

27A Okl.St. Ann. § 2-5-105

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

⌘ Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

⌘ Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒ **§ 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 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; [FN1]
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. 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;

17. 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;

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

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

20. 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. [FN2]

#### CREDIT(S)

Laws 1992, c. 215, § 4, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1805.1 and amended by Laws 1993, c. 145, §§ 42, 359, eff. July 1, 1993. Laws 1998, c. 314, § 6, eff. July 1, 1998; Laws 2002, c. 397, § 2, eff. Nov. 1, 2002.

[FN1] 42 U.S.C.A. § 7661a(b)(10).

[FN2] 42 U.S.C.A. § 7401 et seq.

#### HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1993 amendment, in paragraph 1 substituted "the Oklahoma Clean Air Act" for "this act"; inserted paragraph 2; redesignated former paragraphs 2 to 19 as paragraphs 3 to 20; in paragraph 4 deleted "and regulations" following "rules"; in paragraph 11 substituted "the Oklahoma Clean Air Act"

for "this act"; rewrote paragraph 14, which prior thereto read:

"Bring appropriate court action to enforce this act, including final orders on determinations and obtaining injunctions or other proper relief in the district court of the county where any alleged violation occurs or relief is determined necessary. The department, in furtherance of its statutory powers, and notwithstanding any provision of law to the contrary, shall have the independent authority to file an action under this act in district court. Such action shall be brought in the name of the State Department of Health."

; in paragraph 16, deleted "regulations" following "rules"; in paragraph 17, in the first sentence, substituted "the Department" for "this act" and "the Oklahoma Clean Air Act" for "this act" in two places, deleted ", regulation, permit condition or standard" following "rule", inserted "thereunder or permit condition prescribed", and substituted "thereto" for "to this act"; in paragraph 18, in the first sentence, deleted ", as that term is defined in Section 1732 of Title 21 of the Oklahoma Statutes," following "secrets", substituted "the Oklahoma Clean Air Act" for "this act", deleted ", permit condition, order or standard" following "rule", inserted "thereunder, or any permit condition prescribed or order issued", and substituted "thereto" for "to this act", in the second sentence, substituted "The" for "Provided, however, the", in the third sentence, substituted "the Oklahoma Clean Air Act" for "this act", deleted the former fifth sentence which read: "The term 'trade secret', for the purpose of this act, shall not be construed to include data concerning the amount, emission rate or identification of any air contaminant emitted by any source, nor shall it include the contents of any proposed or final permit.", and in the fifth sentence, substituted "an Administrative Law Judge" for "a hearing examiner"; in paragraph 20, substituted "the Oklahoma Clean Air Act" for "this act, and delegate"; inserted the designation of paragraph 21; in paragraph 21, in the introductory clause, inserted "Delegate", in subparagraph a, substituted "the Oklahoma Clean Air Act" for "this act" in two places, in the second sentence substituted "may" for "shall" and "rules" for "regulations", and in the third sentence added "either:", inserted designations of divisions (1) and (2), rewrote division (1), which prior thereto read:

"establish a special fund in the manner provided for in the Oklahoma Air Quality Control Fund established elsewhere in this act or, alternatively, that"

, in division (2) inserted "allow" and substituted "the Oklahoma Clean Air Act" for "this act", in subparagraph b, in the first sentence, substituted "the Oklahoma Clean Air Act" for "this act" and added ", 42 U.S.C., Section 7401 et seq.", and in the second sentence substituted "this state" for "it", and in subparagraph c, substituted "Department" for "state"; and in paragraph 22, substituted "the Oklahoma Clean Air Act" for "this act".

Section 1 of Laws 1993, c. 47, amending this section, was repealed by Laws 1994, c. 2, § 34.

#### UNITED STATES SUPREME COURT

Environmental protection, Clean Air Act, prevention of significant deterioration program, construction of major air pollutant emitting facility, state permitting authority, best available control technology, EPA stop construction orders, see A.D.E.C. v. E.P.A., 2004, 124 S.Ct. 983.

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27A Okl.St. Ann. § 1-3-101

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

Chapter 1. Oklahoma Environmental Quality Act (Refs & Annos)

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 superseded. The provisions of this subsection shall not nullify any financial obligation arising from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

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

1. All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial, commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration, manufacturing and other sources, facilities and activities, except as provided in subsections D and E of this section;
2. All nonpoint source discharges and pollution except as provided in subsections D, E and F of this section;
3. Technical lead agency for point source, nonpoint source and storm water pollution control programs funded under Section 106 of the federal Clean Water Act, [FN1] 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 [FN2] and 40 CFR Parts 144 through 148, except for:
  - a. Class II injection wells,
  - b. Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission,
  - c. those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act [FN3] regulated by the Commission, and
  - d. any aspect of any CO<sub>2</sub> sequestration facility, including any associated CO<sub>2</sub> injection well, over which the Commission is given jurisdiction pursuant to the Oklahoma Carbon Capture and Geologic Sequestration Act; [FN4]

