreditation program and the United States Environmental Protection Agency by reference.

B. The Board, pursuant to Section 2–2–101 of this title and the Administrative Procedures Act, [1] shall promulgate rules for the assessment of reasonable fees to participating laboratories for the administrative costs of the certification program.

C. Fees charged pursuant to this section shall be paid into the Department of Environmental Quality Revolving Fund and shall only be used by the Department in administering the Department's laboratory certification program.

Amended by Laws 1998, c. 109, § 3, emerg. eff. April 13, 1998.

[1] Title 75, § 250 et seq.

## § 2–4–305. Suspension, revocation, or refusal to renew laboratory certification

A. The Department of Environmental Quality may suspend, revoke, or refuse to renew in part or in whole the certification of any laboratory which does not continue to comply with Board of Environmental Quality rules or conditions of certification, or for cause, including but not limited to:

1. The knowing and willful falsification of data submitted to the Department;

2. The misrepresentation or omission of material data in any report submitted to any person relying on such report because of the laboratory's certification;

3. Failure to maintain or utilize approved quality control procedures, recordkeeping, reporting procedures, methodology, personnel requirements, equipment, facilities or analytical techniques on which the certification was issued;

4. Failure to achieve acceptable results on performance evaluation samples; or

5. For laboratories holding Department-issued certification, the expiration, suspension or revocation of the laboratory's reciprocal out-of-state certification.

B. The Department may conduct on-site evaluations of certified laboratories.

Amended by Laws 1998, c. 109, § 4, emerg. eff. April 13, 1998.

## ARTICLE V. OKLAHOMA CLEAN AIR ACT

### § 2-5-105. Administrative agency—Powers and duties

The Department of Environmental Quality is hereby designated the administrative agency for the Oklahoma Clean Air Act [1] for the state. The Department is empowered to:

1. Establish, in accordance with its provisions, those programs specified elsewhere in the Oklahoma Clean Air Act;

2. Establish, in accordance with the Oklahoma Clean Air Act, a permitting program for the state which will contain the flexible source operation provisions required by Section 502(b)(10) of the Federal Clean Air Act Amendments of 1990; [2]

3. Prepare and develop a general plan for proper air quality management in the state in accordance with the Oklahoma Clean Air Act;

4. Enforce rules of the Board and orders of the Department and the Council;

5. Advise, consult and cooperate with other agencies of the state, towns, cities and counties, industries, other states and the federal government, and with affected groups in the prevention and control of new and existing air contamination sources within the state;

6. Encourage and conduct studies, seminars, workshops, investigations and research relating to air pollution and its causes, effects, prevention, control and abatement;

7. Collect and disseminate information relating to air pollution, its prevention and control;

8. Encourage voluntary cooperation by persons, towns, cities and counties, or other affected groups in restoring and preserving a reasonable degree of purity of air within the state;

9. Represent the State of Oklahoma in any and all matters pertaining to plans, procedures or negotiations for the interstate compacts in relation to the control of air pollution;

10. Provide such technical, scientific or other services, including laboratory and other facilities, as may be required for the purpose of carrying out the provisions of the Oklahoma Clean Air Act, from funds available for such purposes;

11. Employ and compensate, within funds available therefor, such consultants and technical assistants and such other employees on a full- or part-time basis as may be necessary to carry out the provisions of the Oklahoma Clean Air Act and prescribe their powers and duties;

12. Accept and administer grants or other funds or gifts for the purpose of carrying out any of the functions of the Oklahoma Clean Air Act;

13. Budget and receive duly appropriated monies and all other monies available for expenditures to carry out the provisions and purposes of the Oklahoma Clean Air Act;

14. Bring appropriate court action to enforce the Oklahoma Clean Air Act and final orders of the Department, and to obtain injunctive or other proper relief in the district court of the county where any alleged violation occurs or where such relief is determined

necessary. The Department, in furtherance of its statutory powers, shall have the independent authority to file an action pursuant to the Oklahoma Clean Air Act in district court. Such action shall be brought in the name of the Department of Environmental Quality;

15. Take such action as may be necessary to abate the alleged pollution upon receipt of evidence that a source of pollution or a combination of sources of pollution is presenting an immediate, imminent and substantial endangerment to the health of persons;

16. Recommend rules to the Department of Public Safety, to the extent necessary and practicable for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards;

17. Periodically enter and inspect at reasonable times or during regular business hours, any source, facility or premises permitted or regulated by the Department, for the purpose of obtaining samples or determining compliance with the Oklahoma Clean Air Act or any rule promulgated thereunder or permit condition prescribed pursuant thereto, or to examine any records kept or required to be kept pursuant to the Oklahoma Clean Air Act. Such inspections shall be conducted with reasonable promptness and shall be confined to those areas, sources, facilities or premises reasonably expected to emit, control, or contribute to the emission of any air contaminant;

18. Require the submission or the production and examination, within a reasonable amount of time, of any information, record, document, test or monitoring results or emission data, including trade secrets necessary to determine compliance with the Oklahoma Clean Air Act or any rule promulgated thereunder, or any permit condition prescribed or order issued pursuant thereto. The Department shall hold and keep as confidential any information declared by the provider to be a trade secret and may only release such information upon authorization by the person providing such information, or as directed by court order. Any documents submitted pursuant to the Oklahoma Clean Air Act and declared to be trade secrets, to be so considered, must be plainly labeled by the provider, and be in a form whereby the confidential information may be easily removed intact without disturbing the continuity of any remaining documents. The remaining document, or documents, as submitted, shall contain a notation indicating, at the place where the particular information was originally located, that confidential information has been removed. Nothing in this section shall preclude an in-camera examination of confidential information by an Administrative Law Judge during the course of a contested hearing;

19. Maintain and update at least annually an inventory of air emissions from stationary sources;

20. Accept any authority delegated from the federal government necessary to carry out any portion of the Oklahoma Clean Air Act; and

21. Carry out all other duties, requirements and responsibilities necessary and proper for the implementation of the Oklahoma Clean Air Act and fulfilling the requirements of the Federal Clean Air Act. [3]

Amended by Laws 1998, c. 314, § 6, eff. July 1, 1998.

[1] Title 27A, § 2–5–101 et seq.

[2] 42 U.S.C.A. § 7661a(b)(10).

[3] 42 U.S.C.A. § 7401 et seq.

## § 2–5–110. Violations—Compliance orders—Administrative penalties—Notice and hearing—Burden of proof—Settlements or consent orders

A. In addition to any other remedy provided for by law, the Department may issue a written order to any person whom the Department has reason to believe has violated, or is presently in violation of, the Oklahoma Clean Air Act or any rule promulgated by the Board, any order of the Department or Council, or any condition of any permit issued by the Department pursuant to the Oklahoma Clean Air Act, and to whom the Department has served, no less than fifteen (15) days previously, a written notice of violation. The Department shall by conference, conciliation and persuasion provide the person a reasonable opportunity to eliminate such violations, but may, however, reduce the

fifteen-day notice period as in the opinion of the Department may be necessary to render the order reasonably effectual.

B. Such order may require compliance immediately or within a specified time period or both. The order, notwithstanding any restriction contained in subsection A of this section, may also assess an administrative penalty for past violations occurring no more than five (5) years prior to the date the order is filed with the Department, and for each day or part of a day that such person fails to comply with the order.

C. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations, and may impose such requirements, procedures or conditions as may be necessary to correct the violations. The Department may also order any environmental contamination having the potential to adversely affect the public health, when caused by the violations, to be corrected by the person or persons responsible.

D. Any penalty assessed in the order shall not exceed Ten Thousand Dollars ($10,000.00) per day for each violation. In assessing such penalties, the Department shall consider the seriousness of the violation or violations, an y good faith efforts to comply, and other factors determined by rule to be relevant. A final order following an enforcement hearing may assess an administrative penalty of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.

E. Any order issued pursuant to this section shall become a final order, unless no later than fifteen (15) days after the order is served the person or persons named therein request in writing an enforcement hearing. Said order shall contain language to that effect. Upon such request the enforcement hearing shall promptly be set before the Department unless the respondent requests that the hearing be held before the Air Quality Council. In such case, the Department shall schedule the enforcement hearing before the Council and notify the respondent and the Department.

F. At all proceedings with respect to any alleged violation of the Oklahoma Clean Air Act, or any rule promulgated thereunder, the burden of proof shall be upon the Department.

G. Nothing in this section shall be construed to limit the authority of the Department to enter into an agreed settlement or consent order with any respondent.

Amended by Laws 1999, c. 131, § 1, eff. Nov. 1, 1999.

## § 2-5-112. Comprehensive permitting program—Issuance, denial or renewal

A. Upon the effective date of permitting rules promulgated pursuant to the Oklahoma Clean Air Act, it shall be unlawful for any person to construct any new source, or to modify or operate any new or existing source of emission of air contaminants except in compliance with a permit issued by the Department of Environmental Quality, unless the source has been exempted or deferred or is in compliance with an applicable deadline for submission of an application for such permit.

B. The Department shall have the authority and the responsibility, in accordance with rules of the Environmental Quality Board, to implement a comprehensive permitting program for the state consistent with the requirements of the Oklahoma Clean Air Act. Such authority shall include but shall not be limited to the authority to:

1. Expeditiously issue, reissue, modify and reopen for cause, permits for new and existing sources for the emission of air contaminants, and to grant a reasonable measure of priority to the processing of applications for new construction or modifications. The Department may also revoke, suspend, deny, refuse to issue or to reissue a permit upon a determination that any permittee or applicant is in violation of any substantive provisions of the Oklahoma Clean Air Act, or any rule promulgated thereunder or any permit issued pursuant thereto;

2. Refrain from issuing a permit when issuance has been objected to by the Environmental Protection Agency in accordance with Title V of the Federal Clean Air Act; [1]

3. Revise any permit for cause or automatically reopen it to incorporate newly applicable rules or requirements if the remaining permit term is greater than three (3) years; or incorporate insignificant changes into a permit without requiring a revision;

4. Establish and enforce reasonable permit conditions which may include, but not be limited to:

a. emission limitations for regulated air contaminants,
b. operating procedures when related to emissions,
c. performance standards,
d. provisions relating to entry and inspections, and
e. compliance plans and schedules;

5. Require, if necessary, at the expense of the permittee or applicant:

a. installation and utilization of continuous monitoring devices,
b. sampling, testing and monitoring of emissions as needed to determine compliance,
c. submission of reports and test results, and
d. ambient air modeling and monitoring;

6. Issue:

a. general permits covering similar sources, and
b. permits to sources in violation, when compliance plans, which shall be enforceable by the Department, are incorporated into the permit;

7. Require, at a minimum, that emission control devices on stationary sources be reasonably maintained and properly operated;

8. Require that a permittee certify that the facility is in compliance with all applicable requirements of the permit and to promptly report any deviations therefrom to the Department;

9. Issue permits to sources requiring permits under Title V of the Federal Clean Air Act for a term not to exceed five (5) years, except that solid waste incinerators may be allowed a term of up to twelve (12) years provided that the permit shall be reviewed no less frequently than every five (5) years;

10. Specify requirements and conditions applicable to the content and submittal of permit applications; set by rule, a reasonable time in which the Department must determine the completeness of such applications; and

11. Determine the form and content of emission inventories and require their submittal by any source or potential source of air contaminant emissions.

C. Rules of the Board may set de minimis limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee, or be subject to public review. Any source so exempted, however, shall remain under jurisdiction of the Department and shall be subject to any applicable rules or general permit requirements. Such rules shall not prohibit sawmill facilities from open burning any wood waste resulting from the milling of untreated cottonwood lumber in areas that have always attained ambient air quality standards.

D. To ensure against unreasonable delay on the part of the Department, the failure of the Department to act in either the issuance, denial or renewal of a permit in a reasonable time, as determined by rule, shall be deemed to be a final permit action solely for purpose of judicial review under the Administrative Procedures Act,[2] with regard to the applicant or any person who participated in the public review process. The Supreme Court or the district court, as the case may be, may require that action be taken by the Department on the application without additional delay. No permit, however, may be issued by default.

E. The Department shall notify, or require that any applicant notify, all states whose air quality may be affected and that are contiguous to the State of Oklahoma, or are within fifty (50) miles of the source of each permit application or proposed permit for those sources requiring permits under Title V of the Federal Clean Air Act, and shall provide an opportunity for such states to submit written recommendations respecting the issuance of the permit and its terms and conditions.

F. No person, including but not limited to the applicant, shall raise any reasonably ascertainable issue in any future proceeding, unless the same issues have been raised and documented before the close of the public comment period on the draft permit.

G. A change in ownership of any facility or source subject to permitting requirements under this section shall not necessitate any action by the Department not otherwise required by the Oklahoma Clean Air Act. Any permit applicable to such source at the time of transfer shall be enforceable in its entirety against the transferee in the same manner as it would have been against the transferor, as shall any requirement contained in any rule, or compliance schedule set forth in any variance or order regarding or applicable to such source. Provided, however, no transferee in good faith shall be held liable for penalties for violations of the transferor unless the transferee assumes all assets and liabilities through contract or other means. For the purposes of this subsection, good faith shall be construed to mean neither having actual knowledge of a previous violation nor constructive knowledge which would lead a reasonable person to know of the violation. It shall be the responsibility of the transferor to notify the Department in writing within ten (10) days of the change in ownership.

H. Operating permits for new sources.

Operating permits may be issued to new sources without public review upon a proper determination by the Department that:

1. The construction permit was issued pursuant to the public review requirements of the Code and rules promulgated thereunder; and

2. The operating permit, as issued, does not differ from the construction permit in any manner which would otherwise subject the permit to public review.

Amended by Laws 1999, c. 284, § 1, emerg. eff. May 27, 1999; Laws 2000, c. 6, § 7, emerg. eff. March 20, 2000.

[1] 42 U.S.C.A. § 7661 et seq.

[2] Title 75, § 250 et seq.

### Historical and Statutory Notes

Section 2 of Laws 1999, c. 131, amending this section, was repealed by Laws 2000, c. 6, § 33.

## § 2-5-117. Civil actions—Injunction—Abatement—Civil penalties

### United States Supreme Court

Citizen group standing, violations of pollution discharge permit, subsequent compliance with permit or shutdown of facility, mootness doctrine, see Friends of Earth v. Laidlaw Environmental Services (TOC), Inc., 2000, 120 S.Ct. 693.

## ARTICLE VI. WATER QUALITY

## PART 1. GENERAL PROVISIONS

## § 2-6-101. Definitions

For purposes of this article:

1. "Clean Water Act" means the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;

2. "Disposal system" means pipelines or conduits, pumping stations and force mains and all other devices, construction, appurtenances and facilities used for collecting, conducting or disposing of wastewater, including treatment systems;

3. "Drainage basin" means all of the water collection area adjacent to the highest water line of a reservoir which may be considered by the Department to be necessary to protect adequately the waters of the reservoir. The area may extend upstream on any watercourse to any point within six hundred (600) feet of the highest water line of the reservoir;

4. "Federal Safe Drinking Water Act" means the federal law at 42 U.S.C., Section 300 et seq., as amended; [1]

5. "Indirect discharge" means the introduction of pollutants to a publicly owned treatment works from a nondomestic source;

6. "N.P.D.E.S." or "National Pollutant Discharge Elimination System" means the system for the issuance of permits under the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;

7. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined and includes but is not limited to agricultural storm water runoff and return flows from irrigated agriculture;

8. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste discharged into waters of the state;

9. "Public water supply" means water supplied to the public for domestic or drinking purposes;

10. "Reservoir" means any reservoir, whether completed or in the process of construction, whether or not used as a water supply, and whether or not constructed by any recipient of water therefrom;

11. "Sludge" means nonhazardous solid, semi-solid, or liquid residue generated by the treatment of domestic sewage or wastewater by a treatment works, or water by a water supply system, or manure, or such residue, treated or untreated, which results from industrial, nonindustrial, commercial, or agribusiness activities or industrial or manufacturing processes and which is within the jurisdiction of the Department;

12. "Small public sewage system" shall mean a disposal or collection system which serves less than ten (10) residential units or a public or commercial sewage system which has an average flow of less than five thousand (5,000) gallons per day;

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

14. "Treatment works" means any facility used for the purpose of treating or stabilizing wastes or wastewater. "Treatment works" shall be synonymous with "wastewater works";

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

16. "Wastewater" includes any substance, including sewage, that contains any discharge from the bodies of human beings or animals, or contaminating chemicals or other waste or pollutants from domestic, municipal, commercial, agricultural, industrial or manufacturing activities or facilities and which is within the jurisdiction of the Department;

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

18. "Wastewater treatment system" means treatment works and all related pipelines or conduits, pumping stations and force mains, and all other appurtenances and devices used for collecting, treating, conducting or discharging wastewater;

19. "Water supply system" means a water treatment plant, water wells, and all related pipelines or conduits, pumping stations and mains and all other appurtenances and devices used for distributing drinking water to the public and, as such, shall be synonymous with waterworks;

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

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

Amended by Laws 1997, c. 217, § 2, eff. July 1, 1997; Laws 1999, c. 413, § 5, eff. Nov. 1, 1999.

[1] So in enrolled bill; see 42 U.S.C.A. § 300F et seq.

## § 2-6-103. Powers and duties of Department, Board, and Executive Director

A. The Department of Environmental Quality shall have and is hereby authorized to exercise the power and duty to:

1. Develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of this state;

2. Encourage, participate in, or conduct studies, investigations, research and demonstrations relating to water pollution and causes, prevention, control and abatement thereof as it may deem advisable and necessary in the public interest for the discharge of its duties under this act; [1]

3. Collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

4. Require the submission of and review plans, specifications and other data relative to disposal or treatment systems or any part thereof in connection with the issuance of such permits as are required by this article; [1]

5. Enforce the provisions of this article, rules promulgated thereunder, and permits, licenses, and certifications issued pursuant thereto and Oklahoma Water Quality Standards;

6. Establish, implement, amend and enforce the Water Quality Management Plan, the continuing planning process documents, and total maximum daily loads;

7. Require the submission of reports or laboratory analyses performed by certified laboratories or operators for purposes of compliance monitoring and testing or other purposes for which laboratory reports or analyses are required pursuant to this article;

8. Coordinate the preparation of the continuing planning process documents and total maximum daily loads with other environmental agencies and natural resource agencies; and

9. Issue swimming and fishing advisories related to human and animal health hazards for waters of the state, based on available data.

B. 1. The Environmental Quality Board shall have the authority to promulgate such rules as may be necessary to implement the policies and duties set forth in this article including, but not limited to, rules pertaining to services, permits, licenses and certifications, including certifications under Section 401 of the Clean Water Act, [2] and, pursuant to Section 2-3-402 of this title, fee schedules for such services, permits, licenses and certifications.

2. The Board may adopt by reference standards of quality of the waters of the state and classifications of such waters as are lawfully established by the Oklahoma Water Resources Board and the United States Environmental Protection Agency as Oklahoma's Water Quality Standards and promulgate other rules to protect, maintain and improve the best uses of waters in this state in the interest of the public under such conditions as may be necessary or appropriate for the prevention, control and abatement of pollution.

3. The Board shall promulgate rules which describe procedures for amending and updating the Water Quality Management Plan or which are otherwise consistent with the Continuing Planning Process and its components. Such rules shall:

a. be in substantial conformance with any applicable federal requirements and may incorporate appropriate U.S. Environmental Protection Agency regulations by reference, and

b. require public notice to be given of any major amendment and of any update of the Water Quality Management Plan and allow not less than a forty-five-day opportunity for public comment thereon. Such rules shall also authorize the Department, if it determines public interest in the proposed amendment or update is significant, to give notice of and conduct a public meeting on the proposals in accordance with federal requirements. The rules shall provide that the notice, comment period, and public meeting if any, related to an amendment or update proposed in conjunction with the issuance, modification or renewal of a discharge permit or permits, may be combined with the notice, comment period, and public meeting if any, held on the proposed permit action or actions.

C. The Executive Director may:

1. Issue, modify, or revoke orders:

a. prohibiting or abating pollution of the waters of the state,

b. requiring the construction of new disposal or treatment systems or any parts thereof or the modification, extension or alteration of existing disposal or treatment systems or any part thereof, or the adoption of other remedial measures to prevent, control or abate pollution, and

c. requiring other actions such as the Executive Director may deem necessary to enforce the provisions of this article and rules promulgated thereunder;

2. Issue, continue in effect, revoke, amend, modify or deny, renew, or refuse to renew under such conditions as the Department may prescribe, permits, licenses and certifications, including certifications under Section 401 of the Clean Water Act, to prevent, control or abate pollution of waters of the state; and

3. Exercise all incidental powers which are necessary and proper to carry out the purposes of this article.

Amended by Laws 1997, c. 217, § 3, eff. July 1, 1997; Laws 1999, c. 380, § 1, emerg. eff. June 8, 1999.

1 Title 27A, § 2–6–101 et seq.

2 33 U.S.C.A. § 1341.

## PART 3. WATER SUPPLY SYSTEMS

## §§ 2–6–309, 2–6–310. [Blank]

## § 2–6–310.1. Legislative findings and declaration

A. The Oklahoma Legislature finds that a safe public groundwater supply is one of the most valuable natural resources in this state.

B. The Legislature recognizes and declares that the management, protection and conservation of public groundwater supplies and the beneficial uses thereof are essential to the economic prosperity and future well-being of the state. As such, the public interest demands procedures for the development and implementation of management practices to conserve and protect public groundwater supplies.

Added by Laws 1997, c. 241, § 1, eff. July 1, 1997.

## § 2–6–310.2. Promulgation of rules—Wellhead protection program

A. The Environmental Quality Board shall promulgate rules necessary to safeguard public health and welfare and prevent pollution of public water supply systems pursuant to the Oklahoma Water Supply Systems Act.[1]

B. The Department of Environmental Quality shall develop an Oklahoma wellhead protection program to assist municipalities, rural water districts, nonprofit water corporations and other public groundwater suppliers in the conservation and protection of their public groundwater supplies which will specify the following:

1. Guidelines specifying the duties of the Department in developing a wellhead protection program;

2. Guidelines specifying the duties of local governments in developing and implementing the wellhead protection program;

3. Guidelines for determining all potential and actual pollution sources which may have an adverse effect on public health;

4. Guidelines for taking into consideration potential sources of pollution when siting new wells for public water supplies;

5. Guidelines for developing contingency plans for pollution release containment, cleanup and the provision of alternative drinking water supplies for each public water system in the event of groundwater well or groundwater wellfield pollution; and

6. Guidelines including such other information or assistance as deemed necessary by the Department.

Added by Laws 1997, c. 241, § 2, eff. July 1, 1997.

[1] Title 27A, § 2-6-301 et seq.

## § 2–6–310.3. Groundwater protection education program

A. The Department of Environmental Quality shall develop and implement a groundwater protection education program. In developing such program, the Department shall consult with public health agencies, water utilities, state educational and research institutions, nonprofit environmental organizations and any other person or agency the Department deems necessary.

B. The Department shall develop a program to provide public recognition of users of land located within a public groundwater supply wellhead protection area who demonstrate successful and committed efforts to protect drinking water supplies by implementing innovative approaches to groundwater protection. Such program shall also promote groundwater protection through education of members of businesses and industry and the public.

Added by Laws 1997, c. 241, § 3, eff. July 1, 1997.

## § 2–6–310.4. Act not to affect certain agencies' powers and duties

No provision of this act [1] shall affect the powers and duties of any state agency or any agency of any political subdivision of the state which is charged with responsibility for water control or water management.

Added by Laws 1997, c. 241, § 4, eff. July 1, 1997.

[1] Title 27A, § 2-6-301 et seq.

### PART 4. WASTEWATER AND WASTEWATER TREATMENT SYSTEMS

## § 2–6–401. Construction of treatment or sewer systems or changes in treatment, storage, use or disposal of sludge—Permit required, application—Plans and specifications—Innovative treatment techniques

A. No person shall construct or let a contract for any construction work of any nature for a municipal treatment works, nonindustrial wastewater treatment system, sanitary sewer system or other sewage treatment works, or for any extension thereof, or make any change in the manner of nonindustrial wastewater treatment or make any change in the treatment, storage, use or disposal of sewage sludge without a permit issued by the Executive Director. No such permit shall be required for the construction

or modification of a private individual sewage disposal system or a small public sewage system provided that such system is constructed or modified in accordance with the requirements of Section 2–6–403 of this title and rules promulgated under Article VI of the Code.[1]

B. An application for such permit shall include but not be limited to:

1. An engineering report, prepared by a professional engineer registered in the State of Oklahoma, which includes a complete description of the existing and proposed system or treatment works and the wastewater outfall, if any, and any other data or information required by the Department;

2. A legal description of the site where the treatment works or the wastewater treatment system is or is proposed to be located; and

3. A legal description of the site where any discharge point is or is proposed to be located.

C. Upon the Department's approval of the engineering report, the applicant shall submit plans and specifications for the proposed system or the proposed extension or change of an existing system to the Department for review. Such plans and specifications shall be prepared by a professional engineer registered in the State of Oklahoma.

D. Any facility within the jurisdiction of the Department and required to obtain a permit by subsection A of this section may elect to utilize an innovative treatment technique in accordance with this subsection. An innovative treatment technique is a treatment technique not currently recognized by the Department nor found in the regulations governing construction of such facilities. Upon compliance with the requirements of this subsection the requirements in subsection A will not apply. A facility that elects to utilize an innovative treatment technique shall first submit the following documentation to the Department:

1. An engineering report, prepared by a professional engineer registered in the State of Oklahoma, which includes a complete description of the proposed innovative treatment technique;

2. A certification from a professional engineer registered in the State of Oklahoma that the innovative treatment technique will allow the facility to meet applicable federal and state discharge and land application requirements; and

3. A statement from the owner of the facility that should the facility subsequently fail to meet any federal or state discharge or land application requirement that the owner of the facility will immediately take all necessary action to install a recognized treatment technique.

Amended by Laws 1997, c. 131, § 1, eff. Nov. 1, 1997.

[1] Title 27A, § 2–6–101 et seq.

## § 2–6–403. Requirements of construction or operation of sewage disposal systems—Planning residential development sewage disposal—Plats

A. No small public sewage system or private individual sewage disposal system shall be constructed or operated unless such system, when constructed, complies with requirements prescribed by the Environmental Quality Board as determined by an inspection performed by the Department of Environmental Quality or a person authorized by the Department. Upon reinspection of an approved system, performed at the request of the lot owner, the Department or a person authorized by the Department shall not require that the system be uncovered unless there is evidence that the system has not functioned properly.

B. Any person, corporation or other legal entity which creates or intends to create a residential development outside the corporate limits of a city or town shall file a plat describing the methods of sewage disposal for such residential development with the

Department. Approval of the plat shall be obtained prior to recording the plat, offering a lot or lots for sale or beginning construction within such residential development.

1. The plat shall include:

   a. a description of the methods for providing water supply and sewage disposal. If a public water supply or public sewage is to be used, then verification of the preliminary approval from the Department shall be submitted along with the plat,

   b. the actual lot size of each lot in square feet, acres or fractions of acres, and

   c. the location of any public water supply source, including wells and surface water supplies, within three hundred (300) feet of the residential development.

2. Upon approval by the Department, the plat of the residential development shall be imprinted with the stamp of the Department bearing the word "approved", restrictions, if any, signature of the Department or the Department's local representative and the date. Approval of the plat shall be made effective thirty (30) days after the plat is filed with the Department unless specifically rejected prior to the expiration of the said thirty-day period of time.

3. The office of county clerk shall not record a plat containing any lot of less than two and one-half (2 ½) acres situated outside the corporate limits of a municipality unless said instrument bears the "approved" stamp of the Department. The Department shall have no authority to disapprove and shall approve plats of tracts that are being developed for individual residence in which no single tract is less than two and one-half (2 ½) acres, provided that none of the lots are within three hundred (300) feet of a public water supply source.

C. Persons creating or intending to create a residential development, after receiving the stamp of approval from the Department or the Department's local representative, shall file such plat in the land records of the county where the residential development is to be situated.

D. For purposes of this section, "subdivision of land for purposes of a residential development" shall have the same meaning as "subdivision" as defined in Section 863.9 of Title 19 of the Oklahoma Statutes.

E. Any person who knowingly creates a residential development without receiving the approval of the Department or the Department's local representative of a plat or without filing of record a plat in violation of this section, or who installs a private sewage disposal system on a lot for which disapproval of a private sewage disposal system has previously been filed of record shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

F. The Department is authorized to use monies other than fees or appropriated funds as such monies may be available to the Department to offer financial assistance to indigent citizens of the State of Oklahoma to reduce the incidence of surfacing sewage in the State of Oklahoma.

Amended by Laws 1999, c. 284, § 2, emerg. eff. May 27, 1999.

## § 2–6–403.1. Inspections of existing sewage disposal systems

The Department of Environmental Quality shall not require a departmental inspection of an existing individual sewage disposal system prior to a service connection to a public water supply system.

Added by Laws 1997, c. 131, § 2, eff. Nov. 1, 1997.

PART 5. OTHER SURFACE IMPOUNDMENTS AND LAND APPLICATIONS

## § 2-6-501. Activities requiring water quality permit—Facility changes, discharge of sewage—Rules

### Notes of Decisions

Nuisance .3

3. Nuisance

Partnership which owned property surface and its general partners were not precluded from relying on definition of "public nuisance," regarding pollution of waters of state, in Oklahoma's Water Pollution Control Act (OWPCA) in their public nuisance claim against oil and gas well operator, arising from alleged pollution of groundwater by operation of oil and gas wells on or near property, despite contention that appropriate definition was found in different statute, defining public nuisance as one which affects at the same time entire community or neighborhood; language of statutory provisions were not in conflict, and Act provision carried legislature's intent into effect by declaring any pollution of state waters to be of such consequence as to affect at the same time entire community or neighborhood. N.C. Corff Partnership, Ltd. v. OXY USA, Inc., Okla.App. Div. 4, 929 P.2d 288 (1996), rehearing denied, certiorari denied.

PART 7. UNDERGROUND WELLS

## § 2-6-701. Underground injection of hazardous and nonhazardous liquids—Permit required—Water wells and holes to be constructed or sealed to avoid pollution

A. A permit issued by the Executive Director of the Department of Environmental Quality shall be required for Class I, III, IV and V injection wells pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, inclusive, except for:

1. Class V injection wells utilized in the remediation of groundwater associated with underground and aboveground storage tanks regulated by the Corporation Commission; and

2. Wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act regulated by the Corporation Commission.

B. All water wells, monitoring wells, unused water test wells and water test holes used or capable of being used as sources of domestic or public water supply shall be constructed, sealed or plugged as required by the Department in a manner to avoid pollution of water-bearing strata.

Amended by Laws 2000, c. 364, § 4, emerg. eff. June 6, 2000.

PART 9. ENFORCEMENT

## § 2-6-901. Penalties—Misdemeanor—Injunctions—Assessment of civil penalties

### United States Supreme Court

Citizen group standing, violations of pollution discharge permit, subsequent compliance with permit or shutdown of facility, mootness doctrine, see Friends of Earth v. Laidlaw Environmental Services (TOC), Inc., 2000, 120 S.Ct. 693.

ARTICLE VII. HAZARDOUS WASTE MANAGEMENT

PART 1. OKLAHOMA HAZARDOUS WASTE MANAGEMENT ACT

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

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

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

2. The Board may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Oklahoma Hazardous Waste Management Act. [1]

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

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

Amended by Laws 1999, c. 284, § 3, emerg. eff. May 27, 1999.

[1] Title 27A, § 2-7-101 et seq.

## § 2-7-119. Permit fees

A. The Environmental Quality Board shall establish a schedule of fees, pursuant to Section 2-3-402 of this title and the Administrative Procedures Act, [1] to be charged for applications to issue and renew permits for hazardous waste facilities and for the regulation of hazardous waste. Such fees shall only be used for the implementation of the provisions of the Oklahoma Hazardous Waste Management Act [2] pursuant to Section 2-3-402 of this title.

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

For generator disposal plan: $100.00 to $10,000.00 per year
For permit application: $5,000.00 to $50,000.00
For application resubmittal: $100.00 to $1,000.00
For monitoring: $100.00 to $10,000.00 per year.

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

Amended by Laws 2000, c. 130, § 1, emerg. eff. April 24, 2000.

[1] Title 75, § 250 et seq.

[2] Title 27A, § 2-7-101 et seq.

## § 2–7–121.1. Waiver of fee

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

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

1. A consent order approved by the Department;

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

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

Such fee waivers may be granted for remedial actions only when the amount of the fee waiver will qualify toward the contributions required of the state in response actions financed through the Superfund Trust Fund. The Department shall void all waivers for fees as described in paragraph 1 of subsection A of Section 2–7–121 of Title 27A should the requirements of any Consent Order, Compliance Schedule, or Brownfields action not be fulfilled as stipulated.

Added by Laws 1999, c. 284, § 4, emerg. eff. May 27, 1999.

## § 2–7–123. Permit issuance notice—Notice of remediation or related action taken

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

B. The Department shall file a recordable notice of remediation or related action taken pursuant to the federal Comprehensive Environmental Response and Liability Act[1] in the land records of the county in which the site is located. The notice shall contain a legal description of the affected property.

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

Amended by Laws 2000, c. 74, § 1, emerg. eff. April 14, 2000.

[1] Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. § 9601 et seq.

## § 2–7–125. Hazardous waste manifest—Disposal plan number assigned by Department—Transportation, etc. of waste without manifest in possession

A. Persons generating hazardous waste shall provide a manifest to the operator of any mode of any offsite transportation carrying hazardous waste. Such manifest shall be in a form which has been prescribed by the Department of Environmental Quality and shall indicate a disposal plan number assigned by the Department which shows that the Department has approved the plans of the person generating such waste. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste. Such operator shall have the manifest in his possession while

transporting or handling the hazardous waste. Upon delivery of the hazardous waste to a facility duly authorized to accept such waste, the operator shall submit such manifest to the receiving person for processing pursuant to rules promulgated by the Board.

B. No off-site treatment, storage, recycling or disposal facility shall accept the manifest unless such manifest has a properly assigned disposal plan number indicating that the Department has approved the plans of the person generating the hazardous waste.

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

Amended by Laws 2000, c. 130, § 2, emerg. eff. April 24, 2000.

## § 2-7-126. Orders

In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act, [1] the Department of Environmental Quality may issue a written order to any person whom the Department has reason to believe has violated or is presently in violation of the Oklahoma Hazardous Waste Management Act, or any rule promulgated thereunder.

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

   a. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations.

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

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

   a. Orders and hearings are subject to the Administrative Procedures Act. [2]

   b. A final order following an enforcement hearing may assess an administrative penalty of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.

   c. The Department may adopt procedural rules as necessary and appropriate to implement the provisions of this section.

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

Amended by Laws 1998, c. 186, § 2, eff. Nov. 1, 1998.

[1] Title 27A, § 2-7-101 et seq.

[2] Title 75, § 250 et seq.

## § 2-7-129. Violations—Civil penalties

### United States Supreme Court

Toxic waste, private action for recovery of past clean up costs under Resource Conservation and Recovery Act, imminent endangerment requirement, see Meghrig v. KFC Western, Inc., U.S.Cal.1996, 116 S.Ct. 1251, 516 U.S. 479, 134 L.Ed.2d 121, on remand 83 F.3d 1174.

## § 2-7-134. Summary suspension of permit for failure to remit penalty or fee—Revocation proceedings

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

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

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

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

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

Added by Laws 1998, c. 186, § 3, eff. Nov. 1, 1998.

## ARTICLE VIII. LOW-LEVEL RADIOACTIVE WASTE

## PART 1. CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE

## § 2-8-101. Short title

### Historical and Statutory Notes

**Complementary Legislation:**

Ark.—A.C.A. §§ 8-8-201 to 8-8-206.
Kan.—K.S.A. 65-34a01 to 65-34a04.
La.—LSA-R.S. 30:2131 to 30:2134.
Neb.—R.R.S.1943, § 71-3521.
U.S.—42 U.S.C.A. § 2021d.

ARTICLE X. SOLID WASTE MANAGEMENT ACT

PART 1. PURPOSE AND GENERAL DEFINITIONS

## § 2-10-102. Purpose

### Cross References

Displacing private company providing solid waste collection service by municipality, see Title 11, § 22-105.1.

Political subdivisions, authority to regulate solid waste as matter of statewide interest, see Title 19, § 365.

## § 2-10-103. Definitions

As used in the Oklahoma Solid Waste Management Act:

1. "Affiliated person" means:
   a. any officer, director or partner of the applicant,
   b. any person employed by the applicant as general or key manager who directs the operations of the site, transfer station, or facility which is the subject of the application, or
   c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity;

2. "Disclosure statement" means a written statement by the applicant which contains:
   a. the full name, business address, and social security number of the applicant, and all affiliated persons,
   b. the full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state,
   c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation,
   d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant and affiliated person which resulted in a final agency order or final judgment by a court of record, including final order or judgment on appeal, in the ten (10) years immediately preceding the filing of the application relating to solid or hazardous waste. Such action shall include, without limitations, any permit denial or any sanction imposed by a state regulatory agency or the United States Environmental Protection Agency, and
   e. a listing of any federal environmental agency and any state environmental agency that has or has had regulatory responsibility over the applicant;

3. "Disposal site" means any place, including, but not limited to, a transfer station, at which solid waste is dumped, abandoned, or accepted or disposed of by incineration, land filling, composting, shredding, compaction, baling or any other method or by processing by pyrolysis, resource recovery or any other method, technique or process designed to change the physical, chemical or biological character or composition of any solid waste so as to render such waste safe or nonhazardous, amenable to transport, recovery or storage or reduced in volume. A disposal site shall not include a manufacturing facility which processes scrap materials which have been separated for collection and processing as industrial raw materials;

4. "Dwelling" means a permanently-constructed, habitable structure designed and constructed for full-time occupancy in all weather conditions, which is not readily mobile and shall include but not be limited to a manufactured home as such term is defined by paragraph 11 of Section 1102 of Title 47 of the Oklahoma Statutes;

5. "Final closure" means those measures for providing final capping material, proper drainage, perennial vegetative cover, maintenance, monitoring and other closure actions required for the site by rules of the Board;

6. "Inert waste" means any solid waste that is insoluble in water, chemically inactive, that will not leach contaminants, or is commonly found as a significant percentage of residential solid waste;

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

8. "Integrated solid waste management plan" means a plan that provides for the integrated management of all solid waste within the planning unit and embodies sound principles of solid waste management, natural resources conservation, energy production, and employment-creating opportunities;

9. "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. The term "lithified earth material" shall not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface;

10. "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent (90%) or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment;

11. "Monofill" means a landfill which is used to dispose of a single type of specified nonhazardous industrial solid waste, except for other nonhazardous industrial solid wastes which are not readily separable from the specified waste;

12. "Nonhazardous industrial solid waste" means any of the following wastes deemed by the Department to require special handling:

a. unusable industrial or chemical products,

b. solid waste generated by the release of an industrial product to the environment, or

c. solid waste generated by a manufacturing or industrial process.

The term "nonhazardous industrial solid waste" shall not include waste that is regulated as hazardous waste or is commonly found as a significant percentage of residential solid waste;

13. "Person" means any individual, corporation, company, firm, partnership, association, trust, state agency, government instrumentality or agency, institution, county, any incorporated city or town or municipal authority or trust in which any governmental entity is a beneficiary, venture, or other legal entity however organized;

14. "Recycling" means to reuse a material that would otherwise be disposed of as waste, with or without reprocessing;

15. "Seismic impact zone" means an area with a ten percent (10%) or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years;

16. "Solid waste" means all putrescible and nonputrescible refuse in solid, semisolid, or liquid form including, but not limited to, garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid or semisolid commercial and industrial wastes including explosives, biomedical wastes, chemical wastes, herbicide and pesticide wastes. The term "solid waste" shall not include:

a. scrap materials which are source separated for collection and processing as industrial raw materials, except when contained in the waste collected by or in behalf of a solid waste management system, or

b. used motor oil, which shall not be considered to be a solid waste, but shall be considered a deleterious substance, if the used motor oil is recycled for energy reclamation and is ultimately destroyed when recycled;

17. "Solid waste management system" means the system that may be developed for the purpose of collection and disposal of solid waste by any person engaging in such process as a business or by any municipality, authority, trust, county or by any combination thereof at one or more disposal sites;

18. "Solid waste planning unit" means any county or any part thereof, incorporated city or town, or municipal authority or trust in which any governmental entity is a beneficiary, venture, or other legal entity however organized, which the Department determines to be capable of planning and implementing an integrated solid waste management program;

19. "Transfer station" means any disposal site, processing facility or other place where solid waste is transferred from a vehicle or container to another vehicle or container for transportation, including but not limited to a barge or railroad unloading facility where solid waste, in bulk or in containers, is unloaded, stored, processed or transported for any purpose. The term "transfer station" shall not include the following:

a. a facility, such as an apartment complex or a large manufacturing plant, where the solid waste that is transferred has been generated by the occupants, residents, or functions of the facility,
b. a citizens' collection station, or
c. a waste collection system which leaves collected solid waste in enclosed containers along the collection route for later transport to a recycling or disposal facility serving the area; and

20. "Waste reduction" means to reduce the volume of waste requiring disposal.

Amended by Laws 2000, c. 184, § 1, emerg. eff. May 3, 2000.

### Cross References

Displacing private company providing solid waste collection service by municipality, "solid waste" defined as provided in this section, see Title 11, § 22–105.1.

### Notes of Decisions

**Off-site scales 2**

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**2. Off-site scales**

Department's practice permitting use of off-site scales at landfills violated statute requiring owners and operators to install scales by January 1, 1996. Op.Atty.Gen. No. 97–57 (Sept. 12, 1997).

Department may only permit owners of disposal sites to install scales at locations meeting definition of disposal site under statute. Op. Atty.Gen. No. 97–57 (Sept. 12, 1997).

## PART 2. POWERS AND DUTIES

## § 2–10–204. Repealed by Laws 1998, c. 401, § 8, emerg. eff. June 10, 1998

### Historical and Statutory Notes

The repealed section, relating to the mandate to develop a statewide integrated solid waste management plan, was derived from:

Laws 1990, c. 217, § 3

63 O.S.1991, § 1–2420.

Laws 1993, c. 145, §§ 145, 359.

## § 2–10–205. Oklahoma Recycling Initiative

A. The Legislature hereby recognizes and declares that it is necessary for the public interest, health and economic welfare to encourage and promote the recycling and reuse of recoverable materials. The recycling and reuse of recoverable materials substantially reduces disposal costs and the tremendous flow of solid waste to Oklahoma's dwindling

solid waste sites. It is equally necessary that Oklahoma preserve, expand and encourage economic growth. The recycling and reuse of recoverable materials will create new employment, provide and allow for expansion of existing manufacturing, thereby increasing employment and payrolls as well as upgrading the state's natural resources.

B. The Legislature declares that the goal of this state, hereinafter called the Oklahoma Recycling Initiative, is that each incorporated municipality with a population greater than five thousand (5,000), as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, should develop and operate a recycling program which will generate raw materials for the manufacturing industries located in this state. Due to the importance of the paper industry to Oklahoma's economy, each recycling and reuse program should at a minimum include the collection of waste paper.

In implementing any recycling program the Oklahoma Recycling Initiative the municipality may: [1]

1. Consider the overall status of the solid waste collection system and management within the municipality, including generation, recycling and disposal;

2. Review five-, ten-, and twenty-year municipality-wide goals for reducing the amount of solid waste through the recycling of recoverable materials;

3. Evaluate alternative methods for achieving the Oklahoma Recycling Initiative through municipality-wide collection systems or through integrated recoverable materials management on a regional basis;

4. Establish a comprehensive and sustained public information and education program concerning the recoverable materials program's features and requirements; and

5. Include in the program such other information recommended by the Department of Environmental Quality.

Amended by Laws 1998, c. 364, § 11, emerg. eff. June 8, 1998; Laws 1998, c. 401, § 1, emerg. eff. June 10, 1998.

[1] So in enrolled bill.

### Historical and Statutory Notes

Section 11 of Laws 1998, c. 364, amending this section, was repealed by Laws 1999, c. 1, § 45.

## PART 3. PERMITTING PROCESS

## § 2-10-301. Permit required—Exemptions—Remediation projects

*Text as amended by Laws 2000, c. 8, § 1*

A. Except as otherwise specified in this section:

1. No person shall dispose of solid waste at any site or facility other than a site or facility for which a permit for solid or hazardous waste disposal has been issued by the Department of Environmental Quality;

2. No person shall own or operate a site or facility at which solid waste is disposed other than a site or facility for which a permit for solid or hazardous waste disposal has been issued by the Department;

3. No person shall knowingly transport solid waste to an unpermitted site or facility; and

4. The Department shall not bring an enforcement action against any unit of local government which undertakes any remediation of an illegal dump which the local government had no role in creating provided that the unit of local government first consults with and follows the remediation advice of the Department. The Department is authorized to recommend remediation of illegal dumps by burial of the material on location, when such burial appears to pose less risk than failure to remediate.

B. No provision of the Oklahoma Solid Waste Management Act shall be construed to prevent a person from disposing of solid waste from his or her household upon his or her

property provided such disposal does not create a nuisance or a hazard to the public health or environment or does not violate a local government ordinance.

C. Notice of permit actions shall be in accordance with the Uniform Permitting Act. [1]

D. The Department shall issue a permit to be effective for the life of a given site. In order to assure adequate financial assurance as required by this section, each permittee who operates a landfill disposal site, other than a generator owned and operated private industrial nonhazardous monofill, shall submit information on an annual basis at such times and in such form as the Department shall require, sufficient to allow the Department to know the remaining landfill life.

E. Information and data submitted in support of a permit application or a permit modification application for any site serving a population equivalent of five thousand (5,000) or more persons shall be prepared and sealed by a professional engineer licensed to practice in this state. Applicants for smaller site permits are encouraged but not required to seek professional engineering assistance.

F. The Department shall not issue any permit for the siting or expansion of an asbestos monofill which will be located closer than five hundred (500) yards from any occupied residence. No asbestos monofill shall be constructed within three (3) miles of the corporate boundaries of any city or town.

G. Disposal sites approved by the Department to receive only solid waste shall not accept for disposal any waste classified as hazardous waste.

H. No permit shall be required for a disposal site constructed pursuant to an order issued by the Department in an effort to remediate an abandoned or inactive waste site. Such disposal site shall only receive waste from the remediation project, and shall be designed, constructed, and operated in accordance with the technical standards established in the applicable rules promulgated by the Environmental Quality Board. Such rules shall not be less stringent than those which would apply to a federally funded remediation project pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act. [2]

I. No permit shall be required for a project approved by the Department and a local conservation district to use suitable portions of the solid waste stream to reclaim and restore Oklahoma lands.

Amended by Laws 1997, c. 371, § 1, eff. July 1, 1997; Laws 1998, c. 401, § 2, emerg. eff. June 10, 1998; Laws 2000, c. 8, § 1, emerg. eff. March 22, 2000.

1 So in enrolled bill; probably should read "Oklahoma Uniform Environmental Permitting Act", Title 27A, § 2–14–101 et seq.

2 42 U.S.C.A. § 9601 et seq.

*For text as amended by Laws 2000, c. 202, § 1, see § 2–10–301, post*

## § 2–10–301. Permit required—Exemptions—Remediation projects

*Text as amended by Laws 2000, c. 202, § 1*

A. Except as otherwise specified in this section:

1. No person shall dispose of solid waste at any site or facility other than a site or facility for which a permit for solid or hazardous waste disposal has been issued by the Department of Environmental Quality;

2. No person shall own or operate a site or facility at which solid waste is disposed other than a site or facility for which a permit for solid or hazardous waste disposal has been issued by the Department;

3. No person shall knowingly transport solid waste to an unpermitted site or facility; and

4. The Department shall not bring an enforcement action against any unit of local government which undertakes any remediation of an illegal dump which the local government had no role in creating provided that the unit of local government first

consults with and follows the remediation advice of the Department. The Department is authorized to recommend remediation of illegal dumps by burial of the material on location, when such burial appears to pose less risk than failure to remediate.

B. No provision of the Oklahoma Solid Waste Management Act shall be construed to prevent a person from disposing of solid waste from his or her household upon his or her property provided such disposal does not create a nuisance or a hazard to the public health or environment or does not violate a local government ordinance.

C. Notice of permit actions shall be in accordance with the Uniform Permitting Act. [1]

D. The Department shall issue a permit to be effective for the life of a given site. In order to assure adequate financial assurance as required by this section, each permittee who operates a landfill disposal site, other than a generator owned and operated private industrial nonhazardous monofill, shall submit information on an annual basis at such times and in such form as the Department shall require, sufficient to allow the Department to know the remaining landfill life.

E. Information and data submitted in support of a permit application or a permit modification application for any site serving a population equivalent of five thousand (5,000) or more persons shall be prepared and sealed by a professional engineer licensed to practice in this state. Applicants for smaller site permits are encouraged but not required to seek professional engineering assistance.

F. The Department shall not issue any permit for the siting or expansion of an asbestos monofill which will be located closer than five hundred (500) yards from any occupied residence. No asbestos monofill shall be constructed within three (3) miles of the corporate boundaries of any city or town.

G. Disposal sites approved by the Department to receive only solid waste shall not accept for disposal any waste classified as hazardous waste.

H. No permit shall be required for a disposal site constructed pursuant to an order issued by the Department in an effort to remediate an abandoned or inactive waste site. Such disposal site shall only receive waste from the remediation project, and shall be designed, constructed, and operated in accordance with the technical standards established in the applicable rules promulgated by the Environmental Quality Board. Such rules shall not be less stringent than those which would apply to a federally funded remediation project pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act. [2]

I. The Department shall not issue any permit for the siting of a new municipal solid waste landfill in any location that is both:

1. Within a locally fractured or cavernous limestone or cherty limestone bedrock; and

2. Within five (5) miles of any water well owned by a rural water district that is used or has the potential to be used to provide water to customers of the district.

Amended by Laws 1997, c. 371, § 1, eff. July 1, 1997; Laws 1998, c. 401, § 2, emerg. eff. June 10, 1998; Laws 2000, c. 202, § 1, emerg. eff. May 15, 2000.

[1] So in enrolled bill; probably should read "Oklahoma Uniform Environmental Permitting Act", Title 27A, § 2-14-101 et seq.

[2] 42 U.S.C.A. § 9601 et seq.

*For text as amended by Laws 2000, c. 8, § 1, see § 2-10-301, ante*

## § 2-10-301.1. Repealed by Laws 1998, c. 401, § 8, emerg. eff. June 10, 1998

### Historical and Statutory Notes

The repealed section, relating to permits for lateral expansion of landfill disposal site to within one half mile of occupied dwelling, was derived from Laws 1993, c. 128, § 1; Laws 1995, c. 285, § 7.

## § 2-10-302. Disclosure statement upon application—Revocation, or refusal to issue, amend, modify, renew or transfer permit—Failure to disclose or stating false information—Penalty

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

2. If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934,[1] or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other information as the Department of Environmental Quality may require pursuant to this section that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

B. The Department is authorized to revoke or to refuse to issue, amend, modify, renew or transfer a permit for the disposal of solid waste from or to any person or an affiliated person who:

1. Is not, due solely to the applicant's actions or inactions, in substantial compliance with any final agency order or final order or judgment of a court of record secured by the Department issued pursuant to the provisions of the Oklahoma Solid Waste Management Act;[2] or

2. Is not in substantial compliance with any final agency order or final order or judgment of a court of record secured by any state or federal agency, as determined by that agency, relating to the storage, transfer, transportation, treatment or disposal of any solid waste; or

3. Has evidenced a history of a reckless disregard for the protection of the public health and safety or the environment through a history of noncompliance with state or federal environmental laws, including without limitation the rules of the Department, regarding the storage, transfer, transportation, treatment or disposal of any solid or hazardous waste.

C. The application shall be signed under oath by the applicant.

D. The Department may suspend or revoke a permit issued pursuant to the Oklahoma Solid Waste Management Act to any person who has failed to disclose or states falsely any information required pursuant to the provisions of this section.

E. Any person who willfully fails to disclose or states falsely any such information, upon conviction, shall be guilty of a felony and may be punished by imprisonment for not more than five (5) years or a fine of not more than One Hundred Thousand Dollars ($100,000.00) or both such fine and imprisonment.

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

Amended by Laws 1998, c. 401, § 3, emerg. eff. June 10, 1998.

1 15 U.S.C.A. § 77B et seq.

2 Title 27A, § 2-10-101 et seq.

## § 2-10-305. Repealed by Laws 1998, c. 401, § 8, emerg. eff. June 10, 1998

### Historical and Statutory Notes

The repealed section, requiring application for permit to be based upon on-site observations, was derived from:

Laws 1990, c. 296, § 7.

Laws 1991, c. 336, § 6.

Laws 1992, c. 50, § 4.

63 O.S.Supp.1992, § 1-2414.1.

Laws 1993, c. 145, §§ 150, 359.
Laws 1994, c. 373, § 26.

## § 2-10-308. Disposal or processing of biomedical waste—Certificate of need required—Application—Investigation and determination—Appeal—Power to vacate certificate

### Notes of Decisions

Validity 1

1. Validity

Statute setting standards for issuance of certificate of need for biomedical waste disposal facilities was not unconstitutionally vague. Op.Atty. Gen. No. 96-94 (March 24, 1997).

## § 2-10-308.1. Disposal of untreated biomedical waste in municipal solid waste landfills prohibited

No person, firm, association, corporation or cooperative shall dispose of untreated, potentially infectious medical waste in either a municipal solid waste landfill or in any receptacle or system designed to collect and transport solid waste to a municipal solid waste landfill. This prohibition shall include all quantities of untreated sharps but shall not apply to other untreated, potentially infectious medical waste generated in quantities less than sixty (60) pounds (27.2 kilograms) per month from one physical location.

Added by Laws 1997, c. 371, § 2, eff. July 1, 1997.

## PART 5. NONHAZARDOUS INDUSTRIAL SOLID WASTE

## § 2-10-501. Nonhazardous industrial solid waste landfills—Permit—Restrictions

A. The Department of Environmental Quality may issue a permit for a landfill disposal site, which is not a hazardous waste facility, which accepts unspecified nonhazardous industrial solid waste, only under the following circumstances:

1. The landfill is located outside of areas of principal groundwater resource or recharge areas as determined and mapped by the Oklahoma Geological Survey or is on a proposed site on property owned or operated by a person who also owns or operates a hazardous waste facility or solid waste facility, on or contiguous to property on which a hazardous waste facility or solid waste facility is operating pursuant to a permit and the site is designed to meet the most environmentally protective solid waste rules promulgated by the Environmental Quality Board and includes a leachate collection system; or

2. The landfill complies with all siting and public participation requirements as though the solid waste landfill were a hazardous waste landfill; or

3. The site is proposed and designed as a nonhazardous industrial solid waste landfill which will be owned, operated, or owned and operated by an industry or manufacturer for its exclusive noncommercial use; or

4. The landfill is owned or operated by a municipality or is a privately owned landfill which regularly serves one or more municipalities and which has been accepting nonhazardous industrial solid waste under approval of the Department.

B. The provisions of this section shall apply to all pending applications for which final agency action has not been taken, future permit applications and facilities which are not fully operational.

C. Except as otherwise provided in subsection A of this section, the Department shall not allow a solid waste disposal site to accept any nonhazardous industrial solid waste type unless:

1. Said site is permitted by the Department to accept such waste type;

2. The landfill is owned or operated by a municipality or is a privately owned landfill which regularly serves one or more municipalities and which has been accepting nonhazardous industrial solid waste under approval of the Department; or

3. The site is proposed, designed, and permitted as a nonhazardous industrial solid waste monofill.

D. 1. New landfills which accept nonhazardous industrial solid waste shall not be constructed nor shall such existing landfills be expanded which are located within a seismic impact zone unless the applicant demonstrates that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

2. No nonhazardous industrial solid waste landfill shall be located within five (5) miles of a known epicenter of an earthquake of more than 4.0 on the Richter Scale or a number V on the modified Mercalli Scale as recorded by the Oklahoma Geological Survey.

3. Paragraphs 1 and 2 of this subsection shall not apply to a nonhazardous industrial solid waste landfill which is owned or operated by:

a. an industry or manufacturer and utilized for such industry's or manufacturer's exclusive noncommercial use, or

b. a municipality, or is a privately owned landfill which regularly serves one or more municipalities, and which has been accepting nonhazardous industrial solid waste under approval of the Department.

E. 1. Except as otherwise provided by this subsection, the Department shall not issue, amend or modify a permit to allow a solid waste landfill to accept more than one type of nonhazardous industrial solid waste for disposal unless said landfill is equipped with a composite liner and a leachate collection system designed and constructed in compliance with rules promulgated by the Board.

2. Any landfill which is owned, operated, or owned and operated by an industry or manufacturer and utilized for such industry's or manufacturer's exclusive noncommercial use may be required to install a composite liner and a leachate collection system as determined to be necessary by the Department on a case-by-case basis.

3. The Department shall not require composite liners and leachate collection systems for any nonhazardous industrial solid waste landfill initially licensed by the Department prior to July 1, 1992, which is owned and operated by an industry or manufacturer and utilized for such industry's or manufacturer's exclusive noncommercial use.

F. No limitation shall be placed on the percentage of nonhazardous industrial solid waste that may be accepted for disposal at solid waste landfills which have a composite liner and a leachate collection system designed and constructed in compliance with rules promulgated by the Board.

G. Solid waste disposal site operators shall submit to the Department an itemized monthly report of the type, quantity and source of nonhazardous industrial solid waste accepted the previous month. Solid waste disposal sites that are owned and operated by an industry or manufacturer which are utilized for such industry's or manufacturer's exclusive noncommercial use are not required to submit monthly reports to the Department but shall maintain in the operating record information regarding the type and quantity of nonhazardous industrial waste accepted each month. Information maintained in the operating record shall be made available to the Department upon request.

H. 1. Before sending waste identified as nonhazardous industrial solid waste for disposal in an Oklahoma solid waste landfill, a certification that the waste is not a hazardous waste as such term is defined in the Oklahoma Hazardous Waste Management Act [1] shall be submitted to the Department. Such certification shall be made by:

a. the original generator,

b. a person who identifies and is under contract with a generator and whose activities under the contract cause the waste to be generated,

c. a party to a remediation project under an order of the Department or under the auspices of the Oklahoma Energy Resources Board or other agencies of other states, or

d. a person responding to an environmental emergency.

2. The Department may require the certifier to substantiate the certification by appropriate means, when it is reasonable to believe such waste may be hazardous. Such substantiation may include Material Safety Data Sheets, an explanation of specific technical process knowledge adequate to identify that the waste is not a hazardous waste, or laboratory analysis.

I. Any generator seeking to exclude a specific nonhazardous industrial solid waste, which is also an inert waste, from the provisions of this section may petition the Department for a regulatory exclusion. The generator shall demonstrate to the satisfaction of the Department that the waste is inert and that it may be properly disposed.

J. Unless otherwise specified in this section, by January 1, 1993, solid waste landfills existing on the effective date of this section which are required by this section to utilize composite liners and leachate collection systems and are not doing so shall cease to accept nonhazardous industrial solid waste.

K. Notwithstanding any other provision of the Oklahoma Solid Waste Management Act, no solid waste permit shall be required for an incineration facility burning nonhazardous solid waste for the purpose of disposing of the waste if:

1. The incinerator has an air quality permit from the Department;

2. Storage of waste at the site prior to incineration is limited to the lesser of twenty (20) tons or the volume reasonably expected to be incinerated within ten (10) days, considering the nature of the waste and the manufacturer's approved charge rate for the incinerator;

3. The waste is stored at a location and managed in a manner which minimizes the risk of a release, exposure or other incident which could threaten human health or the environment, including the storage of liquids within adequate secondary containment;

4. All ashes and residues from the incineration process are managed in accordance with applicable statutes and rules; and

5. a. The incinerator is owned and operated by a business or industry for the incineration of its own waste exclusively, or

b. The waste feed rate of the incinerator does not exceed five (5) tons per day.

Amended by Laws 1997, c. 200, § 2, eff. July 1, 1997; Laws 1998, c. 401, § 4, emerg. eff. June 10, 1998; Laws 2000, c. 364, § 2, emerg. eff. June 6, 2000.

[1] Title 27A, § 2-10-101 et seq.

## PART 7. CLOSURE

## § 2-10-701. Site closure plan—Financial security

A. All disposal site owners shall provide a closure plan to the Department of Environmental Quality for approval which defines operational phases and includes cost estimates, and plans and specifications for final closure. A site may be closed in phases according to a closure plan approved by the Department.

1. Owners of landfills that receive household solid waste, defined as Municipal Solid Waste Landfill Facilities in the federal regulations adopted under Subtitle D of the federal Solid Waste Disposal Act,[1] and owners of commercial nonhazardous industrial waste landfills shall provide for the maintenance and monitoring of such works for thirty (30) years. Provided, the owner of any landfill that stops receiving waste on or before April 9, 1994, and has completed final closure of the site on or before October 9, 1994, shall provide for the maintenance and monitoring of such site for eight (8) years after final closure has been completed. A permittee who stopped receiving waste at his permitted solid waste municipal landfill on or before April 9, 1994, may apply to the Department for a modification of his permit to operate an on-site solid waste transfer station, a yard-waste composting facility or a citizen's collection station. Provided no

land disposal occurs, such site shall not require monitoring or financial assurance as a municipal solid waste landfill.

2. Generator owned and operated private industrial nonhazardous monofills shall only be required to have an eight-year postclosure period or such postclosure time period as may be mandated under the federal Solid Waste Disposal Act.[2] Generator owned and operated private industrial nonhazardous landfill disposal sites and all construction and demolition landfill disposal sites shall only be required to have an eight-year postclosure period or such postclosure time period as may be mandated under the federal Solid Waste Disposal Act or determined necessary by the Department on a case-by-case basis considering the nature of the waste disposed.

3. Disposal sites other than land disposal sites shall have a closure plan which would accomplish the removal and proper disposal of any remaining waste and the elimination of potential environmental health hazards.

B. The Department shall require that financial assurances be provided in an amount sufficient to cover the estimated cost of closure and any postclosure. The Department shall establish financial assurance mechanisms which will ensure that the funds necessary to meet the costs of closure, postclosure care and corrective action for known releases will be available whenever such funds are needed. An increase in financial assurance shall be required when any permittee deviates from the approved closure plan or when the cost of closure or postclosure is found to have increased. Owners of landfills that receive household solid waste shall increase financial assurance if corrective action is required.

C. 1. Disposal site owners as identified in subsection A of this section shall provide financial assurance to guarantee the performance of final closure and for any required postclosure as required by the Department pursuant to this section. Except in cases where owners utilize a financial test provided by rule, the state shall be the sole beneficiary of any such assurance solely for the cost of performance of closure and postclosure and shall have a security interest therein.

2. The financial assurance shall be in a form described in rules promulgated by the Environmental Quality Board or the owner may provide the Department with cash or certificates of deposit payable to the Department of Environmental Quality Revolving Fund for deposit with the State Treasurer's Office.

3. Disposal site owners may satisfy the financial assurance requirements of this section by creating a trust in accordance with the federal regulations adopted under Subtitle D of the federal Solid Waste Disposal Act. Municipal solid waste disposal site owners may satisfy the financial assurance requirements of this section by creating an escrow account in accordance with Board rules adopted under the Oklahoma Solid Waste Management Act.[3] These financial assurance mechanisms shall provide for payments by the disposal site owner which will allow for closure and corrective action obligations to be spread out over the economic life of the disposal site, but shall not exceed fifteen (15) years.

4. Owners of disposal sites which receive waste after April 9, 1994, shall provide financial assurance for closure and any applicable postclosure on or before April 9, 1995, unless such date is extended by the federal Environmental Protection Agency pursuant to Subtitle D of the federal Resource, Conservation and Recovery Act.[1] If any disposal site owner fails to provide such financial assurance by the applicable deadline, the Department shall cause the landfill disposal site permit to be summarily suspended by order. The Department shall initiate the process of revoking the permit and may require closure of the landfill. This subsection shall not apply to units of the federal government.

5. Financial assurance provided prior to June 8, 1994, as a condition of issuance of any permit or any agreement with the Department shall continue in effect unless the permittee replaces such assurance with an additional mechanism or combination of mechanisms authorized by the Department.

6. In lieu of the performance guarantee mechanisms specified in this section, owners or operators of a nonhazardous industrial solid waste landfill which is owned or operated by an industry or manufacturer for its exclusive noncommercial use may satisfy the financial assurance requirements for closure, postclosure and maintenance by meeting

the requirements of a corporate financial test and corporate guarantee similar to that applicable to hazardous waste facilities.

7. Any unit of local government or public trust of which it is a beneficiary may satisfy financial assurance requirements for closure and, when required, postclosure, by participating in a statewide trust capable of guaranteeing performance of such closure and postclosure.

8. Private owners and operators of disposal sites required by this section to provide financial assurance may satisfy this obligation through participation in the Oklahoma Landfill Closure Authority, created pursuant to the provisions of Section 2-10-701.1 of this title.

9. Solid waste transfer stations, processing facilities, or composting facilities are exempt from the financial assurance requirements of this section if they principally manage municipal solid waste.

D. When financial assurance is required, it shall remain in effect until closure and any postclosure is completed. The amount of such assurance shall be set by the Department and shall not be less than the anticipated cost of contracting for performance of each phase of the closure plan and postclosure. The Department may allow a reduction in the amount of assurance to reflect the anticipated costs which remain.

Amended by Laws 1997, c. 371, § 3, eff. July 1, 1997; Laws 1998, c. 401, § 5, emerg. eff. June 10, 1998.

[1] 42 U.S.C.A. § 6941 et seq.

[2] 42 U.S.C.A. § 6901 et seq.

[3] Title 27A, § 2-10-101 et seq.

### Cross References

Inadequate financial assurance to properly close or monitor site, use of Solid Waste Facility Emergency Closure Fund Special Account, see Title 27A, § 2-10-805.

### Notes of Decisions

Trust fund 2

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**2. Trust fund**

Department rules, creating trust fund mechanism for providing closure and postclosure financial assurance for solid waste landfills, violated statute requiring sufficient amount of assurance remain in effect until completion of closure and postclosure phases. Op.Atty.Gen. No. 97-57 (Sept. 12, 1997).

## § 2-10-701.1. Oklahoma Landfill Closure Authority

A. The Governor is hereby authorized to accept beneficial interest on behalf of the State of Oklahoma in an express trust titled the Oklahoma Landfill Closure Authority which shall be an agency of the state for the specific object and purpose of providing a financial assurance mechanism to owners and operators of private, nongovernmental solid waste disposal sites in order to satisfy requirements for closure and postclosure care of and corrective action as necessary to the disposal sites. Such trust shall be created pursuant to the provisions of this section.

B. Private owners and operators of disposal sites required by the Oklahoma Solid Waste Management Act [1] to provide financial assurance may satisfy this obligation through participation in the Oklahoma Landfill Closure Authority.

C. The authorization specified by subsection A of this section shall be effective only if:

1. The Oklahoma Landfill Closure Authority is established as a public trust pursuant to this section with the state as a beneficiary;

2. The Oklahoma Landfill Closure Authority is established for the furtherance and accomplishment of providing a financial assurance mechanism for private, nongovernmental owners and operators of solid waste disposal sites;

3. The instrument creating the trust provides for the appointment, succession, powers, duties, terms and manner of removal of trustees and such other conditions and

requirements specified by this section. In all respects, terms of the instrument shall be controlling;

4. The instrument creating the trust provides for the appointment of three ex officio trustees, one of whom shall be Executive Director of the Department of Environmental Quality; one of whom shall be the chair of the Solid Waste Management Advisory Council; and one of whom shall be the Secretary of Environment. The trustees shall serve until their successors have been duly appointed and qualified. Trustees shall serve without compensation, except that they shall be entitled to reimbursement for all actual and necessary travel expenses incurred in the performance of their official duties in accordance with the provisions of the trust instrument. Any authorized travel expenses shall be paid from funds of the trust authority;

5. As a condition precedent, approval is received from the Attorney General that the trust is in the proper form; and

6. A certified copy of the trust agreement is filed with the Secretary of State.

D. Each officer handling funds of the public trust shall furnish a good and sufficient fidelity bond in an amount and with surety as may be specified and approved by the Governor of this state. The cost of the bond shall be paid from funds of the trust authority.

E. The trust established pursuant to this section shall not be amended without a two-thirds (⅔) vote of approval of the trustees of such trust. Any such amendment is subject to the approval of the Governor of the State of Oklahoma. Such amendments shall be sent to the Governor within fifteen (15) days of their adoption.

F. The trustees of the Oklahoma Landfill Closure Authority created pursuant to this section shall make and adopt bylaws for the due and orderly administration of regulation of the affairs of the Authority. All bylaws and amendments thereto of the Authority shall be submitted in writing to the Governor of this state and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Governor shall approve the proposed bylaws before they take effect.

G. The Oklahoma Landfill Closure Authority shall comply with:

1. The annual budget provisions of the state requiring a balanced budget. A copy of the budget shall be submitted to the Governor each year;

2. The Public Competitive Bidding Act of 1974; [2]

3. The Oklahoma Open Records Act; [3]

4. The Oklahoma Open Meeting Act; [4]

5. The Administrative Procedures Act; [5] and

6. The provisions of this section.

H. Funds deposited in the finance assurance mechanism program of the trust and interest thereon shall be used exclusively and solely for closure and postclosure care of, and corrective action as necessary to, the disposal sites whose owners and operators are participating in such program and have contributed the necessary amounts for their disposal site's closure and postclosure care or corrective action. Funds collected from a disposal site may only be used to meet the responsibilities under this section for such disposal site.

I. Any monies obtained by the Authority pursuant to this section shall be deposited in an insured interest-bearing account or may be invested in readily marketable classes of securities including bonds or other interest-bearing obligations of the United States of America or guaranteed both as to interest and principal by the United States; provided, that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of claims.

J. 1. The trustees of the Oklahoma Landfill Closure Authority shall cause an audit to be made of, including but not limited to, the funds, accounts, and fiscal affairs of such trust, such audit to be ordered within thirty (30) days of the close of each fiscal year of the trust.

2. The necessary expense of said audits, including the cost of typing, printing, and binding, shall be paid from funds of the trust.

3. The audits required by this subsection shall be certified with the opinion of a certified public accountant or a licensed public accountant. The required audit shall adhere to standards set by the State Auditor and Inspector. One copy of the annual audit shall be filed with the State Auditor and Inspector, one copy with the Governor of the State of Oklahoma and one copy with the Speaker of the House of Representatives and the President Pro Tempore of the Senate not later than six (6) months following the close of each fiscal year of the trust.

4. In the event that the copy of such audit as required shall not be filed with the State Auditor and Inspector within the time herein provided, the State Auditor and Inspector hereby is authorized to employ, at the cost and expense of the trust, a certified public accountant or licensed public accountant to make the audit herein required.

K. The Oklahoma Landfill Closure Authority is authorized to:

1. Establish a financial assurance mechanism for private, nongovernmental owners and operators of disposal sites and to collect assessments or fees from participating owners and operators of solid waste disposal sites;

2. Employ and compensate such personnel as required to fulfill the purposes of this section;

3. Retain legal counsel as is required to fulfill the purposes of this section;

4. Sue and be sued;

5. Initiate prosecution and civil remedies necessary to collect any assessments or fees due and owing to the Authority from participating owners and operators of solid waste disposal sites;

6. Cooperate with local, state or national organizations, whether public or private, in carrying out the purposes of this section, and to enter into such contracts as may be necessary; provided, however, no Authority funds shall be used, directly or indirectly, or as a result of contract or agreement with other persons or organizations, in lobbying, or in supporting or opposing political candidates, political officeholders, or legislation, either state or national;

7. Make such reasonable expenditures of funds as is necessary to carry out the provisions of this section;

8. Call and conduct such meetings and elections as may be necessary in carrying out the provisions of this section; and

9. Exercise such other powers as necessary to carry out the purposes of this section.

L. The operations of the trust shall be administered by the Department of Environmental Quality, which is hereby authorized to keep confidential, upon request of an owner or operator, any specific information pertaining to the finances of any disposal site.

M. The Oklahoma Landfill Closure Authority is not authorized to:

1. Issue or sell bonds;

2. Acquire lands by use of eminent domain; or

3. Engage in any activity or transaction that is not expressly authorized in the instruments or articles prescribing its creation except by express consent of the Legislature of the state.

N. 1. The Oklahoma Landfill Closure Authority shall be the regularly constituted authority of the beneficiary for the performance of the functions for which the trust shall have been created.

2. Except for acts of dishonesty, no trustee shall be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in the performance of such trust or in the operation of the trust property. Except for acts of dishonesty, any act, liability for any omission or obligation of a trustee or the Authority, in the execution of such trust, or in the operation of the trust property, shall be subject to limits specified by the Governmental Tort Claims Act. [6] In no event shall the state be construed to be or become liable for any act, omission or obligation of a trustee or of the Board.

O. The Oklahoma Landfill Closure Authority may be terminated by agreement of the trustees and the Governor of this state, or may be terminated by the Legislature; provided, that such trust shall not be terminated while there exists outstanding any contractual obligations chargeable against the trust property.

P. Funds collected by the Oklahoma Landfill Closure Authority pursuant to this section shall not be subject to state budget and expenditure limitations. Such funds shall at no time become monies of the state or become part of the general budget of the state. Debts or obligations of the Authority shall not be construed to be debts or obligations of this state.

Q. The Authority established pursuant to the provisions of this section as a trust with the state as a beneficiary shall not otherwise be required to comply with any provisions established pursuant to Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes.

R. Compliance with the provisions of this section, by the Oklahoma Landfill Closure Authority, shall be and constitute a binding contract with the State of Oklahoma for the acceptance of the beneficial interest in the trust property by the Department of Environmental Quality, as designated beneficiary, and the application of the proceeds of the trust property and its operation for the purposes, and in accordance with the stipulations of the trust instrument.

S. The Executive Director shall not be authorized to employ outside personnel on a contractual fee basis to aid in establishing or administering the Oklahoma Landfill Closure Authority.

Added by Laws 1997, c. 371, § 4, eff. July 1, 1997. Amended by Laws 1998, c. 401, § 6, emerg. eff. June 10, 1998.

[1] Title 27A, § 2-10-101 et seq.
[2] Title 61, § 101 et seq.
[3] Title 51, § 24A.1 et seq.
[4] Title 25, § 301 et seq.
[5] Title 75, § 250 et seq.
[6] Title 51, § 151 et seq.

## PART 8. FEES AND OPERATIONS

### § 2-10-802. Scales—Fees, exemptions—Expenditure of funds—Recycling project contracts—Annual report

A. 1. Owners or operators of landfill disposal sites which are not generator owned and operated nonhazardous industrial waste monofills shall install scales by January 1, 1996. Such scales shall be installed on or within five (5) miles of the landfill disposal site and shall be tested and certified as required by Section 5-61e of Title 2 of the Oklahoma Statutes relating to the authority of the Board of Agriculture to test annually the standards of weights and measures used by any city or county within the state and to approve if found to be correct.

2. The owner or operator shall upon receipt weigh all waste received and record the weight in writing. If scales at a disposal site are not operative, tonnage shall be estimated on a volume basis whereby the volume reported shall be no less than the volume capacity of the containers or, if none, of the vehicles delivering the waste, and one cubic yard of solid waste shall be calculated to weigh one-third (⅓) ton. The owner or operator shall place notice in the disposal site's operating record of the time and date at which the scales became inoperable, describe the steps taken to repair them, and note the date use was resumed. If daily use has not resumed within thirty (30) days after the scales became inoperable, the owner or operator shall give written notice to the Department of Environmental Quality.

3. The owner or operator shall also maintain a written record of the weight or volume of any solid waste received which is productively reused or recovered and sold in accordance with the landfill disposal site's permit.

4. The scale location restriction of this subsection shall not apply to federal or state military installations so long as:

a. the scales are located within the physical boundary of that installation, and

b. the disposal site receives waste only from that military installation.

B. 1. Except as otherwise provided by this subsection, on and after January 1, 1996:

a. owners and operators of landfill disposal sites which receive an average of less than one hundred (100) tons of solid waste per operating day shall assess a fee of One Dollar and fifty cents ($1.50) per ton of solid waste received for disposal. A total of fifty cents ($.50) per ton of such fee shall be retained by the owner or operator and used exclusively for capital improvement to their facilities and for the projects required pursuant to the Oklahoma Solid Waste Management Act or the disposal site's permit for such period of time necessary to recoup a capital investment, plus the interest costs expended in purchasing the scales, of a total of Forty Thousand Dollars ($40,000.00),

b. when the owner or operators have recouped a capital investment of the total specified in subparagraph a of this paragraph, the fee to be assessed shall be One Dollar and twenty-five cents ($1.25) per ton of solid waste received for disposal. At such time, for a return with remittance filed on or before the due date, the owner or operator may deduct and retain ten percent (10%) of the fees collected, and

c. records documenting the projects and use of the funds shall be included with each return.

2. a. Owners and operators of landfill disposal sites which receive an average of more than one hundred (100) tons of solid waste per operating day shall assess a fee of One Dollar and fifty cents ($1.50) per ton of solid waste received for disposal, retaining twenty-five cents ($0.25) per ton for a period of time necessary to recoup a capital investment, plus the interest costs expended in purchasing the scales, of Forty Thousand Dollars ($40,000.00). At the end of such period the fee shall revert to One Dollar and twenty-five cents ($1.25) per ton. For a return with remittance filed on or before the due date, the owner or operator may deduct and retain ten percent (10%) of the fees collected.

b. Records documenting the capital investment and the use of the funds shall be included with each return.

3. The fee shall not be imposed on:

a. the solid waste received which is productively reused or recovered in accordance with the landfill disposal site's permit. The owner or operator shall include records pertaining to this fee exemption in the quarterly return of fees to the Department, and

b. generator owned and operated nonhazardous waste land disposal monofills and waste subject to a fee pursuant to Section 2–10–803 of this title. For emergencies and other special events, the Department and the owner or operator of a site subject to this section may enter into a formal agreement to waive the fee.

4. Large industrial waste generators who generate over ten thousand (10,000) tons of nonhazardous industrial solid waste in the state in a calendar year may annually apply to the Department for a certificate exempting the disposal of such generated waste in excess of ten thousand (10,000) tons from the disposal fee authorized by this section. An applicant must have implemented a pollution prevention plan for such waste and filed it with the Department, provided operational documentation regarding such plan and paid the disposal fee on ten thousand (10,000) tons of the waste during the calendar year of application. The Department-issued exemption certificates shall be valid for the remainder of the calendar year of application, may contain conditions, and, upon presentation by authorized persons, shall be recognized by owners or operators of landfill disposal sites subject to this section. If a generator operates a landfill solely for waste from that generator, and if that generator chooses to seek the exemption authorized by this paragraph, the generator shall not be required to install scales or keep records relative to quantity of waste received for the landfill.

5. The fee assessed by this subsection is to be a charge to waste producers in addition to any charges specified in any contract or elsewhere. The fee shall be imposed upon and passed through to disposers of waste using the facility.

6. The owner or operator of a solid waste disposal site shall collect the fee levied pursuant to this subsection as trustee for the state and shall prepare and file with the Department quarterly returns indicating:

a. the total tonnage of solid wastes received for disposal at the gate of the site, and

b. the total amount of the fees collected pursuant to this section.

7. Not later than thirty (30) days after the end of the quarter to which such a return applies, the owner or operator shall mail to the Department the return for that quarter together with the fees collected during that quarter as indicated on the return.

8. The owner or operator may receive an extension of not more than thirty (30) days for filing the return and remitting the fees, provided that:

a. the owner or operator has submitted a request for an extension in writing to the Department together with a detailed description of why the extension is requested,

b. the Department has received the request not later than the day on which the return is required to be filed, and

c. the Department has approved the request.

9. For any quarterly return filed more than thirty (30) days after the last day of the quarter or extension date, the owner or operator shall remit an additional five percent (5%) of the fees collected during the month to which the return applies. If the fees are not remitted within sixty (60) days of the last day of the quarter during which they were collected, the owner or operator shall pay an additional fifty percent (50%) of the amount of the fees for each month that they are late.

10. If the owner or operator misrepresents, or fails to properly measure or record, the amount of waste received or fails to remit fees within sixty (60) days after the last day of the quarter during which they were collected, the landfill disposal site's permit shall be summarily suspended by order and the Department shall initiate the process of revoking the permit and may require closure of the landfill.

C. 1. The Department shall expend funds collected pursuant to the provisions of this section solely for the administration and enforcement of the provisions of the Oklahoma Solid Waste Management Act and for the development of solid waste technical assistance programs, solid waste public environmental education programs and educational curricula, solid waste studies, development of a statewide solid waste plan, solid waste recycling and litter prevention programs, and other environmental improvements.

2. In order to assist the Department of Environmental Quality regarding its responsibilities relating to the promotion of recycling of solid waste, beginning July 1, 1996, and each fiscal year thereafter, the Department shall contract with units of local government, political subdivisions of this state, components of The Oklahoma State System of Higher Education, local and statewide organizations representing municipalities or counties, or substate planning districts recognized by the Oklahoma Department of Commerce, for up to a total of One Hundred Thousand Dollars ($100,000.00) and to the extent such monies are available for projects promoting the recycling of solid waste. Local governments, political subdivisions of this state, components of The Oklahoma State System of Higher Education, local and statewide organizations representing municipalities and counties and substate planning districts recognized by the Oklahoma Department of Commerce desiring to contract with the Department for such projects shall meet the application requirements of rules promulgated by the Environmental Quality Board and the criteria established by a recycling priorities plan prepared annually by the Department after review and comment by the Solid Waste Management Advisory Council. Except as otherwise provided by this section, contracts for such projects shall not be granted to state agencies.

3. Any litter prevention program shall be developed by the Department in conjunction with the Department of Transportation.

4. a. To the extent that funds are available, the Department may also reimburse any governmental entity for equipment other than motor vehicles or buildings to separate, process, modify, convert or treat solid waste or recovered materials so that the resulting product is being used in a productive manner.

b. The reimbursements shall be from solid waste fee funds and shall not exceed twenty-five percent (25%) of the person's total project costs. No reimbursement may be larger than Twenty Thousand Dollars ($20,000.00).

c. Reimbursements must be expended in accordance with rules promulgated by the Environmental Quality Board and criteria established through the Department's annual recycling priorities plan. The Department shall not expend more than Two Hundred Thousand Dollars ($200,000.00) in each fiscal year for such reimbursements, nor shall the Department reimburse waste tire facilities that may be eligible for compensation from the Waste Tire Recycling Indemnity Fund.

5. a. The Department, in conjunction with the Corporation Commission, the Oklahoma Energy Resources Board and the Oklahoma Conservation Commission, may develop a plan to use suitable portions of the solid waste stream to reclaim Oklahoma lands damaged by oil and gas exploration and production or by mining activities.

b. To the extent that funds are available, the Department may use up to ten percent (10%) of the annual income from the fees received pursuant to the provisions of this section to implement the plan. The Department may use its discretion in administering the funds for the purpose of this paragraph, but shall keep records subject to audit by the State Auditor and Inspector for good business practices.

6. a. To the extent that funds are available, after having reasonably met other specified uses of the solid waste fund, the Department is authorized to expend up to five percent (5%) of the total annual solid waste fee income for the purpose of making incentive payments to any person, firm or corporation located in this state generating energy by utilizing solid waste landfill methane.

b. The Environmental Quality Board shall promulgate rules to administer the provisions of this paragraph.

c. No person, firm or corporation shall be eligible to receive incentive payments as provided in subparagraph a of this paragraph for more than three (3) years. The amount of such payments shall be determined by the Department based on the amount of energy generated and the cost of production.

D. The provisions of this section shall not apply to landfill disposal sites that receive only ash generated by the burning of coal.

E. On or before September 1, 1996, and September 1 of each year thereafter, the Department of Environmental Quality shall prepare a report of income and expenditures for the period of each fiscal year in which solid waste fee monies authorized by this section were received and such report shall be distributed to members of the Solid Waste Management Advisory Council for review. By November 1 of each year the Council shall submit to the Executive Director, Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate, its written comments on the comparison of income with program expenditures.

Amended by Laws 1997, c. 371, § 5, eff. July 1, 1997; Laws 1998, c. 401, § 7, emerg. eff. June 10, 1998; Laws 1999, c. 15, § 1, eff. July 1, 1999; Laws 2000, c. 184, § 2, emerg. eff. May 3, 2000.

## Notes of Decisions

Off-site scales 1

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### 1. Off-site scales

Department's practice permitting use of off-site scales at landfills violated statute requiring owners and operators to install scales by January 1, 1996. Op.Atty.Gen. No. 97-57 (Sept. 12, 1997).

Department may only permit owners of disposal sites to install scales at locations meeting definition of disposal site under statute. Op. Atty.Gen. No. 97-57 (Sept. 12, 1997).

## § 2-10-803. Fee for treatment, storage or disposal of solid wastes generated outside state—Reciprocal agreements

### United States Supreme Court

Solid waste disposal, surcharge on waste generated out-of-state, see Oregon Waste Systems, Inc. v. Department of Environmental Quality of State of Or., 1994, 114 S.Ct. 1345, 511 U.S. 93, 128 L.Ed.2d 13, on remand 319 Or. 251, 876 P.2d 749.

## § 2-10-804. Use of fees to implement county solid waste management plans—Authorizing administrative and technical support—Interlocal agreements

A. The Department of Environmental Quality shall use at least ten percent (10%) of the annual income from the solid waste fees received under Section 2-10-802 of Title 27A of the Oklahoma Statutes to assist in implementing county solid waste management plans developed under Section 2-10-1001 of Title 27A of the Oklahoma Statutes. The Department shall prioritize its assistance for enforcement, clean-up and prevention of unpermitted disposal sites, and the management of solid waste that is hard to dispose.

B. The Department may consult with the Association of County Commissioners of Oklahoma and the Oklahoma State University Cooperative Extension Service to assure that boards of county commissioners receive adequate administrative and technical support for implementing their county solid waste plans.

C. Any county, in formulating and implementing its solid waste management plan, may enter into an interlocal agreement with a municipality and may use funds provided by the Department according to this section for such agreements in furtherance of said solid waste management plans.

Added by Laws 1997, c. 371, § 6, eff. July 1, 1997.

## § 2-10-805. Solid Waste Facility Emergency Closure Fund Special Account

A. There is hereby created in the State Treasury a revolving fund for the Department of Environmental Quality to be designated the "Solid Waste Facility Emergency Closure Fund Special Account". The fund account shall be a continuing fund account, not subject to fiscal year limitations. All monies accruing to the credit of said fund account are hereby appropriated and may be budgeted and expended by the Department for the purpose specified by this section.

B. The Fund shall contain only monies appropriated by the Legislature and specifically designated for deposit to the fund.

C. Expenditures from the fund account shall be made upon vouchers prescribed by the State Treasurer and issued by the Department against the Solid Waste Facility Emergency Closure Fund Special Account.

D. No monies shall be expended by the Department from the Solid Waste Facility Emergency Closure Fund Special Account except for closure and monitoring activities at landfill disposal sites where the owner or operator has failed to adequately provide closure and postclosure care and where the financial assurance, as specified in Section 2-10-701 of Title 27A of the Oklahoma Statutes, is insufficient to properly close or monitor the site as required by the rules, and for any action determined to be necessary by the Department for the pursuit of cost recovery as required by this section.

E. The State Auditor and Inspector shall audit the Solid Waste Facility Emergency Closure Fund Special Account on an annual basis. The expense of the audit shall be paid from the Special Account.

F. The Department shall expeditiously pursue all remedies available to compel the legally responsible parties to perform closure and postclosure monitoring and care as required by the rules, and to seek the recovery of any funds expended by the Department under this section. The Department shall utilize staff or outside counsel to assure such expeditious pursuit of remedies.

G. Nothing in this section shall be construed as a state mechanism for the financial assurance required of disposal site owners and operators under Section 2–10–701 of Title 27A of the Oklahoma Statutes.

Added by Laws 1997, c. 371, § 7, eff. July 1, 1997.

PART 9. MUNICIPAL SOLID WASTE MANAGEMENT SYSTEMS

## § 2–10–901. Development of plan—Fees and charges—Control of collection, transportation, storage and disposal of solid waste—Acceptance and disbursement of funds—Contracts for land, facilities, vehicles and machinery—Operational policies

### United States Supreme Court

Solid waste disposal, discrimination in favor of local businesses, see C & A Carbone, Inc. v. Town of Clarkstown, N.Y., U.S.N.Y.1994, 114 S.Ct. 1677, 511 U.S. 383, 128 L.Ed.2d 399, on remand 208 A.D.2d 612, 617 N.Y.S.2d 482.

### Notes of Decisions



**1. Construction and application**

Franchise provisions of Oklahoma Constitution, requiring grant of franchise be approved by majority of qualified electors and prohibiting granting of exclusive franchise, do not place any limitations on ability of municipality to contract with private company for solid waste collection and disposal services under the Solid Waste Management Act. Op.Atty.Gen. No. 97–47 (June 30, 1997).

**2. Competitive bidding**

A municipal corporation is not required to comply with the Public Competitive Bidding Act of 1974 when it enters into a contract with a private company for solid waste collection and disposal services. Op.Atty.Gen. No. 97–47 (June 30, 1997).

**3. Antitrust claims**

City was entitled to state action immunity from disappointed bidder's antitrust claims arising out of city's award of garbage hauling contract; Oklahoma State legislature, through Solid Waste Management Act, established clear state policy to allow regulation instead of competition in area of waste disposal services, and this policy did not conflict with Oklahoma's constitutional prohibitions against exclusive franchises, anticompetitive perpetuities, and monopolies. Southern Disposal, Inc. v. Texas Waste Management, a Div. of Waste Management of Texas, Inc., C.A.10 (Okla.)1998, 161 F.3d 1259.

PART 10. COUNTY SOLID WASTE MANAGEMENT SYSTEMS

## § 2–10–1001. Development of plan—Fees and charges—Acceptance and disbursement of funds—Contracts for land, facilities and vehicles—Operational policies—Personnel—Violations and penalties—Exempt counties

A. The board of county commissioners in each county of the state shall develop a plan, subject to the approval of the Department of Environmental Quality, to provide a solid waste management system to handle adequately solid wastes generated or existing within the boundaries of such county. An application for a solid waste transfer station to be located in a county with a population of less than twenty thousand (20,000) based on the 1990 Federal Decennial Census shall not be submitted to the Department unless it is included in the county plan submitted to the Department. The application shall be made in accordance with the permitting requirements in the Oklahoma Solid Waste Management Act [1]. By agreement or contractual arrangement the board of county commissioners may assume responsibility for solid wastes generated within incorporated cities or towns whether within their counties or other counties. The board of county commissioners of a county may enter into agreements with other counties, one or more

towns or cities, governmental agencies, with private persons, trusts or with any combination thereof to provide a solid waste management system for the county or any portion thereof.

B. The county commissioners shall have the authority to levy and collect such fees and charges and require such licenses as may be appropriate to discharge their responsibility for a solid waste management system or any portion thereof. Such fees, charges and licenses shall be based on a fee schedule contained in an official resolution of the board of county commissioners and may be invoiced and collected by other public or private utility services in the normal course of their business.

C. The board of county commissioners may accept and disburse funds derived from federal or state grants or from private sources or from monies that may be appropriated from the General Revenue Fund for the installation and operation of a solid waste management system.

D. The board of county commissioners is authorized to contract for the lease or purchase of land, facilities and vehicles for the operation of a solid waste management system either for the county or as a party to a regional solid waste management district.

E. The board of county commissioners of a county shall have the right to establish written policies in compliance with the plan approved by the Department for the operation of a solid waste management system including hours of operation, amount, character and kind of waste accepted at the solid waste container sites or any disposal site, and such other rules as may be necessary for the safety of the operating personnel, persons using the sites and the general public.

F. The board of county commissioners of a county is authorized to hire such persons, including peace officers, as may be necessary to administer the county solid waste management system, enforce policies established pursuant to the solid waste plan and issue citations for violation of the solid waste laws of the State of Oklahoma.

G. Any person who violates any policy established by the board of county commissioners for the operation of a solid waste management system created pursuant to the provisions of this section, shall be subject to a civil penalty not to exceed Five Hundred Dollars ($500.00) per day. Each violation shall constitute a separate offense.

H. The provisions of this section requiring approval of the Department for plans providing for a solid waste management system, shall not apply to counties having a solid waste management system plan in effect on July 1, 1992. For any county having a solid waste management system plan in effect on July 1, 1992, the county commissioners may charge and collect reasonable service and disposal fees as necessary for any nonhazardous industrial solid waste collection and disposal system. In determining reasonable fees for any nonhazardous industrial solid waste collection and disposal system, the county may take into account the damage and repair of access roads, litter control, surveillance, civil defense, and such other costs and expenditures deemed necessary by the county. Any person subject to the assessment of such fees who is aggrieved at the action of the commissioners in determining the amount of such fees, may appeal the action of the commissioners to the district court of the county for a review as to the reasonableness of the fees. The decision of the court shall be final and binding upon the commissioners, provided that any such order of the commissioners assessing the fees shall be binding until reversed by the court.

Amended by Laws 1999, c. 284, § 6, emerg. eff. May 27, 1999.

[1] Title 27A, § 2-10-101 et seq.

## PART 11. REGIONAL SOLID WASTE MANAGEMENT DISTRICTS [REPEALED]

### §§ 2-10-1101 to 2-10-1111. Repealed by Laws 1998, c. 401, § 8, emerg. eff. June 10, 1998

## Historical and Statutory Notes

Repealed § 2-10-1101, relating to the creation of regional solid waste planning committees, was derived from:

Laws 1982, c. 77, § 1.

63 O.S.Supp.1989, § 2255.1.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2401.

Laws 1993, c. 145, §§ 166, 359.

Repealed § 2-10-1102, relating to regional solid waste planning boards, was derived from:

Laws 1982, c. 77, § 2.

63 O.S.Supp.1989, § 2255.2.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2402.

Laws 1993, c. 145, §§ 167, 359.

Repealed § 2-10-1103, relating to agreements to establish regional solid waste management districts, was derived from:

Laws 1982, c. 77, § 3.

63 O.S.Supp.1989, § 2255.3.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2403.

Laws 1993, c. 145, §§ 168, 359.

Repealed § 2-10-1104, relating to the report of findings and recommendations of regional solid waste planning board and the election to establish district, was derived from:

Laws 1982, c. 77, § 4.

63 O.S.Supp.1989, § 2255.4.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2404.

Laws 1993, c. 145, §§ 169, 359.

Repealed § 2-10-1105, relating to procedures to be followed in establishing solid waste planning districts, was derived from:

Laws 1983, c. 156, § 3.

63 O.S.Supp.1989, § 2255.4A.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2405.

Laws 1993, c. 145, §§ 170, 359.

Repealed § 2-10-1106, relating to powers and duties of planning districts, was derived from:

Laws 1982, c. 77, § 5.

63 O.S.Supp.1989, § 2255.5.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2406.

Laws 1993, c. 145, §§ 171, 359.

Repealed § 2-10-1107, relating to fees and charges, was derived from:

Laws 1982, c. 77, § 6.

63 O.S.Supp.1989, § 2255.6.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2407.

Laws 1993, c. 145, §§ 172, 359.

Repealed § 2-10-1108, relating to regional solid waste management district committees, was derived from:

Laws 1982, c. 77, § 7.

63 O.S.Supp.1989, § 2255.7.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2408.

Laws 1993, c. 145, §§ 173, 359.

Repealed § 2-10-1109, relating to apportionment of district budget, was derived from:

Laws 1982, c. 77, § 8.

63 O.S.Supp.1989, § 2255.8.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2409.

Laws 1993, c. 145, §§ 174, 359.

Repealed § 2-10-1110, relating to audits and reports, was derived from:

Laws 1982, c. 77, § 9.

63 O.S.Supp.1989, § 2255.9.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2410.

Laws 1993, c. 145, §§ 175, 359.

Repealed § 2-10-1111, permitting participating counties, cities or towns to sell, lease or license disposal sites to disposal districts, was derived from:

Laws 1982, c. 77, § 10.

63 O.S.Supp.1989, § 2255.10.

Laws 1990, c. 217, § 10.

Laws 1990, c. 225, § 11.

63 O.S.1991, § 1-2411.

Laws 1993, c. 145, §§ 176, 359.

## ARTICLE XI. WASTE REDUCTION AND RECYCLING

## PART 2. OKLAHOMA HAZARDOUS WASTE REDUCTION PROGRAM

### §§ 2-11-201 to 2-11-204. Repealed by Laws 2000, c. 190, § 2, emerg. eff. May 8, 2000

### Historical and Statutory Notes

Repealed §§ 2-11-201 to 2-11-203, relating to the Hazardous Waste Reduction Program, were derived from Laws 1993, c. 145, §§ 180 to 182.

Repealed § 2-11-204, relating to administration and activities of the program, was derived from:

Laws 1992, c. 201, § 41.

63 O.S.Supp.1992, § 1-2053.

Laws 1993, c. 145, §§ 183, 359.

## PART 4. OKLAHOMA WASTE TIRE RECYCLING ACT

## § 2-11-401. Short title

### Notes of Decisions

Validity 1

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1. Validity

Expenditures under act providing for distribution of public funds to private persons or entities that process waste tires are for a public purpose as required by Const. Art. 10, § 15 and are not gifts to private entities forbidden by Const. Art. 10, § 15 and fact that monies for this purpose are not required to be segregated from other monies does not violate the constitution. Op. Atty.Gen. No. 00-1 (Jan. 3, 2000).

## § 2-11-402. Definitions

As used in the Oklahoma Waste Tire Recycling Act: [1]

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

2. "Priority cleanup list" means a list of unpermitted waste dumps which:

   a. did not exist when the owner took possession of the property where the tires are located, and were created without the consent of or benefit to the owner of the property, and

   b. such other tire dumps designated by the Department pursuant to Section 2-11-406 of this title;

3. "Tire" means any solid or air-filled covering for motor vehicle wheels;

4. "Tire dealer" means any person engaged in the business of selling new and used tires to final consumers, not for resale;

5. "Waste tire facility" means any place which is permitted as a solid waste disposal site, in accordance with the Oklahoma Solid Waste Management Act, [2] at which waste tires are collected or deposited for processing by shredding or other technology, except baling, which alters the form of at least one-half of the tires collected, for the purpose of facilitating the future extraction of useful materials for recycling, reuse or energy recovery; and

6. "Waste tire processing" means the preparation of waste tires to facilitate use for recycling, reuse or energy recovery.

Amended by Laws 1998, c. 314, § 11, eff. July 1, 1998; Laws 1999, c. 1, § 11, emerg. eff. Feb. 24, 1999.

[1] Title 27A, § 2-11-401 et seq.

[2] Title 27A, § 2-10-101 et seq.

### Historical and Statutory Notes

Section 1 of Laws 1998, c. 114, amending this section, was repealed by Laws 1999, c. 1, § 45.

## § 2-11-403. Waste tire recycling fee—Assessment—Remittance—Delinquencies—Penalties

A. 1. Except as otherwise provided by this section, the following assessments shall be made for tires for use on motor vehicles as such term is defined by Section 1-134 of Title 47 of the Oklahoma Statutes.

a. At the time any tire:

(1) with a rim diameter of seventeen and one-half (17½) inches rim diameter or less is sold by a tire dealer, there shall be assessed a waste tire recycling fee of One Dollar ($1.00) per tire,

(2) with a rim diameter greater than seventeen and one-half (17½) inches is sold by a tire dealer, there shall be assessed a waste tire recycling fee of Three Dollars and fifty cents ($3.50) per tire, and

(3) is sold by a tire dealer for use on a motorcycle, minibike, motor-driven cycle or motorized bicycle as defined in Sections 1-135, 1-133.1, 1-136 and 1-136.1 of Title 47 of the Oklahoma Statutes, there shall be assessed a waste tire recycling fee of One Dollar ($1.00) per tire.

b. At any time a motor vehicle with a tire rim diameter of seventeen and one-half (17½) inches or less is first registered in this state, there shall be assessed a waste tire recycling fee of One Dollar ($1.00) per tire.

c. At any time a motor vehicle with a tire rim diameter of greater than seventeen and one-half (17½) inches is first registered in this state, there shall be assessed, except as otherwise provided by subparagraph d of this paragraph, a waste tire recycling fee of Three Dollars and fifty cents ($3.50) per tire.

d. At any time a motorcycle, minibike, motor-driven cycle or motorized bicycle is first registered in this state, there shall be assessed a waste tire recycling fee of One Dollar ($1.00) per tire.

2. Motor vehicles registered pursuant to Section 1120 of Title 47 of the Oklahoma Statutes shall be exempt from the provisions of this subsection.

3. a. No fee shall be assessed by a tire dealer for used tires or retreaded tires for which the tire dealer can document that the recycling fee has been previously paid.

b. No fee shall be assessed by a tire dealer for any tire sold when the waste tire generated as a result of the sale will be managed by the dealer in an out-of-state recycling facility. The tire dealer shall obtain a Tire Recycling Fee Exemption Certificate pursuant to Section 2-11-403.1 of this title.

B. Any person who furnishes to a tire dealer or to a motor license agent a valid Tire Recycling Fee Exemption Certificate issued according to Section 2-11-403.1 of this title shall be exempt from the assessments of subsection A of this section.

C. 1. The tire dealer and motor license agent shall remit such fee to the Oklahoma Tax Commission in the same manner as provided by Section 1365 of Title 68 of the Oklahoma Statutes. At the time of filing any report as required by the Oklahoma Tax Commission, the tire dealer shall remit therewith to the Tax Commission, except as otherwise provided by this section, ninety-seven and three-quarters percent (97.75%) of the fee due pursuant to this section.

2. Motor license agents shall remit all but One Dollar ($1.00) of the fee assessed on each vehicle registered. The fees authorized to be retained by motor license agents pursuant to this paragraph shall not be considered compensation but may be retained in addition to the maximum sum of compensation authorized by Section 1143 of Title 47 of the Oklahoma Statutes.

3. Failure to remit such fee at the time of filing the returns shall cause the fee to become delinquent. If the fee becomes delinquent the tire dealer or motor license agent forfeits any claim to the discount authorized by this section and shall remit to the Tax Commission one hundred percent (100%) of the amount of the fee due plus any penalty due.

D. If any amount of fee imposed or levied by subsection A of this section, or any part of such amount, is not paid before such fee becomes delinquent, there shall be collected on the total delinquent fee interest at the rate of one and one-quarter percent (1¼%) per month from the date of the delinquency until paid.

E. If any fee due under subsection A of this section, or any part thereof, is not paid within fifteen (15) days after such fee becomes delinquent, a penalty of ten percent (10%) on the total amount of fee due and delinquent shall be added thereto, collected and paid.

F. All penalties or interest imposed by this section shall be recoverable by the Tax Commission as a part of the fee imposed and all penalties and interest will be apportioned as provided for the apportionment of the fee on which such penalties or interest are collected.

Amended by Laws 1997, c. 159, § 1, emerg. eff. April 25, 1997.

## § 2-11-403.1. Tire Recycling Fee Exemption Certificate—Revocation, penalty

A. 1. Any person may apply to the Department for a Tire Recycling Fee Exemption Certificate. Applications must be on forms of the Department and must include a copy of a current contract providing for the transportation and lawful recycling of all of the person's waste tires.

2. Tire dealers who manage their waste tires in an out-of-state recycling facility may also apply for a Tire Recycling Fee Exemption Certificate, and must demonstrate that the designated receiving facility is permitted or authorized by the receiving state to recycle waste tires, and must maintain and make available to either the Department or the Tax Commission, upon request, documentation that the waste tires are actually arriving at the proper out-of-state facility.

B. If the Department has no reason to believe that all of the waste tires of the person will not be lawfully recycled under the contract, the Department shall issue a Tire Recycling Fee Exemption Certificate showing the name of the person and the period of time of the contract, not to exceed one (1) year.

C. The Department shall provide a copy of each Tire Recycling Fee Exemption Certificate to the Oklahoma Tax Commission. The Oklahoma Tax Commission shall neither require a fee or provide reimbursement under a Tire Recycling Fee Exemption Certificate.

D. Any person who avoids paying waste tire recycling fees with a Tire Recycling Fee Exemption Certificate and fails to comply with the contract upon which the Certificate was issued shall, in addition to any other penalties provided by law, be subject to revocation of the Certificate and a penalty of Five Hundred Dollars ($500.00).

Amended by Laws 1997, c. 159, § 2, emerg. eff. April 25, 1997.

## § 2-11-404. Waste Tire Recycling Indemnity Fund

A. There is hereby created within the Oklahoma Tax Commission the "Waste Tire Recycling Indemnity Fund". The Indemnity Fund shall be administered by the Oklahoma Tax Commission pursuant to the provisions of Section 195 of this act.[1]

B. The Indemnity Fund shall consist of:

1. All monies received by the Commission as proceeds from the assessment imposed pursuant to Section 193 of this act;[2]

2. Interest attributable to investment of money in the Indemnity Fund; and

3. Money received by the Commission in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the provisions of the Oklahoma Waste Tire Recycling Act[3].

Amended by Laws 1999, c. 254, § 5, eff. June 30, 1999.

[1] Title 27A, § 2-11-405.

[2] Title 27A, § 2-11-403.

[3] Title 27A, § 2-11-401 et seq.

## § 2-11-405. Allocation of Waste Tire Recycling Indemnity Fund funds

A. Of the monies accruing annually to the Waste Tire Recycling Indemnity Fund, four percent (4%) thereof shall be available to the Oklahoma Tax Commission and four percent (4%) thereof shall be available to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling

Act.[1] In addition, an amount not to exceed Fifty Thousand Dollars ($50,000.00) per required audit shall be available to the State Auditor and Inspector for the purpose of conducting audits of the Oklahoma Waste Tire Recycling Program pursuant to Section 2-11-411 of this title.

B. Of the ninety-two percent (92%) of the remaining monies in the Waste Tire Recycling Indemnity Fund, ten percent (10%) shall be allocated to businesses located in Oklahoma who manufacture new products or derive energy benefits from waste tires which have been processed according to the requirements of the Oklahoma Waste Tire Recycling Act. Such businesses shall be eligible for compensation in a total amount not to exceed one hundred percent (100%) of their capital investment in equipment necessary to utilize processed waste tires purchased on or after January 1, 1995, at a rate of Twenty Dollars ($20.00) per ton of processed waste tires consumed in the manufacturing or energy recovery process. Funds shall be awarded based on a proportionate share of the funds available and based on the relative amount of each capital investment. Such businesses may apply for compensation monthly to the Oklahoma Tax Commission, and shall supply any information required by the Commission to document compliance with the provisions of the Oklahoma Waste Tire Recycling Indemnity Act.[2]

C. The balance of the monies remaining in the Waste Tire Recycling Indemnity Fund shall be allocated pursuant to the provisions of the Oklahoma Waste Tire Recycling Act to waste tire facilities or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Waste Tire Recycling Act to receive reimbursement which, through the filing of appropriate applications, reports, and other documentation that may be required by the Department of Environmental Quality pursuant to the Oklahoma Waste Tire Recycling Act, demonstrate that such facilities or legal entities have successfully processed discarded vehicle tires pursuant to the Oklahoma Waste Tire Recycling Act.

Amended by Laws 1998, c. 114, § 2, emerg. eff. April 13, 1998; Laws 1998, c. 314, § 12, eff. July 1, 1998.

[1] Title 27A, § 2-11-401 et seq.

[2] So in enrolled bill.

## § 2-11-406. Compensation of waste tire facilities—Rate—Qualification

A. 1. Waste tire facilities meeting the requirements of the Oklahoma Waste Tire Recycling Act[1] shall be eligible for compensation from the Waste Tire Recycling Indemnity Fund, for processing tires discarded in this state to the extent that funds are therein contained, at a rate not to exceed Fifty-three Dollars and forty-eight cents ($53.48) per ton of processed tire material in any calendar year by the facility as demonstrated through the application and submission of documentation to the Tax Commission.

2. a. In addition to other requirements of the Oklahoma Waste Tire Recycling Act, in order to qualify for such compensation, the applicant shall demonstrate that over the life of the facility prior to each request for compensation, at least ten percent (10%) of the tires processed by the waste tire facility were collected from tire dumps or landfills as identified through placement on the priority cleanup list by the Department of Environmental Quality or community-wide cleanup events approved by the Department.

b. In developing the priority cleanup list required by this section and Section 2-11-407.1 of this title, the Department shall prioritize those dumps where the landowner was a victim of illegal dumping. Any other tire dump may be placed on the priority cleanup list in cases where the administrative enforcement process has been exhausted.

c. For those illegal tire dumps placed on the list where administrative enforcement has been exhausted, the Department may provide for the cleanup of such dumps pursuant to Section 2-11-413 of this title.

B. 1. In addition to the compensation authorized by subsection A of this section, any waste tire facility that is in good standing with the Department shall be eligible for compensation at the rate of Thirty-seven Dollars and forty-three cents ($37.43) per ton of processed tire material for the collection and transportation of waste tires obtained

from dealers, automotive dismantlers, parts recyclers, solid waste landfill sites, and dumps certified by the Department's priority cleanup list, and delivering such tires to the waste tire facility.

2. The collection and transportation of waste tires shall be on a statewide basis and shall be provided by the waste tire facility at no additional cost. No tire dealer shall charge any customer any additional fee for the management, recycling, or disposal of any waste tire upon which the waste tire recycling fee has been remitted to the Oklahoma Tax Commission. For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the Oklahoma Tax Commission, the tire dealer shall issue a receipt which will entitle the customer to deliver the waste tire to the dealer at a later date. The Department shall not require a waste tire facility to collect less than one thousand discarded vehicle tires at any one location.

3. To be eligible for compensation pursuant to this subsection, the waste tire facility shall:

a. demonstrate to the satisfaction of the Department that such facility is regularly engaged in the collection, transportation and delivery of waste tires, on a statewide basis, and from each county of the state, and

b. provide documentation to the Oklahoma Tax Commission, signed by a participating dealer at the time of collection, which certifies the total amount of waste tire recycling fees, itemized by month, remitted by the dealer since the date the dealer's waste tires were last collected.

C. Compensation pursuant to this section shall be payable only for the tires collected and processed in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department pursuant thereto. In lieu of proof of remitted tire recycling fees, the waste tire facility shall accept proof of purchase of a salvage vehicle registered in Oklahoma by an automotive dismantler and parts recycler, licensed pursuant to the Automotive Dismantlers and Parts Recycler Act,[2] for the collection and transportation of up to five waste tires per salvage vehicle purchased on or after January 1, 1996. The Environmental Quality Board shall promulgate rules to ensure proper verification and proof of purchase information.

Amended by Laws 1998, c. 114, § 3, emerg. eff. April 13, 1998.

[1] Title 27A, § 2–11–401 et seq.

[2] Title 47, § 591.1 et seq.

## § 2–11–407.1. Erosion control, bank stabilization or other conservation projects—Waste tire utilization—Compensation

A. Any person, corporation or other legal entity who has obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District to provide services for erosion control, bank stabilization or other conservation projects shall be eligible for reimbursement from the Waste Tire Recycling Indemnity Fund if:

1. The legal entity collects or provides for the collection, processing and utilization of waste tires pursuant to the provisions of the Oklahoma Waste Tire Recycling Act in an erosion control, bank stabilization or other conservation project in accordance with a written plan approved by the United States Army Corps of Engineers or by a local Conservation District;

2. The tires are processed on the site of the erosion control, bank stabilization or other conservation project;

3. The project includes the planting of trees or other suitable vegetation in accordance with a planting plan developed in conjunction with the Division of Forestry of the State Department of Agriculture; and

4. The legal entity completes and maintains the proper information and records as required by the Oklahoma Tax Commission and the Department of Environmental Quality pursuant to the Oklahoma Waste Tire Recycling Act and in all other manner complies with any storage, transportation and disposal requirements promulgated by the

Department of Environmental Quality pursuant to the Oklahoma Environmental Quality Code. [1]

B. 1. Any person, corporation or other legal entity meeting the requirements specified by this section shall be eligible for compensation from the Waste Tire Recycling Indemnity Fund, to the extent that funds are therein contained for processing of waste tires discarded in this state having a tire rim diameter of greater than seventeen and one-half (17 ½) inches at a rate not to exceed Two Dollars and twenty-five cents ($2.25) per tire and for tires having a rim diameter less than or equal to seventeen and one-half (17 ½) inches at a rate not to exceed forty-five cents ($0.45) per tire processed in any calendar year by the legal entity as demonstrated through the proper application and submission of proper documentation to the Oklahoma Tax Commission.

2. In addition to other requirements of the Oklahoma Waste Tire Recycling Act, in order to qualify for such compensation, the applicant shall demonstrate that all of the tires processed by the legal entity for which compensation is requested were collected from tire dumps or landfills as identified through placement on the priority cleanup list or community-wide cleanup events approved by the Department.

C. 1. Compensation pursuant to this section shall be payable only for the tires collected and processed in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department pursuant thereto.

2. The Department may determine the amount of and authorize partial compensation, during the course of the project, as tires are processed in accordance with the written plan.

Amended by Laws 1998, c. 114, § 4, emerg. eff. April 13, 1998; Laws 1999, c. 380, § 2, emerg. eff. June 8, 1999.

[1] Title 27A, § 2–1–101 et seq.

## § 2–11–408. Compensation—Re-evaluation and recertification

A. Upon receiving completed applications and upon determining that there are sufficient monies in the Waste Tire Recycling Indemnity Fund, the Oklahoma Tax Commission shall compensate waste tire facilities and any person, corporation or other legal entity authorized to receive reimbursement pursuant to Section 2–11–407.1 of this title as applicable for:

1. Processing the number of tires documented in the application at the rate of Fifty-three Dollars and forty-eight cents ($53.48) per ton of processed tire material;

2. The collection, transportation and delivery of waste tires documented in the application at the rate of Thirty-seven Dollars and forty-three cents ($37.43) per ton of processed tire material. This amount shall not be payable, however, unless and until such tires have been actually processed according to the facility's solid waste permit; and

3. Collecting, processing and utilizing tires for erosion control, bank stabilization or other conservation projects pursuant to Section 2–11–407.1 of this title documented in the application at the rate of Two Dollars and twenty-five cents ($2.25) each for tires having a tire rim diameter greater than seventeen and one-half (17 ½) inches or at a rate of forty-five cents ($0.45) each for tires having a rim diameter equal to or less than seventeen and one-half (17 ½) inches. This amount shall not be payable unless and until such tires have been actually processed and utilized for the erosion control, bank stabilization or other conservation project, and the legal entity has otherwise complied with the provisions of Section 2–11–407.1 of this title.

B. If the Indemnity Fund contains insufficient funds in any month, then the Oklahoma Tax Commission shall apportion the payments among all the qualifying applicants according to the percentage of tires collected, transported, delivered or processed.

C. The Department shall evaluate each waste tire facility and legal entity authorized to receive reimbursement pursuant to Section 2–11–407.1 of this title every three (3) years. Upon completion of the evaluation, the Department of Environmental Quality

shall recertify for compensation only those waste tire facilities or other legal entities which have provided for recycling, reuse or energy recovery from waste tires.

Amended by Laws 1998, c. 114, § 5, emerg. eff. April 13, 1998.

### Notes of Decisions

Construction and application 1

1. Construction and application

Entity obtaining compensation under this section for collecting, processing, and utilizing tires for erosion control is ineligible for additional reimbursement under this section for processing, collection, transportation and delivery of those tires. Op.Atty.Gen. No. 97–52 (Sept. 26, 1997).

## § 2–11–410. Progress reports

The Department of Environmental Quality shall file a report with the Legislature and the Governor detailing the administration of the Oklahoma Waste Tire Recycling Act [1] and its effectiveness in bringing about the cleanup of existing waste tire dumps and in preventing the development of new dumps. The first report shall be filed by no later than December 31, 1992. Subsequent reports shall be filed every three (3) years thereafter.

Amended by Laws 1998, c. 114, § 6, emerg. eff. April 13, 1998.

[1] Title 27A, § 2–11–401 et seq.

## § 2–11–413. Unlawful storage, collection, disposal, transportation or removal of waste tires—Exemptions

A. Except as otherwise provided by this section, it shall be unlawful for any person to:

1. Own or operate a site used for the storage, collection or disposal of more than fifty waste tires except at a site or facility permitted by the Department of Environmental Quality to accept waste tires; however, the provisions of this paragraph shall not apply to tire manufacturers, retailers, wholesalers and retreaders who store two thousand five hundred or fewer waste tires at their place of business or designated off-premises storage site;

2. Dispose of waste tires at any site or facility other than a site or facility for which a permit has been issued by the Department;

3. Knowingly transport or knowingly allow waste tires under his control or in his possession to be transported to an unpermitted site or facility; or

4. Remove more than ten used tires from a tire dealer's possession unless a manifest form, approved by the Department, which documents the removal and approve disposition or sale of the tires is provided by the dealer. Dealers, haulers, and waste tire facilities shall keep copies of manifests available for inspection for five (5) years.

B. The provisions of subsection A of this section shall not apply to:

1. The use of waste tires for agricultural purposes as recognized by the State Department of Agriculture; or

2. The use of waste tires for erosion control, bank stabilization and other conservation projects if practiced in accordance with a written plan approved by the U.S. Army Corps of Engineers or the local Conservation District in accordance with designated best management practices established for such uses by the Oklahoma Conservation Commission.

C. The provisions of paragraphs 2 and 3 of subsection A of this section shall not be construed so as to prevent an individual from disposing of waste tires previously used by the individual as vehicle or equipment tires; provided such disposal is upon property owned by such individual and such disposal does not create a nuisance or pose a hazard to the public health or environment.

D. 1. Except as otherwise ordered by the court, if the administrative enforcement process for a violation of an order issued by the Department for remediation, corrective

action or cleanup of an illegal tire dump has been exhausted, the Department or a representative of the Department, upon notice to the landowner and an opportunity to be heard on the issue, may enter the property to clean up the tire dump.

2. The Department may initiate a court action to recover the actual cost of cleanup, attorney fees, court costs, and all other monies expended in connection with the cleanup.

3. The Department shall deposit any funds recovered through such action into the Waste Tire Recycling Indemnity Fund.

Amended by Laws 1998, c. 114, § 7, emerg. eff. April 13, 1998.

## ARTICLE XII. OKLAHOMA LEAD-BASED PAINT MANAGEMENT ACT

### PART 1. SHORT TITLE AND DEFINITIONS

### § 2–12–102. Definitions

For the purposes of the Oklahoma Lead-based Paint Management Act: [1]

1. "Abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Board. The term abatement includes but is not limited to:

   a. the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil, and

   b. all preparation, cleanup, disposal and postabatement clearance testing activities associated with such measures;

2. "Board" means the Environmental Quality Board;

3. "Certified lead-based paint contractor" means any individual who is certified by the Department as a lead-based paint reduction contractor, inspector or hazard evaluator or a combination thereof;

4. "Certified lead-based paint specialist" means a lead-based paint specialist certified by the Department;

5. "Child-occupied facility" means a building or portion of a building constructed prior to 1978, which is visited by a child six (6) years of age or younger for at least three (3) hours in one day on two (2) or more days in the same week, when the combined visiting time for that child totals six (6) hours or more in one week and at least sixty (60) hours in one year. The designated weekly period for this calculation begins on Sunday and ends on Saturday. The term "child-occupied facility" may include, but is not limited to, day-care centers, preschools and kindergarten classrooms;

6. "Deleading" means activities conducted by a lead-based paint contractor or specialist who offers to eliminate lead-based paint or lead-based paint hazards or to plan such activities;

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

8. "Executive Director" means the Executive Director of the Department of Environmental Quality;

9. "Federally assisted housing" means residential dwellings receiving project-based assistance pursuant to programs including, but not limited to:

   a. Section 221(d)(3) or 236 of the National Housing Act,[2]

   b. Section 1 of the Housing and Urban Development Act of 1965,[3]

   c. Section 8 of the United States Housing Act of 1937,[4] or

   d. Sections 502(a), 504, 514, 515, 516 and 533 of the Housing Act of 1949; [5]

10. "Federally owned housing" means residential dwellings owned or managed by the federal agency, or for which a federal agency is a trustee or conservator. The term federal agency includes the federal Department of Housing and Urban Development, the Farmers Home Administration, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the General Services Administration, the Department of De-

fense, the federal Department of Veterans Affairs, the Department of the Interior, the federal Department of Transportation, and any other federal agency;

11. "Hazard evaluation" means an on-site investigation process established by the rules of the Board to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings. For purposes of this act,[1] the term hazard evaluation shall be synonymous with the term risk assessment as used in Title X of the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., Public Law No. 102–550;

12. "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs;

13. "Lead-based paint" means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or:

a. in the case of paint or other surface coatings in target housing, such lower level as may be established by the United States Secretary of Housing and Urban Development, as defined in Section 302(c) of the federal Lead-based Paint Poisoning Prevention Act,[6] or

b. in the case of any other paint or surface coatings, such other level as may be established by the Board;

14. "Lead-based paint activities" means:

a. in the case of public property and private property, hazard evaluation assessment, inspection, deleading and abatement of lead sources or lead-based paint, lead-based paint hazards, lead-contaminated dust, or lead-contaminated soil, and demolition, and

b. in the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure, identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges and demolition;

15. "Lead-based paint contractor" means any individual or firm who performs or supervises or offers to perform or to supervise lead-based paint inspections, hazard evaluations, project designs, abatements or reduction;

16. "Lead-based paint reduction contractor" means any individual who performs or supervises lead-based paint services, including but not limited to hazard reduction, abatement, or deleading;

17. "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the Board;

18. "Lead-based paint hazard evaluator" means an individual certified by the Department to perform lead-based paint hazard evaluations;

19. "Lead-based paint inspector" means an individual certified by the Department to perform a surface-by-surface investigation to determine the presence of lead-based paint and provide a report explaining the results of the investigation;

20. "Lead-based paint services" means any lead-based paint hazard evaluation, detection, reduction, renovation, remodeling, abatement, on-site testing, or any other lead-based paint activities which may create a lead-based paint hazard;

21. "Lead-based paint specialist" means any worker or other person directly and substantially involved in the performance of lead-based paint services and who has satisfactorily completed the required level of lead-based paint training from accredited training providers and programs, or in the case of out-of-state providers and programs, from Department-recognized and approved providers and programs. For the purposes of this article,[1] the term lead-based paint specialist shall be synonymous with the term abatement worker or worker as used in Title X of the Residential Lead-based Paint Hazards Reduction Act of 1992, 42 U.S.C., Section 4851 et seq., Public Law No. 102–550;

22. "Lead-contaminated dust" means surface dust in residential or commercial dwellings that contains an area or mass concentration of lead in excess of levels determined by the Board to pose a threat of adverse human health effects;

23. "Lead-contaminated soil" means bare soil on residential or commercial real property that contains lead at or in excess of the levels determined to be hazardous to human health by the Board;

24. "Lead-hazard detection" means the identification of lead-based paint hazards;

25. "Reduction" or "lead-hazard reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement;

26. "Residential dwelling" means:

a. a single-family dwelling, including attached structures such as porches and stoops, or

b. a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons; and

27. "Target housing" means any housing constructed prior to 1978. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the United States Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

Amended by Laws 1997, c. 114, § 1, emerg. eff. April 15, 1997.

[1] Title 27A, § 2-12-101 et seq.

[2] 12 U.S.C.A. § 1715l(d)(3) or 12 U.S.C.A. § 1715z-1.

[3] 12 U.S.C.A. § 1749aa (repealed).

[4] 42 U.S.C.A. § 1437f.

[5] 42 U.S.C.A. §§ 1472, 1474, 1484, 1485, 1486 and 1490m.

[6] 42 U.S.C.A. § 4822(c).

## PART 2. POWERS AND DUTIES

### § 2-12-201. Rulemaking—Fee schedule

A. The Environmental Quality Board shall promulgate rules governing lead-based paint services which will:

1. Enable any lead-based paint contractor meeting the standards and criteria established by the Board, including satisfactory completion of required training in applicable courses offered by Department of Environmental Quality-accredited training providers and programs or an out-of-state provider or program recognized and approved by the Department, to become certified by the Department;

2. Require that any lead-based paint reduction contractor, inspector or hazard evaluator or specialist performing or offering to perform lead-based paint services on target housing or child-occupied facilities is certified prior to the performance of any such service;

3. Ensure that persons holding themselves out to be certified lead-based paint contractors or certified lead-based paint specialists have been certified as such by the Department; and

4. Provide for accreditation of approved training providers and programs located in this state.

B. Such rules shall:

1. Contain standards for performing lead-based paint activities taking into account reliability, effectiveness and safety;

2. Contain specific requirements for the accreditation of lead-based paint training programs and the instructors of such programs including, but not limited to:

a. minimum requirements for the accreditation of training providers,

b. minimum training curriculum requirements,

c. minimum training hour requirements,
d. minimum hands-on training requirements,
e. minimum trainee competency and proficiency requirements, and
f. minimum requirements for training program quality control;

3. Set training requirements for certified lead-based paint contractors and lead-based paint specialists and require that such training be provided by Department-accredited training providers and programs, or by out-of-state providers and programs recognized and approved by the Department. Such requirements shall allow for differences in the training needs of such contractors and specialists in lead-based paint services in target housing and child-occupied facilities and in applicable state and municipal regulatory waste disposal requirements;

4. Provide that training requirements applicable to lead-based paint specialists establish minimum acceptable levels of training and periodic refresher training for each class of specialists;

5. Require that all lead-based paint training programs shall include, but not be limited to, a hands-on component and instruction on the health effects of lead exposure, the use of personal protective equipment, workplace hazards and safety problems, reduction and abatement methods and work practices, decontamination procedures, cleanup and waste disposal procedures, lead monitoring and on-site testing methods, and legal rights and responsibilities;

6. Set forth requirements for certification of lead-based paint contractors and specialists. Such requirements shall include, but are not limited to, applications therefor, bonding and education, training, examination and experience prerequisites;

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

8. Identify guidelines, based on federal regulations, for the determination of adverse human health effects posed by lead-based paint hazards.

C. Rules promulgated by the Board shall not apply to railroad bridges owned or leased by a railroad.

D. 1. The Board shall establish a system of nonrefundable fees to be charged for certification of lead-based paint contractors and specialists, accreditation of approved Oklahoma training programs and training providers, recognition and approval of out-of-state accredited training programs and training providers, any training or other program related to lead-based paint services conducted by the Department, and for services rendered by the Department in connection with such certification, accreditation, recognition and approval, and programs.

2. The Board shall base its schedule of fees upon the costs of services provided.

3. The state and political subdivisions thereof, shall be exempt from any certification fees required by rules of the Board if an affidavit is filed with the Department stating that the applicant is employed by the state or political subdivision thereof and shall only be performing lead-based paint services for the state or political subdivision employer. Any such employee who performs or offers to perform lead-based paint services as a certified lead-based paint contractor or specialist for persons other than his or her state or political subdivision employer shall be subject to certification fees upon such performance or offer.

E. Any rules promulgated by the Board shall be consistent with federal laws and regulations relating to lead-based paint services specified by the Residential Lead-based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., Public Law No. 102-550, to ensure consistency in regulatory action. Such rules shall not be more restrictive than corresponding federal regulations unless such stringency is specifically authorized by this article. The Board shall have the right to revise its rules and procedures from time to time to assure that lead-based paint projects continue to be eligible for federal funding by meeting the state certification program standards and other requirements that may from time to time be promulgated by federal agencies that have jurisdiction over lead-based paint hazards.

Amended by Laws 1997, c. 114, § 2, emerg. eff. April 15, 1997.

PART 3. ACCREDITATION AND CERTIFICATION

## § 2-12-301. Certification—Waiver—Renewal

A. An applicant who has paid the required nonrefundable certification fees and has complied with the requirements of this article [1] and rules promulgated thereunder, including, but not limited to, education, training, experience and examination prerequisites, shall be certified by the Department of Environmental Quality.

B. The Department may waive some or all of its testing, training, experience, or examination requirements for certification if the applicant presents a currently valid certificate or license issued to him by another state or certifying agency or institution or national nonprofit organization for lead-based paint services, if the Department finds that the certification requirements of the issuer in effect at the time of issuance are equivalent to its certification requirements; provided, however, that no certification shall be issued under this subsection unless the holder of the certificate would be issued a similar certificate or license by such other state, certifying agency, or organization under substantially the same conditions.

C. Any certificate issued under this section shall be renewed by the April 1 occurring not more than one year after the date of the most recent date of issuance, renewal, reactivation or reinstatement. Thereafter, the certificate may be renewed for a one-year period beginning April 1 and ending March 31 of the following year.

D. A certificate shall be renewed upon approval of the Department. Application for such renewal shall be submitted to the Department on forms prescribed by the Department, shall be accompanied by a nonrefundable renewal fee as set by the Board and shall include documentation that the applicant has met the annual renewal requirements of the Department. The Department shall allow a thirty-day grace period for such renewals without payment of late fees, provided the applicant submits the required renewal fee and qualifies for such renewal.

E. A certificate which is not so renewed shall expire on April 30 after the thirty-day grace period, and shall have no further validity unless the Department, upon receipt of an application from the holder of the expired certificate within one (1) year after the certificate's March 31 renewal date, reactivates and renews such certificate. Such reactivation and renewal application shall include the submission of data on forms prescribed by the Department, nonrefundable renewal and reactivation late fees as set by the Environmental Quality Board, and documentation that the applicant has met the Department's renewal requirements. A reactivated certificate may be renewed annually thereafter as provided in this section.

F. The holder of an expired and unreactivated certificate shall not be issued any new certificate unless the certificate holder applies and qualifies therefor pursuant to this article and rules promulgated thereunder.

G. Any certificate issued pursuant to the Oklahoma Lead-based Paint Management Act [1] may contain such conditions or restrictions as the Department shall deem necessary or appropriate.

H. A certificate shall not be issued pursuant to the provisions of this article to any entity other than an individual or firm.

Amended by Laws 1997, c. 114, § 3, emerg. eff. April 15, 1997.

[1] Title 27A, § 2-12-101 et seq.

## § 2-12-302. Contractors on public projects required to be certified—Advertisement by contractors—Use of accredited or certified laboratories—Official certification list—Health and safety information

A. No lead-based paint contractor t shall perform or offer to perform lead-based paint services upon any target housing or child-occupied facilities unless such person is certified by the Department prior to performing or offering to perform such services.

B. No individual shall advertise or otherwise present himself as a certified lead-based paint contractor or specialist, for purposes of offering to perform or performing

lead-based paint services unless certified by the Department pursuant to this article [1] and rules promulgated thereunder.

C. Certified lead-based paint contractors and specialists shall use only environmental sampling laboratories that are part of an effective voluntary accreditation program as determined by the federal Environmental Protection Agency or which are federally certified to analyze for lead in paint films, soil and dust.

D. The Department shall maintain an official listing of the names and addresses of all certified lead-based paint contractors and specialists and make such list available to any person requesting it upon payment of a copying fee established by the Environmental Quality Board.

E. The State Department of Labor shall provide health and safety information on lead abatement to all lead-based paint contractors and specialists certified pursuant to the terms of this article.

Amended by Laws 1997, c. 114, § 4, emerg. eff. April 15, 1997.

[1] Title 27A, § 2–12–101 et seq.

PART 4. LEAD-BASED PAINT INFORMATION

## § 2–12–402. Renovation, demolition and remodeling—Guidelines

In order to reduce the risk of exposure to lead in connection with renovation, demolition and remodeling of target housing and child-occupied facilities, the Environmental Quality Board shall, consistent with the terms of federal funding agreements and the receipt of such funds by the Department of Environmental Quality for such development and dissemination, promulgate guidelines for the conduct of such renovation, demolition and remodeling activities which may create a risk of exposure to dangerous levels of lead. The Department shall disseminate such guidelines to persons engaged in such renovation, demolition and remodeling through hardware and paint stores, employee organizations, trade groups, state and local agencies, and through other appropriate means.

Amended by Laws 1997, c. 114, § 5, emerg. eff. April 15, 1997.

ARTICLE XIV. OKLAHOMA UNIFORM ENVIRONMENTAL PERMITTING ACT

PART 3. TIER II OR TIER III APPLICATION PROCESS

## § 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.

ARTICLE XV. OKLAHOMA BROWNFIELDS VOLUNTARY REDEVELOPMENT ACT

## § 2-15-101. Short title

### Law Review and Journal Commentaries

Brownfield redevelopment: State-led reform of Superfund liability. Anne Slaughter Andrew, 10 Nat.Resources & Env't 27 (Winter 1996).

## § 2-15-104. Redevelopment program—Administration—Voluntary nature of program—Regulatory entities not to require evidence of participation—Ineligible persons—Rules

A. The Department of Environmental Quality may establish and implement a voluntary redevelopment program for brownfields. In administering the Oklahoma Brownfields Voluntary Redevelopment Act, [1] the Department shall:

a. approve site-specific remediation plans for each site as necessary, using a risk-based system,

b. review and inspect site assessment and remediation activities and reports,

c. use risk-based remediation procedures as determined by the agency to establish cleanup levels, and

d. develop and implement rules and procedures for the review and processing of Brownfields Voluntary Redevelopment project applications for obtaining funds allocated to the state from the Federal Clean Water Act [2] and other state and federal funds available for Brownfields Voluntary Redevelopment projects.

B. Any brownfields program established pursuant to the Oklahoma Brownfields Voluntary Redevelopment Act shall be a voluntary program.

C. No state governmental entity regulating any person or institution shall require evidence of participation in the Oklahoma Brownfields Voluntary Redevelopment Act.

D. The provisions of the Oklahoma Brownfields Voluntary Redevelopment Act shall not apply to any person who is:

1. Responsible for taking corrective action on the real property pursuant to orders or agreements issued by the federal Environmental Protection Agency;

2. Not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any state or federal agency relating to the generation, storage, transportation, treatment, recycling or disposal of regulated substances; or

3. Has a demonstrated pattern of uncorrected noncompliance.

E. 1. The Board of Environmental Quality shall promulgate rules necessary to implement the Oklahoma Brownfields Voluntary Redevelopment Act.

2. The Department is specifically authorized to promulgate emergency rules necessary pursuant to the Administrative Procedures Act [3] to implement the provisions of the Oklahoma Brownfields Voluntary Redevelopment Act.

3. Such rules shall include but not be limited to provision for applications, consent orders, notice and public participation opportunities, brownfield remediation plans and no action necessary determinations issued by the Department.

Amended by Laws 1999, c. 381, § 1, emerg. eff. June 8, 1999.

[1] Title 27A, § 2-15-101 et seq.

[2] 33 U.S.C.A. § 1251 et seq.

[3] Title 75, § 250 et seq.

# CHAPTER 3
# CONSERVATION

## ARTICLE I. SHORT TITLE, PURPOSE, DEFINITIONS



## ARTICLE II. OKLAHOMA CONSERVATION COMMISSION



## ARTICLE III. CONSERVATION DISTRICTS

### PART 1A. CONSERVATION COST-SHARE PROGRAM



### PART 2. GOVERNING BODY



### PART 4. MISCELLANEOUS



## ARTICLE I. SHORT TITLE, PURPOSE, DEFINITIONS

### § 3-1-103. Definitions

As used in the Conservation District Act: [1]

1. "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of the Conservation District Act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

2. "Director" means a member of the governing body of a conservation district, elected or appointed in accordance with the provisions of the Conservation District Act;

3. "Commission" means the Oklahoma Conservation Commission;

4. "State" means the State of Oklahoma;

5. "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state;

6. "United States" or "agencies of the United States" includes the United States of America, and any department, agency or instrumentality of the federal government;

7. "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them;

8. "Due notice" which shall be in conformance with the Administrative Procedures Act [2] means notice published at least twice, with an interval of at least seven (7) days between the two publication dates, in a newspaper or other publication of general circulation within the district, or, if no such publication of general circulation is available, by posting at five conspicuous places within the district, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates;

9. "District cooperator" means any person that has entered into a cooperative agreement with a conservation district for the purpose of protecting, conserving and practicing wise use of the renewable natural resources under his or her control;

10. "Renewable natural resources", "natural resources" or "resources" include land, soil, water, vegetation, trees, natural beauty, scenery and open space;

11. "Conservation" includes conservation, development, improvement, maintenance, preservation, protection and wise use of land, water and related natural resources; the control and prevention of floodwater and sediment damages; and the disposal of excess surface waters;

12. " Cost-Share program" means the assumption by the state of a proportional share of the cost of installing conservation structures, conservation practices or best management practices on lands for public and environmental benefits;

13. "Best Management practices" means a control method or combination of control methods that is determined to be the most effective and practicable means of preventing soil loss from erosion or reducing the amount of nonpoint source pollution from a given land use;

14. "Nonpoint source" shall have the same meaning as such word is defined by the Oklahoma Environmental Quality Act; [3]

15. "Pollution" shall have the same meaning as such word is defined by the Oklahoma Environmental Quality Act;

16. "Nonpoint source working group" means an advisory group established by the Conservation Commission to provide input into the state's nonpoint source management and assessment program and is open to federal, state and local environmental agencies and natural resource agencies and other interested groups;

17. "Watershed" means an area of land that drains to a given point;

18. "Blue Thumb Program" means a nonpoint source educational program emphasizing water quality education, including volunteer monitoring;

19. "Soil science" means the science which:

a. is the study of physical, chemical, and biological processes taking place in both naturally occurring and reconstructed unconsolidated material formed by the alteration of parent rock due to exposure at the earth's surface, and

b. includes sampling, measuring, identification, characterization, classification, and mapping of soil materials and migration of water solute, air and other gaseous components in the unsaturated portion of the earth; and

20. "Soil scientist" means a person who:

a. has earned a baccalaureate or higher degree in a field of soil science from an institution of higher education which is accredited by a regional or national accrediting agency, with a minimum of thirty (30) semester hours or forty-five (45) quarter hours of undergraduate work in a field of biological, physical, or earth science with a minimum of fifteen (15) semester hours of core soil science courses, and

b. has a specific and continuous record of related and verifiable soil science work experience for two (2) years. Publications in a soil science publication or prior qualifications as an expert witness in administrative or judicial proceeding, hearing or trial shall be prima facie verification of experience related to soil science.

Amended by Laws 1997, c. 217, § 4, eff. July 1, 1997; Laws 1998, c. 5, § 12, emerg. eff. March 4, 1998; Laws 1998, c. 271, § 1, eff. July 1, 1998.

[1] Title 27A, § 3-1-101 et seq.

[2] Title 75, § 250 et seq.

[3] Title 27A, § 1-1-101 et seq.

## Historical and Statutory Notes

Section 1 of Laws 1997, c. 24, amending this section, was repealed by Laws 1998, c. 5, § 29.

ARTICLE II. OKLAHOMA CONSERVATION COMMISSION

## § 3–2–106. Powers and duties of Commission

A. In addition to other powers and duties specified by law and except as otherwise provided by law, the Oklahoma Conservation Commission shall have the power and duty to:

1. Offer the assistance as may be appropriate to the directors of conservation districts in the carrying out of any of their powers and programs and to:

a. assist and guide districts in the preparation and carrying out of programs for resource conservation authorized under the Conservation District Act, [1]

b. review district programs,

c. coordinate the programs of the several districts and resolve any conflicts in such programs, and

d. facilitate, promote, assist, harmonize, coordinate and guide the resource conservation programs and activities of districts as they relate to other special purpose districts, counties and other public agencies;

2. Keep the directors of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

3. Review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with any state, federal, or interstate, or other public or private agency, organization or individual, and advise the districts concerning such agreements or forms of agreements;

4. Secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts and to accept donations, grants, gifts and contributions in money, services or otherwise from the United States or any of its agencies or from the state or any of its agencies in order to carry out the purposes of the Conservation District Act;

5. Disseminate information throughout the state concerning the activities and programs of the conservation districts and to make available information concerning the needs and the work of the conservation districts and Commission to the Governor, the Legislature, executive agencies of the government of this state, political subdivisions of this state, cooperating federal agencies and the general public;

6. Serve along with conservation districts as the official state agencies for cooperating with the Natural Resources Conservation Service of the United States Department of Agriculture and carrying on conservation operations within the boundaries of conservation districts;

7. Cooperate with and give such assistance as they deem necessary and proper to conservancy districts, watershed associations and other special purpose districts in the State of Oklahoma for the purpose of cooperating with the United States through the Secretary of Agriculture in the furtherance of conservation pursuant to the provisions of the Federal Watershed Protection and Flood Prevention Act, as amended; [2]

8. Recommend the inclusion in annual and longer term budgets and appropriation legislation of the State of Oklahoma of funds necessary for appropriation by the Legislature to finance the activities of the Commission and the conservation districts and to:

a. administer the provisions of the Conservation District Act hereafter enacted by the Legislature appropriating funds for expenditure in connection with the activities of conservation districts,

b. distribute to conservation districts funds, equipment, supplies and services received by the Commission for that purpose from any source, subject to such conditions as shall be made applicable thereto in any state or federal statute or local ordinance making available such funds, property or services,

c. issue regulations establishing guidelines and suitable controls to govern the use by conservation districts of such funds, property and services; and to review all budgets, administrative procedures and operations of such districts

and advise the districts concerning their conformance with applicable laws and regulations;

9. Enlist the cooperation and collaboration of state, federal, regional, interstate, local, public and private agencies with the conservation districts and to facilitate arrangements under which the conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of renewable natural resources;

10. Pursuant to procedures developed mutually by the Commission and federal, state and local agencies that are authorized to plan or administer activities significantly affecting the conservation of renewable natural resources, receive from such agencies for review and comment suitable descriptions of their plans, programs and activities for purposes of coordination with district conservation programs and to arrange for and participate in conferences necessary to avoid conflict among such plans and programs, to call attention to omissions and to avoid duplication of effort;

11. Compile information and make studies, summaries and analyses of district programs in relation to each other and to other resource conservation programs on a statewide basis;

12. Except as otherwise assigned by law, carry out the policies of this state in programs at the state level for the conservation of the renewable natural resources of this state and represent the state in matters affecting such resources;

13. Assist conservation districts in obtaining legal services from state and local legal officers;

14. Require annual reports from conservation districts, the form and content of which shall be developed by the Commission in consultation with the district directors;

15. Establish by regulations, with the assistance and advice of the State Auditor and Inspector, adequate and reasonably uniform accounting and auditing procedures which shall be used by conservation districts;

16. Conduct workshops for district directors to instruct them on the subjects of district finances, the Conservation District Law and related laws, and their duties and responsibilities as directors;

17. Assist and supervise districts in carrying out their responsibilities in accordance with the Oklahoma laws;

18. Have power, by administrative order, upon the written request of the board of directors of the conservation district or districts involved, with a showing that such request has been approved by a majority vote of the members of each of the boards involved, to:

a. transfer lands from one district established under the provisions of the Conservation District Act to another,

b. divide a single district into two or more districts, each of which shall thereafter operate as a separate district under the provisions of the Conservation District Act, and

c. consolidate two or more districts established under the provisions of the Conservation District Act, which consolidated area shall operate thereafter as a single district under the provisions of the Conservation District Act;

19. Except as otherwise provided by law, act as the management agency having jurisdiction over and responsibility for directing nonpoint source pollution prevention programs outside the jurisdiction or control of cities or towns in Oklahoma. The Commission, otherwise, shall be responsible for all identified nonpoint source categories except silviculture, urban storm water runoff and industrial runoff;

20. Administer cost-share programs for the purpose of carrying out conservation or best management practices on the land to benefit the public through the prevention or reduction of soil erosion and nonpoint source pollution and through general resource management. The Commission is not authorized to implement mandatory compliance with management practices, except as otherwise provided by law, to abate agricultural nonpoint source pollution;

21. Plan watershed-based nonpoint source pollution control activities, including the development and implementation of conservation plans for the improvement and protection of the resources of the state;

22. Provide assistance to the Oklahoma Water Resources Board on lake projects through stream and river monitoring, assessing watershed activities impacting lake water quality and assisting in the development of a watershed management plan;

23. Maintain the activities of the state's nonpoint source working group;

24. Prepare, revise and review Oklahoma's nonpoint source management program and nonpoint source assessment report in coordination with other state environmental agencies and compile a comprehensive assessment for the state every five (5) years. Such management program and assessment report shall be distributed to the Governor, Secretary of Environment, the President Pro Tempore of the Senate and the Speaker of the House of Representatives;

25. Under the direction of the Office of the Secretary of the Environment, develop and implement the state's nonpoint source water quality monitoring strategy in coordination with other environmental agencies;

26. Monitor, evaluate and assess waters of the state to determine the condition of streams and rivers impacted by nonpoint source pollution. In carrying out this area of responsibility, the Conservation Commission shall serve as the technical lead agency for nonpoint source pollution categories as defined in Section 319 of the Federal Clean Water Act or other subsequent federal or state nonpoint source programs;

27. Administer the Blue Thumb Program;

28. Enter into agreements or contracts for services with any of the substate planning districts recognized by the Oklahoma Department of Commerce;

29. Cooperate with the federal government, or any agency thereof, to participate in and coordinate with federal programs that will yield additional federal funds to the state for programs within the jurisdiction of the Conservation Commission. This participation shall be subject to the availability of state funds; and

30. Implement pilot projects and programs, subject to the availability of funds, that will demonstrate the latest technologies and applications in conservation programs that may provide direct or residual benefits to conservation practices in the state.

B. Nothing in this act shall take away any of the present duties or responsibilities delegated by law or constitution to other environmental agencies.

Amended by Laws 1997, c. 217, § 5, eff. July 1, 1997; Laws 1998, c. 271, § 2, eff. July 1, 1998.

[1] Title 27A, § 3-1-101 et seq.

[2] 16 U.S.C.A. § 1001 et seq.

### Cross References

Crimes and punishments, district board members participating in programs authorized by this section exempted from prohibition of individual interest in public contracts, see Title 21, § 344.

## § 3-2-107. Geographic data base system—Reports—List of permit approvals

A. The Conservation Commission may establish and maintain an environmental and natural resources geographic data base system. Such system shall include but not be limited to pollution complaints filed with the state environmental agencies and state agencies with limited environmental responsibilities, resolutions of complaints and such other data as funds become available and as may be desirable and necessary to provide public access to specific site information.

B. Not more than once each month, each state environmental agency and state agency with limited environmental responsibilities shall submit to the Conservation Commission a report listing the environmental pollution complaints received during the previous month. The report shall include the name of the complainant, if known, the address of the complainant, the location involved in the complaint, the name of the

person or company and address thereof alleged to be responsible for the pollution and how the complaint was resolved. The report shall be in such form and made in such manner as is required by the Commission. The report shall be in writing or may be submitted in electronic data or machine-readable form at the discretion of the Commission.

C. The Commission shall annually submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor containing the total number of pollution complaints filed, the total number of complaints and type of complaints addressed by each state environmental agency, the total number of such complaints resolved, the total number of complaints remaining to be resolved, the average time frame for resolving such complaints, and the historical comparison of complaint resolution in previous years, and any other information which the Commission believes is pertinent in regard to pollution complaints.

D. The Conservation Commission may recover costs incurred in duplicating any reports made pursuant to the provisions of this section.

E. The Department of Environmental Quality shall routinely provide the Conservation Commission with a list of permit approvals for inclusion in the Commission's data base.

Amended by Laws 1999, c. 413, § 17, eff. Nov. 1, 1999.

## ARTICLE III. CONSERVATION DISTRICTS

## PART 1A. CONSERVATION COST-SHARE PROGRAM

### § 3-3-114. Purpose—Rules—Definition

A. The Oklahoma Conservation Commission is hereby authorized to establish and administer a conservation cost-share program as funds become available. The conservation cost-share program shall provide monies to eligible persons for the purpose of implementing conservation or best management practices on such eligible land as described in conservation management plans according to rules promulgated by the Commission.

B. The Commission shall promulgate rules governing the cost-share program.

C. To implement the program, the Commission shall require conservation districts to enter into contracts for approved projects on eligible land detailing the eligible person's responsibilities.

D. For purposes of the conservation cost-share program:

1. "Eligible person" means any individual, partnership, corporation, legally recognized Indian tribe, estate, or trust who as an owner, lessee, tenant, or operator participates in the care and/or management of land within a conservation district;

2. "Eligible land" means:

   a. privately owned land within the state,
   b. land owned by the state or a political subdivision of the state,
   c. land owned by corporations which are partly owned by the United States,
   d. land temporarily owned by the United States or a corporation wholly owned by it, which were not acquired or reserved for conservation purposes, including lands administered by the Farm Service Agency, the U.S. Department of Defense, or by any other government agency,
   e. any cropland farmed by private persons which is owned by the United States or a corporation wholly owned by it, and
   f. noncropland owned by the United States on which practices are performed by private persons where such practices directly conserve or benefit nearby or adjoining privately owned lands of the persons performing the practices and such persons maintain and use such federally owned noncropland under agreement with the federal agency having jurisdiction thereof; and

3. "Eligible projects" means conservation practices determined to be needed by a conservation district to:

a. improve or protect water quality, or
b. reduce soil erosion, or both.

Added by Laws 1998, c. 271, § 3, eff. July 1, 1998.

### Historical and Statutory Notes

**Title of Act:**

An Act relating to environment and natural resources; amending 82 O.S. 1991, Sections 1501–103, as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 12 of Enrolled House Bill 3348 of the 2nd Session of the 46th Oklahoma Legislature, and 1501–205, as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 5, Chapter 217, O.S.L. 1997 (27A O.S. Supp. 1997, Section 3–2–106), which relate to the Oklahoma Conservation Commission; modifying terms; clarifying and expanding certain duties; providing for the establishment and administration of a conservation cost-share program; providing for purpose of program; providing for promulgation of rules; prohibiting certain allocation of funds; requiring certain contracts; defining terms; creating the Conservation Cost-Share Fund; providing for composition of fund; providing for depositing and expenditure of monies; requiring submission of certain information; requiring certain actions; providing for liability of state; providing for codification; providing an effective date; and declaring an emergency. Laws 1998, c. 271.

## § 3–3–115. Conservation Cost–Share Fund

A. There is hereby created within the State Treasury a cost-share fund for the Oklahoma Conservation Commission to be designated the "Conservation Cost-Share Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Conservation Commission to implement and maintain the conservation cost-share program.

B. The Conservation Cost-Share Fund shall consist of:

1. Money received by the Conservation Commission in the form of gifts, grants, reimbursements, donations, industry contributions, state appropriations, funds allocated by federal agencies for cost-share programs and such other monies specifically designated for the cost-share program. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Commission for the conservation cost-share program; and

2. Interest attributable to investment of money in the Conservation Cost-Share Fund.

C. All donations or other proceeds received by the Commission pursuant to the provisions of this section shall be deposited with the State Treasurer to be credited to the Conservation Cost-Share Fund. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

D. The monies deposited in the Conservation Cost-Share Fund shall at no time become part of the general budget of the Conservation Commission or any other state agency. Except for any administration costs incurred in development and implementation of the cost-share program, no monies from the fund shall be transferred for any purpose to any other state agency or any account of the Conservation Commission or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

Added by Laws 1998, c. 271, § 4, eff. July 1, 1998.

## § 3–3–116. Applications

A. The Conservation Commission shall require applicants to submit information, forms and reports as are necessary to properly and efficiently administer the conservation cost-share program.

B. Persons may apply to a conservation district for cost-share funds for eligible conservation projects in the State of Oklahoma, in accordance with rules promulgated by the Commission. To be eligible for reimbursement for a cost-share project, an eligible person must:

1. File a conservation plan approved by the conservation district in which the applicant's land is located; and

2. Enter into a contract with a conservation district detailing the responsibilities of the person.

C. Applications for funds shall be approved or denied by the conservation district in accordance with criteria promulgated by the Commission.

## § 3–3–117. Financial or general obligation of state—Construction of act

Nothing in this act [1] or in the contract executed pursuant to Section 3 of this act [2] shall be interpreted or construed to constitute a financial or general obligation of the state. No state revenue shall be used to guarantee or pay for any damages to property or injury to persons as a result of the provisions of this act or the contract.

Added by Laws 1998, c. 271, § 6, eff. July 1, 1998.

[1] Title 27A, § 3–3–114 et seq.

[2] Title 27A, § 3–3–114.

### PART 2. GOVERNING BODY

## § 3–3–201. Directors

A. The governing body of the district shall consist of five (5) directors, elected or appointed as provided in the Conservation District Act.[1]

B. 1. Three directors shall be elected for a term of three (3) years and shall be elected for staggered terms as provided by the Conservation District Act.

2. The three elected directors' positions shall be designated as position number one, position number two and position number three by the Commission.

3. To be eligible for election as a director of a conservation district, a person must be a registered voter in said district, and must be a cooperator of said district.

C. Two directors for each district shall be appointed by the Commission to serve a term of two (2) years. The Commission shall issue a certificate of appointment to all appointed directors. Initially one director shall serve for a period of one (1) year and one director for a period of two (2) years.

D. A director shall hold office until the director's successor or replacement has been elected or appointed, and qualified.

E. Any director may be removed from office by the Commission, upon notice and hearing, for neglect of duty or for malfeasance in office.

F. All vacancies in the office of an elected or appointed director shall be filled for the unexpired term by the Commission.

G. Directors shall be entitled to be reimbursed by the district for actual expenses incurred in the official performance of their duties.

H. District directors shall be paid a per diem of Twenty-five Dollars ($25.00) per meeting for attending monthly district board meetings and for such other area and state meetings as are called by the Oklahoma Conservation Commission.

I. If any director shall, during his or her term of office as director, be elected or appointed to any county or state elective office, or if he or she shall file as a candidate for the nomination to be elected to any such other office, his or her office as director shall become vacant and the vacancy shall be filled by appointment of the Commission. Provided, that a district director may also serve on a board of education of a school district.

Amended by Laws 1999, c. 370, § 1, eff. Sept. 1, 1999.

[1] Title 27A, § 3–1–101 et seq.

PART 4. MISCELLANEOUS

## § 3-3-407. Allocation of funds

A. The Commission shall have authority to allocate to any conservation district in this state, from the Small Watersheds Flood Control Fund, such sum or sums as in the judgment of the said Commission may be necessary to enable such district to acquire real property or easements needed by such district to permit such district to install upstream flood control structures on rivers and streams and the tributaries thereof, including cooperative projects between such district and the United States government.

B. Monies from the fund may also be used for costs associated with the rehabilitation of flood control structures, including, but not limited to, landrights.

Amended by Laws 1999, c. 370, § 2, eff. Sept. 1, 1999.

## § 3-3-410. Payment of insurance premiums for employees

The Oklahoma Conservation Commission is hereby authorized to equitably apportion and pay dependent health insurance premiums for local conservation district employees from funds appropriated for such purpose.

Added by Laws 1999, c. 370, § 5, eff. Sept. 1, 1999.

# CHAPTER 4

# EMERGENCY RESPONSE AND NOTIFICATION

ARTICLE I. OKLAHOMA EMERGENCY RESPONSE ACT



ARTICLE I. OKLAHOMA EMERGENCY RESPONSE ACT

## § 4-1-102. Definitions

For purposes of the Oklahoma Emergency Response Act: [1]

1. "State environmental agency" includes:
   a. the Oklahoma Water Resources Board,
   b. the Corporation Commission,
   c. the State Department of Agriculture,
   d. the Oklahoma Conservation Commission,
   e. the Department of Wildlife Conservation,
   f. the Department of Mines and Mining,
   g. the Department of Public Safety,
   h. the Department of Labor,
   i. the Department of Environmental Quality, and
   j. the Department of Civil Emergency Management;

2. "Lead official" means the person designated by the contact agency to be the official in charge of the on-site management of the emergency;

3. "Emergency" means a sudden and unforeseeable occurrence or condition either as to its onset or as to its extent, of such severity or magnitude that immediate emergency

response or action is necessary to preserve the health and safety of the public or environment or to preserve property;

4. "Dangerous substance" means explosives, gases, flammable liquids and solids, poisons, radioactive materials, hazardous materials, deleterious substances, oil, or other substance or material in a quantity or form capable of posing an unreasonable risk to public health and safety, property or to the environment;

5. "Release" means a leakage, seepage, discharge, emission or escaping of a dangerous substance into the environment of the state;

6. "Extreme emergency" means any emergency which requires immediate protective actions;

7. "Protective actions" are those steps deemed necessary by first responders to an extreme emergency to preserve the health and safety of the emergency responders, the public and the protection of the environment and property during an incident involving the release of a dangerous substance. Protective actions include but are not limited to area isolation, evacuation, dilution, cooling, encapsulation, chemical treatment and diking;

8. "First responder" means the first person to arrive at the scene of an incident involving the release of a dangerous substance who has the authority by virtue of that person's position as a local law enforcement officer, peace officer, fire protection officer or Oklahoma Highway Patrol Officer or other law enforcement officer;

9. "Contact agency" means a municipality, fire department or the Oklahoma Highway Patrol as determined by the location of an incident as follows:

| Location | Contact Agency |
|---|---|
| a. Inside corporate municipal limits | Municipal Fire Department |
| b. Outside corporate limits on private property | Closest Municipal Fire Department |
| c. Outside corporate limits on federal/state highway, public property, county road, or a railroad; | Oklahoma Highway Patrol; |

10. "Responsible party" means any person who owned, operated, or otherwise controlled activities at the facility at the time the incident or event involving releases of dangerous substances requiring protective actions occurred; and

11. "Facility" means:

a. any building, structure, installation, equipment, pipe or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or

b. any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise came to be located, or

c. any vessel, including every description of watercraft or other artificial conveyance used, or capable of being used, as a means of transportation on water.

Amended by Laws 1998, c. 207, § 1, eff. Nov. 1, 1998.

[1] Title 27A, § 4–1–101 et seq.

## § 4–1–103. Duties of first responder and lead official—Toll free telephone number—Duties of Department of Environmental Quality and Department of Civil Emergency Management—Duties of responsible party

A. For incidents or events involving releases of dangerous substances requiring protective actions, the first responder shall be responsible for initial evaluation of the incident and implementation of protective action measures.

B. As soon as reasonably possible after arriving at the scene of the incident, the first responder shall notify the lead official to respond to such an incident pursuant to

subsection C of this section. The first responder shall maintain such authority to implement protective action measures until the lead official arrives or until the incident is stabilized.

C. Each contact agency specified to respond to a dangerous substance incident requiring emergency response shall designate lead officials who shall be capable of responding on a twenty-four-hour basis to such an incident.

D. Upon arrival at the incident scene, the lead official will immediately assume responsibility for management of the incident. All other responding emergency persons are to assist the lead official in the discharge of such official's duties.

E. If the first responder or the lead official believes the incident to be of a significant nature to threaten the public health, safety or the environment, the first responder or lead official shall contact the Department of Environmental Quality as soon as is reasonably possible. The Department of Environmental Quality shall maintain a twenty-four-hour toll free statewide telephone number to report emergencies.

F. The Department of Environmental Quality shall, as necessary:

1. Provide technical information or advice to the lead official;

2. Provide for personnel for assistance in completing material identification;

3. Provide technical assistance on or initiate procedures for containment or suppression of the release;

4. Provide sampling, analysis and monitoring;

5. Notify the responsible party of the release; and

6. Oversee the planning of final containment, cleanup and recovery of dangerous materials.

G. The Department of Environmental Quality is authorized when determined to be necessary to protect the public health, safety and welfare of the environment to initiate cleanup operations of the release based upon seriousness of the release, location of the release, threat of the release to the public health and safety or the environment, responsiveness of the responsible party, or authorization of the responsible party. The responsible party shall be liable for any expenses incurred in any cleanup operation.

H. 1. Upon the release of dangerous substances requiring protective actions, the responsible party shall take immediate emergency response measures as directed by the lead official assuming responsibilities for management of the incident or the Department of Environmental Quality if contacted by the first responder or lead official pursuant to subsection E of this section.

2. If the responsible party fails to take immediate emergency response measures as required pursuant to paragraph 1 of this subsection, the contact agency, the district attorney of the county where the release occurred or the Department of Environmental Quality, as applicable, is authorized to apply for a temporary order to compel the responsible party to take such immediate emergency response measures.

I. 1. In not less than four (4) hours nor more than seven (7) days, as determined by the contact agency or the Department of Environmental Quality, as applicable, the responsible party shall provide a written action plan for the proposed cleanup operations to the contact agency and shall initiate cleanup operations.

2. The contact agency, the district attorney of the county where the release occurred or the Department of Environmental Quality, as applicable, is authorized to apply for a temporary and permanent court order to compel the responsible party to provide the written action plan and to abate the release and restore the release site.

J. The Department of Environmental Quality shall maintain a list of persons qualified to provide the services necessary to take corrective actions to abate and restore release sites.

K. The lead official may request the Department of Civil Emergency Management to provide state resources in managing an emergency or extreme emergency. If the lead official does not request that the Department of Civil Emergency Management provide state resources in managing an emergency or extreme emergency, the lead official shall notify the Department of Civil Emergency Management after the emergency or extreme

emergency no longer poses an immediate threat to the public's health or safety or the environment of the release of dangerous substances.

L. The Department of Civil Emergency Management shall keep a record of each emergency or extreme emergency which includes but is not limited to the location, first responder, lead official, type of emergency or extreme emergency, and actions taken to address said emergency or extreme emergency.

M. At the request of the contact agency, the Department of Civil Emergency Management shall provide assistance to the contact agency, in either reviewing the emergency procedure or emergency management plan used in managing the completed emergency or extreme emergency within the contact agency's jurisdiction.

Amended by Laws 1998, c. 207, § 2, eff. Nov. 1, 1998.

## § 4-1-104. Liability for release of dangerous substance—Construction of act

The provisions of the Oklahoma Emergency Response Act [1] shall not be construed to effect or remove the liability of the person who owns the dangerous substance for injury or damages incurred as a result of the release of the dangerous substance.

Added by Laws 1998, c. 207, § 3, eff. Nov. 1, 1998.

[1] Title 27A, § 4-1-101 et seq.

## § 4-1-105. Release of dangerous substance requiring protective action—Entry upon public or private property—Records or reports of incidents or events—Administrative warrants—Contempt

A. During or after a release of a dangerous substance and as part of any required cleanup operations or remediation requirements, any duly authorized representative of the first responder, the contact agency, the Department of Civil Emergency Management or the Department of Environmental Quality shall have the authority to enter upon any private or public property for the purpose of responding to and stabilizing an incident or event involving a release of dangerous substances requiring protective action measures.

B. 1. The contact agency or the Department of Environmental Quality, as applicable, may require the establishment and maintenance of records and reports relating to the incident or event.

2. Copies of such records or reports shall be submitted to the requesting agency.

3. Any authorized representative of the contact agency or the Department of Environmental Quality, as applicable, shall be allowed access and may examine such records or reports.

C. 1. A contact agency or the Department of Environmental Quality may apply to and obtain from a judge of the district court, an order authorizing an administrative warrant or other warrant to enforce access to premises for the purpose of responding to and stabilizing an incident or event involving releases of dangerous substances requiring protective action measures or for the purpose of examining records or reports relating thereto.

2. Failure to obey an administrative warrant or other warrant of the district court may be punished by the district court as a contempt of court.

Added by Laws 1998, c. 207, § 4, eff. Nov. 1, 1998.

## § 4-1-106. Prosecution of violations—Actions for injunctive relief—Jurisdiction—Penalties

A. The Attorney General or the district attorney of the county where the release occurs may bring an action in a court of competent jurisdiction for the prosecution of a violation of the Oklahoma Emergency Response Act [1] by the responsible party.

B. 1. Any action for injunctive relief to redress or restrain a violation of the Oklahoma Emergency Response Act by such responsible party may be brought by the district attorney of the county where the release occurred, as applicable, the contact agency, or the Attorney General or the Department of Environmental Quality on behalf of the State of Oklahoma.

2. It shall be the duty of the Attorney General or district attorney, if so requested, to bring such actions.

C. The court shall have jurisdiction to determine such action and to grant the necessary or appropriate relief including, but not limited to, mandatory or prohibitive injunctive relief and interim equitable relief, and for inhibiting emergency response to an incident, punitive damages.

D. A responsible party who violates any of the provisions of, or who fails to perform any duty imposed by, the Oklahoma Emergency Response Act shall, upon conviction, be guilty of a misdemeanor and may be punished by a fine of not less than Two Hundred Dollars ($200.00) and not more than Ten Thousand Dollars ($10,000.00) per day for each violation. Each day or part of a day upon which such violation occurs shall constitute a separate offense.

Added by Laws 1998, c. 207, § 5, eff. Nov. 1, 1998.

[1] Title 27A, § 4-1-101 et seq.

# TITLE 28

# FEES



## CHAPTER 1

## FEES OF COUNTY OFFICERS, JURORS AND WITNESSES

### FEES OF PARTICULAR OFFICERS



### FEES OF WITNESSES AND JURORS



### FEES OF PARTICULAR OFFICERS

## § 31. Fees of court clerks

Notwithstanding any other provision of law, the clerk of the district court, or the clerk of any other court of record, shall charge and collect the following fees for services by them respectively rendered and none others, except as otherwise provided by law:

Approving bond or undertaking, including certificate and seal ..... $3.00
Making copy of an instrument of record or on file, first page. ..... $1.00
subsequent pages (each) ..... $0.50
Certifying to any instrument (each) ..... $0.50
Authentication of court records ..... $5.00
Receiving and paying out money in pursuance of law or order of court 1% provided, however, that such charge shall not exceed ..... $300.00.
In any case which has been on file and pending without activity for a period of five (5) years and in which there is on hand, unexpended, a balance of deposits for costs, there shall be a charge annually thereafter for accounting, to be deducted from any such balance, and to the extent available therefor, an annual fee of ..... $3.00
Application, issuing, entering return and recording marriage license if the applicants submit a certificate that states the applicants have completed the premarital counseling program pursuant to Section 2 of this act [1] ..... $5.00
Application, issuing, entering return and recording marriage license if the applicants do not submit a certificate that states the applicants have completed the premarital counseling program pursuant to Section 2 of this act ..... $25.00
Conveyance of full-blood Indian heirs to interest in inherited lands, same to be accounted for as other fees ..... $5.00
Storage and indexing of wills ..... $5.00
Posting notice outside the courthouse ..... $10.00
Mailing, by any type of mail, writs, warrants, orders, process, command or notice for each person ..... $7.00
except ordinary mailing of first-class mail in probate cases, for each case ..... $7.00
For the actual cost of all postage in each case in excess of ..... $7.00

For filing and indexing of disclaimers other than in pending probate or civil cases pursuant to the provisions of Section 751 et seq. of Title 60 of the Oklahoma Statutes ..... $5.00

Amended by Laws 1997, c. 400, § 9, eff. July 1, 1997; Laws 1999, c. 174, § 3, eff. Nov. 1, 1999.

[1] Title 43, § 5.1.

## § 32. County clerk—Fees

*Text effective until July 1, 2001*

A. Notwithstanding any other provision of law county clerks shall charge and collect the following flat fees to be uniform throughout the state regardless of the recording method used, and the county clerks shall not be required to itemize or charge these fees pursuant to any other schedule, except as specifically provided by law:

1. For recording the first page of deeds, mortgages and any other instruments ..... $8.00
2. For recording each additional page of same instrument ..... $2.00
3. For furnishing hard copies of microfilmed records to bonded abstractors only, per page ..... $1.00
4. For furnishing photographic copies of photographic records, or of typewritten script or printed records, per page ..... $1.00
5. For recording plat of one block or less ..... $10.00
6. For recording plat of more than one block ..... $25.00
7. For certifying to any copy per page ..... $1.00
8. For recording an assignment of Tax Sale Certificate to be paid by the party purchasing ..... $5.00
9. For recording of any mark or brand and giving certificate for same ..... $5.00
10. For recording each certificate for estrays and forwarding description of same, as required by law ..... $1.00
11. a. For recording and filing of mechanics' or materialmen's liens which includes the release thereof ..... $10.00
    b. For preparing and mailing notice of mechanics' or materialmen's lien ..... $8.00
    c. For each additional page or exhibit ..... $2.00
12. For recording and filing of fictitious name partnership certificates ... $5.00 To this fee shall be added the fees required by Sections 81 through 86 of Title 54 of the Oklahoma Statutes.
13. For filing and indexing an original financing statement or a continuation statement and for filing a termination statement and a statement of release therefor ..... $10.00 (Section 9-403 of Title 12A)
14. For a filing pursuant to Section 6-209 of Title 12A of the Oklahoma Statutes ..... $10.00
15. For recording the first page of deeds, mortgages, and any other instruments which are nonconforming pursuant to subsection C of Section 298 of Title 19 of the Oklahoma Statutes:
    a. before January 1, 1998 ..... $8.00
    b. beginning January 1, 1998 ..... $25.00
16. For recording each additional page of an instrument which is nonconforming pursuant to subsection C of Section 298 of Title 19 of the Oklahoma Statutes:
    a. before January 1, 1998 ..... $2.00
    b. beginning January 1, 1998 ..... $10.00

B. The fees prescribed in paragraph 4 of subsection A of this section shall be deposited into the County Clerk's Lien Fee Account, created pursuant to Section 265 of Title 19 of the Oklahoma Statutes in an amount not to exceed Twenty Thousand Dollars ($20,000.00) each fiscal year.

Amended by Laws 1997, c. 233, § 3, eff. July 1, 1997; Laws 1998, c. 92, § 1, eff. Nov. 1, 1998.

*For text effective July 1, 2001, see § 32, post*

## § 32. County clerk—Fees

*Text effective July 1, 2001*

A. Notwithstanding any other provision of law county clerks shall charge and collect the following flat fees to be uniform throughout the state regardless of the recording method used, and the county clerks shall not be required to itemize or charge these fees pursuant to any other schedule, except as specifically provided by law:

1. For recording the first page of deeds, mortgages and any other instruments not subject to the fee imposed by Section 1-9-525 of Title 12A of the Oklahoma Statutes ..... $8.00
2. For recording each additional page of same instrument ..... $ 2.00
3. For furnishing hard copies of microfilmed records to bonded abstractors only, per page ..... $1.00
4. For furnishing photographic copies of photographic records, or of typewritten script or printed records, per page ..... $1.00
5. For recording plat of one block or less ..... $10.00
6. For recording plat of more than one block ..... $25.00
7. For certifying to any copy per page ..... $1.00
8. For recording an assignment of Tax Sale Certificate to be paid by the party purchasing ..... $5.00
9. For recording of any mark or brand and giving certificate for same ..... $5.00
10. For recording each certificate for estrays and forwarding description of same, as required by law ..... $1.00
11. a. For recording and filing of mechanics' or materialmen's liens which includes the release thereof ..... $10.00
    b. For preparing and mailing notice of mechanics' or materialmen's lien .. $8.00
    c. For each additional page or exhibit ..... $2.00
12. For recording and filing of fictitious name partnership certificates ..... $5.00
    To this fee shall be added the fees required by Sections 81 through 86 of Title 54 of the Oklahoma Statutes.
13. For recording the first page of deeds, mortgages, and any other instruments which are nonconforming pursuant to subsection C of Section 298 of Title 19 of the Oklahoma Statutes ..... $25.00
14. For recording each additional page of an instrument which is nonconforming pursuant to subsection C of Section 298 of Title 19 of the Oklahoma Statutes ..... $10.00

B. The fees prescribed in paragraph 4 of subsection A of this section shall be deposited into the County Clerk's Lien Fee Account, created pursuant to Section 265 of Title 19 of the Oklahoma Statutes in an amount not to exceed Twenty Thousand Dollars ($20,000.00) each fiscal year.

C. For the purpose of preserving, maintaining, and archiving recorded instruments including, but not limited to, records management, records preservation, automation, modernization, and related lawful expenditures, in addition to all other fees required by law, the county clerk shall collect Five Dollars ($5.00) for each instrument recorded with the Registrar of Deeds.

D. There is hereby created a fund to be known as the "County Clerk's Records Management and Preservation Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of the fees and monies accruing to the fund, as prescribed in subsection C of this section with all monies accruing to the fund to be expended by the clerk and not transferred to any other fund.

Amended by Laws 1997, c. 233, § 3, eff. July 1, 1997; Laws 1998, c. 92, § 1, eff. Nov. 1, 1998; Laws 2000, c. 371, § 168, eff. July 1, 2001.

*For text effective until July 1, 2001, see § 32, ante*

### Historical and Statutory Notes

Section 1 of Laws 1998, c. 19, amending this section, was repealed by Laws 1998, c. 412, § 8.

FEES OF COUNTY ASSESSORS

## § 60. Fees of county assessors

### Notes of Decisions

Copies of records 1

1. Copies of records

A county assessor does not have the authority pursuant to 68 O.S. 1991 and Supp.1996, §§ 2814–2846, 28 O.S. Supp.1996, § 60, or the Open Records Act, 51 O.S. 1991 and Supp.1996, §§ 24A.1—24A.24, to contract to sell public records that are regularly kept in computer-readable format to a private business for resale to the public. Op.Atty.Gen. No. 96-26 (Jan. 16, 1997).

A county assessor may only charge the fees for records that are regularly kept in computer-readable format for delivery to a private business or resale to the public that are set forth in 28 O.S. Supp.1996, § 60 and 51 O.S. Supp.1996, § 24A.5(3). Op.Atty.Gen. No. 96-26 (Jan. 16, 1997).

FEES OF WITNESSES AND JURORS

## § 86. Jurors' fees—Parking—Persons excused from serving

A. Jurors shall be paid the following fees out of the local court fund:

1. For each day's attendance before any court of record, Twenty Dollars ($20.00); and

2. For mileage going to and returning from jury service each day, pursuant to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74.

B. The Court Fund Board of the district court may contract for or provide reimbursement for parking for district court jurors to be paid from the Court Fund. Parking so provided to jurors shall be in lieu of any reimbursement to jurors for parking fees.

C. The provisions of this section shall not apply to any person who is summoned for jury duty and who is excused from serving pursuant to the provisions of subsection A of Section 28 of Title 38 of the Oklahoma Statutes, beginning on the day the person is excused from service.

Amended by Laws 1997, c. 400, § 10, eff. July 1, 1997.

# CHAPTER 2
# FEES OF SECRETARY OF STATE

Section
111. Fees chargeable by Secretary of State.

## § 111. Fees chargeable by Secretary of State

*Text as amended by Laws 2000, c. 371, § 169, eff. July 1, 2001*

A. In addition to other fees provided for by law, the Secretary of State shall collect the following fees:

1. For affixing the certificate of the Secretary and the seal of the State of Oklahoma, Ten Dollars ($10.00).

2. For copy of any paper or document to be paid for by the person demanding the same, One Dollar ($1.00) per page, provided the minimum charge shall not be less than Two Dollars ($2.00).

3. For filing an effective financing statement in the office of the Secretary of State pursuant to Section 1–9–320.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00).

4. For filing a continuation statement, partial release, assignment of or amendment to an effective financing statement filed in the office of the Secretary of State pursuant to Section 1–9–320.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00).

5. For filing a termination statement for an effective financing statement filed in the office of the Secretary of State pursuant to Section 1-9-320.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00).

6. For registering a buyer of farm products, commission merchant , selling agent or other person as provided for in Section 1-9-320.6 of Title 12A of the Oklahoma Statutes, Fifty Dollars ($50.00) per year.

7. For distributing a copy of the master list or portions thereof to buyers of farm products, commission merchants, and selling agents, as provided for in Section 1-9-320.6 of Title 12A of the Oklahoma Statutes, or for providing a copy of such master list or portions thereof to other interested parties, in accordance with the following fee schedule. Such fees may be paid annually or semi-annually:

a. For information requested for five or less counties:

| | Number of Farm Products | Photostatic Reproduction | Microfiche |
|---|---|---|---|
| (1) | 1 to 5 products | $150 per year | $25 per year |
| (2) | 6 to 10 products | $200 per year | $50 per year |
| (3) | 11 to 20 products | $250 per year | $75 per year |
| (4) | over 20 products | $300 per year | $100 per year |

b. For information requested for six to twenty-five counties:

| | Number of Farm Products | Photostatic Reproduction | Microfiche |
|---|---|---|---|
| (1) | 1 to 10 products | $200 per year | $50 per year |
| (2) | 11 to 20 products | $250 per year | $75 per year |
| (3) | over 20 products | $300 per year | $100 per year |

c. For information requested for twenty-six (26) to fifty counties:

| | Number of Farm Products | Photostatic Reproduction | Microfiche |
|---|---|---|---|
| (1) | 1 to 10 products | $250 per year | $75 per year |
| (2) | 11 to 20 products | $300 per year | $100 per year |
| (3) | over 20 products | $350 per year | $125 per year |

d. For information requested for over fifty counties:

| | Number of Farm Products | Photostatic Reproduction | Microfiche |
|---|---|---|---|
| (1) | 1 to 10 products | $300 per year | $100 per year |
| (2) | 11 to 20 products | $350 per year | $125 per year |
| (3) | over 20 products | $400 per year | $150 per year |

8. a. The Secretary of State is authorized to provide for the distribution of the master list or portions thereof to those persons specified in paragraph 7 of this subsection through electronic data or machine readable equipment or other communication media in such form and manner as is specified by the Secretary of State.

b. The Secretary of State is authorized to establish a fee system for such transfer of information pursuant to this paragraph. Such fee shall not exceed the amount necessary to cover the costs of the Secretary of State in providing such transfer of information.

c. In providing for the transfer of the information specified by this paragraph, the Secretary of State shall ensure the integrity of confidential information within the office of the Secretary of State through data security measures, internal controls and appropriate data base management.

9. For issuing a written confirmation of the existence or nonexistence of any effective financing statement on file in the office of the Secretary of State, Six Dollars ($6.00).

10. The Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) for every apostille, which is a special certificate which is attached to a public foreign

document in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, issued.

11. For each service rendered and not specified in this section, such fees as are allowed for similar services in other cases.

B. All of said fees shall be properly accounted for and shall be paid into the State Treasury monthly. The fees generated by paragraphs 1, 2 and 10 of subsection A of this section shall be deposited to the credit of the Revolving Fund for the Office of the Secretary of State created pursuant to Section 276.1 of Title 62 of the Oklahoma Statutes. The fees generated by paragraphs 3 through 9 of subsection A of this section shall be deposited to the credit of the Central Filing System Revolving Fund created pursuant to Section 276.3 of Title 62 of the Oklahoma Statutes.

Amended by Laws 2000, c. 371, § 169, eff. July 1, 2001.

*For text as amended by Laws 2000, c. 385, § 15, see § 111, post*

## § 111. Fees chargeable by Secretary of State

*Text as amended by Laws 2000, c. 385, § 15*

A. In addition to other fees provided for by law, the Secretary of State shall collect the following fees:

1. For affixing the certificate of the Secretary and the seal of the State of Oklahoma, Ten Dollars ($10.00);

2. For copying any paper or document, One Dollar ($1.00) per page, provided the minimum charge shall not be less than Two Dollars ($2.00);

3. For filing an effective financing statement in the office of the Secretary of State pursuant to Section 9–307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00);

4. For filing a continuation statement, partial release, assignment of or amendment to an effective financing statement filed in the office of the Secretary of State pursuant to Section 9–307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00);

5. For filing a termination statement for an effective financing statement filed in the office of the Secretary of State pursuant to Section 9–307.6 of Title 12A of the Oklahoma Statutes, Ten Dollars ($10.00);

6. For registering a buyer of farm products, commission merchant or selling agent as provided for in Section 9–307.6 of Title 12A of the Oklahoma Statutes, Fifty Dollars ($50.00) per year;

7. For distributing a copy of the master list or portions thereof to buyers of farm products, commission merchants, and selling agents, as provided for in Section 9–307.6 of Title 12A of the Oklahoma Statutes, or for providing a copy of such master list or portions thereof to other interested parties, in accordance with the following fee schedule. Such fees may be paid annually or semi–annually:

a. For information requested for five or less counties:

| Number of Farm Products | Photostatic Reproduction | Microfiche |
|---|---|---|
| (1) 1 to 5 products | $150 per year | $25 per year |
| (2) 6 to 10 products | $200 per year | $50 per year |
| (3) 11 to 20 products | $250 per year | $75 per year |
| (4) over 20 products | $300 per year | $100 per year |

b. For information requested for six to twenty-five counties:

| Number of Farm Products | Photostatic Reproduction | Microfiche |
|---|---|---|
| (1) 1 to 10 products | $200 per year | $50 per year |
| (2) 11 to 20 products | $250 per year | $75 per year |
| (3) over 20 products | $300 per year | $100 per year |

c. For information requested for twenty-six (26) to fifty counties:

| Number of Farm Products | Photostatic Reproduction | Microfiche |
|---|---|---|
| (1) 1 to 10 products | $250 per year | $75 per year |
| (2) 11 to 20 products | $300 per year | $100 per year |
| (3) over 20 products | $350 per year | $125 per year |

d. For information requested for over fifty counties:

| Number of Farm Products | Photostatic Reproduction | Microfiche |
|---|---|---|
| (1) 1 to 10 products | $300 per year | $100 per year |
| (2) 11 to 20 products | $350 per year | $125 per year |
| (3) over 20 products | $400 per year | $150 per year; |

8. a. The Secretary of State is authorized to provide for the distribution of the master list or portions thereof to those persons specified in paragraph 7 of this subsection through electronic data or machine readable equipment or other communication media in such form and manner as is specified by the Secretary of State.

b. The Secretary of State is authorized to establish a fee system for such transfer of information pursuant to this paragraph. Such fee shall not exceed the amount necessary to cover the costs of the Secretary of State in providing such transfer of information.

c. In providing for the transfer of the information specified by this paragraph, the Secretary of State shall ensure the integrity of confidential information within the office of the Secretary of State through data security measures, internal controls and appropriate data base management;

9. For issuing a written confirmation of the existence or nonexistence of any effective financing statement on file in the office of the Secretary of State, Six Dollars ($6.00);

10. The Secretary of State shall collect a fee of Twenty-five Dollars ($25.00) for every apostille issued. For the purposes of this paragraph, an apostille is a special certificate attached to a public record, as required by the 1961 Hague Convention, Fed. R. Civ. P. 44 (28 U.S.C.A.), to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears; provided, however, a fee of Ten Dollars ($10.00) shall be collected for any apostille requested for an international adoption; and

11. For each service rendered and not specified in this section, such fees as are allowed for similar services in other cases.

B. All fees shall be properly accounted for and shall be paid into the State Treasury monthly. The fees generated by paragraphs 1, 2, 10 and 11 of subsection A of this section shall be deposited to the credit of the Revolving Fund for the Office of the Secretary of State created pursuant to Section 276.1 of Title 62 of the Oklahoma Statutes. The fees generated by paragraphs 3 through 9 of subsection A of this section shall be deposited to the credit of the Central Filing System Revolving Fund created pursuant to Section 276.3 of Title 62 of the Oklahoma Statutes.

Amended by Laws 2000, c. 385, § 15, eff. Nov. 1, 2000.

*For text as amended by Laws 2000, c. 371, § 169, see § 111, ante*

## CHAPTER 3

## FEES FOR PUBLIC PRINTING

Section
121. Fees for printing legal notices.

### § 121. Fees for printing legal notices

A. In all cases where publication of legal notices is required or allowed by law, the person or official desiring publication shall be required to pay:

1. For all matters other than tabular matter, eleven cents ($0.11) per word for first insertion, and ten cents ($0.10) per word for each subsequent insertion, with each separate group of numerals included in the matter to be counted as one word, regardless of the number of digits involved; and

2. For all tabular matter, in not to exceed eight-point type, including but not limited to, lists of persons, firms, and corporations whose personal property taxes are delinquent and lists of lands and town lots upon which taxes are delinquent, sixty cents ($0.60) per

line per newspaper column in width, for first insertion, and fifty-five cents ($0.55) per line per newspaper column in width, for each subsequent insertion.

B. The county treasurer shall collect the cost of publication of lists of lands and town lots sold for delinquent taxes at original sale or resale from the individuals purchasing the lands and town lots at the sale or resale involved, and shall deposit all monies collected to the credit of the fund of the county which paid the cost of publication. The publisher of the notice shall be paid for the publication of the notice from the general fund of the county or, if monies are not available in the general fund of the county at the time of publication, from the "Resale-Property Fund" of the county.

Amended by Laws 2000, c. 135, § 1, eff. Nov. 1, 2000.

## CHAPTER 4

## COURT COSTS AND FILING FEES

Section
151. Collection of fees, fines, costs and assessments.
151.1. Statement of ownership of monies—Use for legal notices.
152. Flat fee schedule—Deposits in certain funds—In forma pauperis.
152.1. Civil actions—Charges in addition to flat fee.
153. Costs in criminal cases.
162. Juvenile proceedings—Fees and costs.

### § 151. Collection of fees, fines, costs and assessments

A. It shall be the duty of the clerks of the district court and other trial courts of record of this state to charge and collect the fees imposed by this title, fines, costs and assessments imposed by the district courts or appellant courts, and none others, in all cases, except those in which the defendant is charged with a misdemeanor or traffic violation, and except cases under the Small Claims Procedure Act, Section 1751 et seq. of Title 12 of the Oklahoma Statutes.

B. 1. Payment for any fee provided for in this title may be made by a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of the payment as a service charge for the acceptance and verification of the credit card. For purposes of this subsection, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value and which is accepted by over one thousand merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees.

2. Written procedures for acceptance or rejection of credit cards shall be established by the Office of the State Auditor and Inspector with approval and direction to court clerks to be issued by the Administrative Office of the Courts.

C. Payment for any fee provided for in this title may be made by a personal or business check. The court clerk, at the court clerk's discretion, may:

1. Add an amount equal to the amount of the service charge incurred, not to exceed three percent (3%) of the amount of the check as a service charge for the acceptance and verification of the check; or

2. Add an amount of no more than Five Dollars ($5.00) as a service charge for the acceptance and verification of a check. For purposes of this subsection, "personal or business check" shall not mean a money order, cashier's check, or bank certified check.

D. The Supreme Court is authorized to institute a cost collection program for collection of fees, fines, costs and assessments provided for in this title.

Amended by Laws 1997, c. 239, § 1, eff. July 1, 1997.

### § 151.1. Statement of ownership of monies—Use for legal notices

The clerk of the district court shall accept monies only as ordered by the court or as required by law. Upon delivery of monies, a written statement of ownership of the

monies, including the name and mailing address of the owner, shall be provided to the court clerk. Unless amended through judicial proceeding, the court clerk shall use this information for case-related mailings and other legal notices, including notice of proceedings relating to unclaimed property.

Added by Laws 2000, c. 172, § 3, eff. Nov. 1, 2000.

## § 152. Flat fee schedule—Deposits in certain funds—In forma pauperis

A. In any civil case filed in a district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall be the only charge for court costs, except as is otherwise specifically provided for by law:

| | |
|---|---|
| 1. Actions for divorce, alimony without divorce, separate maintenance, custody or support | $82.00 |
| 2. Any ancillary proceeding to modify or vacate a divorce decree providing for custody or support | $40.00 |
| 3. Probate and guardianship | $82.00 |
| 4. Annual guardianship report | $30.00 |
| 5. Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship | $40.00 |
| 6. Any proceeding to revoke the probate of a will | $40.00 |
| 7. Judicial determination of death | $55.00 |
| 8. Adoption | $102.00 |
| 9. Civil actions and condemnation | $82.00 |
| 10. Garnishment | $20.00 |
| 11. Continuing wage garnishment | $60.00 |
| 12. Any other proceeding after judgment | $30.00 |
| 13. All others, including but not limited to actions for forcible entry and detainer, judgments from all other courts, including the Workers' Compensation Court | $82.00 |
| 14. Notice of renewal of judgment | $20.00 |

B. Of the amounts collected pursuant to subsection A of this section, the sum of Three Dollars ($3.00) shall be deposited to the credit of the Law Library Fund.

C. Of the amounts collected pursuant to paragraph 8 of subsection A of this section, the sum of Twenty Dollars ($20.00) shall be deposited to the credit of the Voluntary Registry and Confidential Intermediary program and the Mutual Consent Voluntary Registry established pursuant to the Oklahoma Adoption Code. [1]

D. Of the amounts collected pursuant to subsection A of this section, the sum of Ten Dollars ($10.00) shall be deposited to the credit of the Child Abuse Multidisciplinary Account. [2]

E. In any case in which a litigant claims to have a just cause of action and that, by reason of poverty, the litigant is unable to pay the fees and costs provided for in this section and is financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths to that effect and upon satisfactory showing to the court that the litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may file with the court clerk of

the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of poverty. In all such cases, the court shall promptly set for hearing the determination of eligibility to litigate without payment of fees or costs. Until a final order is entered determining that the affiant is ineligible, the clerk shall permit the affiant to litigate without payment of fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

Amended by Laws 1997, c. 320, § 5, eff. Nov. 1, 1997; Laws 1997, c. 366, § 54, eff. Nov. 1, 1997; Laws 2000, c. 38, § 4, emerg. eff. April 7, 2000.

[1] Title 10, § 7501-1.1 et seq.

[2] See Title 10, §§ 7110.1, 7110.2.

### United States Supreme Court

In forma pauperis, associations as persons, see Rowland v. California Men's Colony, Unit II Men's Advisory Council, U.S.Cal.1993, 113 S.Ct. 716, 506 U.S. 194, 121 L.Ed.2d 656, on remand 990 F.2d 519.

In forma pauperis complaint, frivolousness, dismissal, review for abuse of discretion, see Denton v. Hernandez, U.S.Cal.1992, 112 S.Ct. 1728, 504 U.S. 25, 118 L.Ed.2d 340, on remand 966 F.2d 533.

In forma pauperis suits, repeated frivolous filings, see Zatko v. California, 1991, 112 S.Ct. 355, 502 U.S. 16, 116 L.Ed.2d 293, reconsideration denied 112 S.Ct. 864, 502 U.S. 1028, 116 L.Ed.2d 771.

## § 152.1. Civil actions—Charges in addition to flat fee

A. In civil cases, the court clerk shall collect and deposit in the court fund the following charges in addition to the flat fee:

1. For posting notices and filing certificates required by statute .... $30.00

2. For the filing of any counterclaim or setoff pursuant to Section 1758 of Title 12 of the Oklahoma Statutes ..... $20.00

3. For mailing by any type of mail writs, warrants, orders, process, command, or notice for each person ..... $ 7.00

4. For the actual cost of all postage in each case in excess of ..... $ 7.00

5. For serving each writ, warrant, order, process, command, or notice for each person in one or more counties..... $35.00

   provided that if more than one person is served at the same address, one flat fee of Thirty-five Dollars ($35.00) may be charged

6. For sheriff's fees on court-ordered sales of real or personal property ..... $75.00

7. When a jury is requested ..... $60.00

8. For issuing each summons for each person..... $ 5.00

9. For services of a court reporter at each trial held in the case .... $20.00

The fees prescribed in paragraphs 5 and 6 of subsection A of this section shall be paid by the court clerk into the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county where service is made or attempted or where the sheriff's sale occurs. All other fees shall be deposited into the local court fund in the county where collected.

B. Of the amounts collected pursuant to the provisions of paragraphs 1, 2 and 7 of subsection A of this section, the sum of Ten Dollars ($10.00) shall be deposited to the credit of the Child Abuse Multidisciplinary Account. [1]

Amended by Laws 1997, c. 400, § 11, eff. July 1, 1997; Laws 1999, c. 58, § 1, eff. Nov. 1, 1999; Laws 2000, c. 38, § 5, emerg. eff. April 7, 2000.

[1] See Title 10, §§ 7110.1, 7110.2.

## § 153. Costs in criminal cases

A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for standing and parking violations and for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to the date of judgment:

1. For each defendant convicted of exceeding the speed limit by at least one (1) mile per hour but not more than ten (10) miles per hour, whether charged individually or conjointly with others ..... $ 57.00
2. For each defendant convicted of a misdemeanor traffic violation other than an offense provided for in paragraph 1 or 5 of this subsection, whether charged individually or conjointly with others ..... $ 73.00
3. For each defendant convicted of a misdemeanor, other than for driving under the influence of alcohol or other intoxicating substance or an offense provided for in paragraph 1 or 2 of this subsection, whether charged individually or conjointly with others ..... $ 83.00
4. For each defendant convicted of a felony, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others ..... $103.00
5. For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others ..... $183.00
6. For each defendant convicted of the felony of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others ..... $183.00
7. For the services of a court reporter at each preliminary hearing and trial held in the case ..... $ 20.00
8. For each time a jury is requested ..... $ 30.00
9. A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice
   a. within the county ..... $30.00, or mileage as established by the Oklahoma Statutes, whichever is greater, or
   b. outside of the county ..... $30.00, or actual, necessary expenses, whichever is greater

10. For the services of a language interpreter, other than an interpreter appointed pursuant to the provisions of the Oklahoma Interpreter for the Deaf Act, at each hearing held in the case, the actual cost of the interpreter.

B. Of the amount collected pursuant to paragraphs 2 through 5 of subsection A of this section, the sum of Three Dollars ($3.00) shall be deposited to the credit of the Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the services of a language interpreter or for the issuance or service of process to obtain compulsory attendance of witnesses.

D. The fees collected pursuant to this section shall be deposited into the court fund, except the following:

1. The sheriff's fee provided for in paragraph 9 of subsection A of this section which, when collected, shall be deposited in the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted;

2. The sheriff's fee provided for in Section 153.2 of this title; and

3. The witness fees paid by the district attorney pursuant to the provisions of Section 82 of this title which, if collected by the court clerk, shall be transferred to the district attorney's office in the county where witness attendance was required. Fees transferred pursuant to this paragraph shall be deposited in the district attorney's maintenance and operating expense account.

E. Costs required to be collected pursuant to this section shall not be dismissed or waived; provided, if the court determines that a person needing the services of a language interpreter is indigent, the court may waive all or part of the costs or require the payment of costs in installments.

F. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

G. A court clerk may accept in payment for any fee, fine, or cost for violation of any traffic law a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of the payment as a service charge for the acceptance of the credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value and which is accepted by over one thousand (1,000) merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such cards.

H. Upon receipt of payment of fines and costs for offenses charged prior to July 1, 1992, the court clerk shall apportion and pay Thirteen Dollars ($13.00) per conviction to the court fund.

Amended by Laws 1999, c. 408, § 2, eff. Nov. 1, 1999; Laws 2000, c. 6, § 8, emerg. eff. March 20, 2000.

### Historical and Statutory Notes

Section 7 of Laws 1999, c. 359, amending this section, was repealed by Laws 2000, c. 6, § 33.

## § 162. Juvenile proceedings—Fees and costs

A. The clerks of the courts shall collect as costs in every juvenile delinquency, child in need of supervision, or deprived case in which the juvenile is adjudicated, irrespective of whether or not the sentence is deferred, or child in need of mental health treatment case pursuant to the Inpatient Mental Health Treatment of Children Act, Section 5-501 et seq. of Title 43A of the Oklahoma Statutes, irrespective of whether the child is committed for inpatient mental health treatment, or in every such case in which a petition is filed at the demand of the parents of a juvenile and said petition is subsequently dismissed prior to adjudication at said parents' request, the following flat charge and no more, except for the charges provided for in this section, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants and orders, and other services to date of judgment:

| | |
|---|---|
| For each case where one or more juveniles are adjudicated deprived | $50.00 |
| For each juvenile who is certified to stand trial as an adult | $75.00 |
| In each juvenile case wherein parental rights are terminated | $50.00 |
| For each juvenile adjudicated in need of supervision | $50.00 |
| For each child found to be a child in need of mental health treatment | $50.00 |
| For each juvenile adjudicated for an offense which would be a misdemeanor if committed by an adult, including violation of any traffic law, whether charged individually or conjointly with others | $50.00 |
| For each juvenile adjudicated for an offense which would be a felony if committed by an adult, whether charged individually or conjointly with others | $75.00 |
| For the services of a court reporter at each trial held in the case | $20.00 |

When a jury is requested ..... $30.00
A sheriff's fee for serving or endeavoring to serve all writs, warrants, orders, process, commands, or notices or pursuing any fugitive from justice ..... $20.00 or mileage as established by Oklahoma Statutes, whichever is greater.

B. Such costs shall be levied against the juvenile, the parent, or both, but shall not be levied against the legal guardian or any state or private agency having custody of any juvenile subject to such proceedings.

C. Prior to adjudication, parties in juvenile delinquency, child in need of supervision, child in need of treatment, and deprived cases shall not be required to pay, advance, or post security for the issuance or service of process to obtain compulsory attendance of witnesses. These fees shall be deposited into the court fund, except the sheriff's fee, when collected, shall be transferred to the general fund of the county in which service is made or attempted to be made.

D. The clerk of the district court shall charge the sum of One Hundred Dollars ($100.00) for preparing, assembling, indexing, and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal and shall be entered as costs in the action. If more than one party to the action shall prosecute an appeal from the same judgment or order, the fee shall be paid by the party whose petition in error is determined by the district court or by the appellate court to commence the principal appeal. The fees collected hereunder shall be paid into the court fund.

E. Fees and costs collected in juvenile cases may be withdrawn from the court fund and used for operations of the juvenile bureaus, in counties wherein a statutory juvenile bureau is in operation, upon approval by the Chief Justice of the Oklahoma Supreme Court.

F. In those seventy-four counties in which court services are provided by contract between the Oklahoma Supreme Court and the Department of Human Services, funds received from court costs in juvenile cases may be withdrawn from the court fund and paid to the Department of Human Services upon approval by the Chief Justice of the Oklahoma Supreme Court. Said funds are to be expended by the Department of Human Services to supplement community-based programs, such as youth services programs, day treatment programs and group home services. Specific annual training of Department workers in community-based services providing the above court-related services is also to be included for expenditure of funds received from court costs in juvenile cases by the Department of Human Services.

G. In those seventy-four counties in which court services are provided by contract between the Oklahoma Supreme Court and the Office of Juvenile Affairs, funds received from court costs or orders for care and maintenance in juvenile cases may be withdrawn from the court fund and paid to the Office of Juvenile Affairs upon approval by the Chief Justice of the Oklahoma Supreme Court. Said funds are to be expended by the Office of Juvenile Affairs to provide care and maintenance and to supplement community-based programs, such as alternative education, juvenile offender community and victim restitution work programs, community sanction programs, youth services programs, day treatment programs, group home services, and detention services. Specific annual training of agency workers in community-based services providing the above court-related services is also to be included for expenditure of funds received from court costs in juvenile cases by the Office of Juvenile Affairs.

Amended by Laws 1997, c. 293, § 39, eff. July 1, 1997.

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## CONSULT GENERAL INDEX