8. Notwithstanding any other provision in this section or other environmental jurisdiction statute, sole and exclusive jurisdiction for air quality under the federal Clean Air Act [FN5] and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act [FN6] and by Chapter 11 of Title 40 of the Oklahoma Statutes;
9. Hazardous waste and solid waste, including industrial, commercial and municipal waste;
10. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [FN7] and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986; [FN8]
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 [FN9] or other applicable sections of the federal Clean Water Act [FN10] or other subsequent state and federal clean lakes programs; administration of a state program for assessing, monitoring, studying and restoring Oklahoma lakes with administration to include, but not be limited to, receipt and expenditure of funds from federal, state and private sources for clean lakes and implementation of a volunteer monitoring program to assess and monitor state water resources, provided such funds from federal Clean Water Act sources are administered and disbursed by the Office of the Secretary of Environment;
9. Statewide water quality standards and their accompanying use support assessment protocols, anti-degradation policy and implementation, and policies generally affecting Oklahoma Water Quality Standards application and implementation including but not limited to mixing zones, low flows and variances or any modification or change thereof pursuant to Section 1085.30 of Title 82 of the Oklahoma Statutes;
10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Board;
11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional area of environmental responsibility;
12. Development of classifications and identification of permitted uses of groundwater, in recognized water rights, and associated groundwater recharge areas;
13. Establishment and implementation of a statewide beneficial use monitoring program for waters of the state in coordination with the other state environmental agencies;
14. Coordination with other state environmental agencies and other public entities of water resource investigations conducted by the federal United States Geological Survey for water quality and quantity monitoring in the state; and
15. Development and submission of a report concerning the status of water quality monitoring in this state pursuant to Section 1-1-202 of this title.

D. Oklahoma Department of Agriculture, Food, and Forestry.

1. The Oklahoma Department of Agriculture, Food, and Forestry shall have the following jurisdictional areas of environmental responsibility except as provided in paragraph 2 of this subsection:
  - a. point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
  - b. pesticide control,
  - c. forestry and nurseries,
  - d. fertilizer,
  - e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals,
  - f. dairy waste and wastewater associated with milk production facilities,
  - g. groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,

- h. utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,
- i. development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility, and
- j. storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.

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

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

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

(3) aquaculture and fish hatcheries,

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

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

#### E. Corporation Commission.

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

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, of:
  - (1) Class II injection wells,
  - (2) Class V injection wells utilized in the remediation of groundwater associated with

underground or aboveground storage tanks regulated by the Commission,

(3) those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act, and

(4) any aspect of any CO<sub>2</sub> sequestration facility, including any associated CO<sub>2</sub> injection well, over which the Commission is given jurisdiction pursuant to the Oklahoma Carbon Capture and Geologic Sequestration Act.

Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,

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

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

(1) natural gas liquids extraction plant,

(2) refinery,

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

(4) mineral brine processing plant, and

(5) petrochemical manufacturing plant,

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

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

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

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

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

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

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

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

2. The exclusive jurisdiction, power and authority of the Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and

activities described in paragraph 1 of this subsection.

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

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

5. The Commission shall have jurisdiction over:

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

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities. The Department of Environmental Quality shall not have any jurisdiction with respect to pipeline transportation of carbon dioxide.

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

- a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,
- b. manufacturing of equipment and products related to oil and gas,
- c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, and
- d. other facilities, activities and sources not subject to the jurisdiction of the Commission or the Oklahoma Department of Agriculture, Food, and Forestry as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the federal Clean Air Act [FN11] as amended.

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

1. Soil conservation, erosion control and nonpoint source management except as otherwise provided by law;
2. Monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. In carrying out this area of responsibility, the Oklahoma Conservation Commission shall serve as the technical lead agency for nonpoint source categories as defined in Section 319 of the federal Clean Water Act [FN12] or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal storm water or as otherwise provided by state law;
3. Wetlands strategy;
4. Abandoned mine reclamation;
5. Cost-share program for land use activities;
6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;
7. Complaint data management;
8. Coordination of environmental and natural resources education;
9. Federal upstream flood control program;
10. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission;
11. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility;
12. Utilization of Oklahoma Water Quality Standards and Implementation documents; and
13. Verification and certification of carbon sequestration pursuant to the Oklahoma Carbon Sequestration Enhancement Act. This responsibility shall not be superseded by the Oklahoma Carbon Capture and Geologic Sequestration Act.

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

1. Mining regulation;
2. Mining reclamation of active mines;
3. Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Commission; and
4. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of responsibility.

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

1. Investigating wildlife kills;
2. Wildlife protection and seeking wildlife damage claims; and
3. Development and promulgation of a Water Quality Standards Implementation Plan pursuant to Section 1-1-202 of this title for its jurisdictional areas of environmental responsibility.

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

1. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and
2. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act. [FN13]

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

1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;
2. Asbestos monitoring in public and private buildings; and
3. Indoor air quality as regulated under the authority of the Oklahoma Occupational Health and Safety Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency.

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

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

1. Coordination of all emergency resources and activities relating to threats to citizens' lives and property pursuant to the Oklahoma Emergency Resources Management Act of 1967; [FN14]
2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 [FN15] 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; [FN16]
3. Administer and conduct periodic exercises of emergency operations plans provided for in this subsection pursuant to the Oklahoma Emergency Resources Management Act of 1967;
4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders pursuant to the Oklahoma Emergency Resources Management Act of 1967; and
5. Maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

CREDIT(S)

Laws 1992, c. 398, § 6, eff. July 1, 1993. Renumbered from Title 27A, § 6 and amended by Laws 1993, c. 145, §§ 11, 359, eff. July 1, 1993. Laws 1993, c. 324, § 6, eff. July 1, 1993; Laws 1994, c.

140, § 24, eff. Sept. 1, 1994; Laws 1997, c. 217, § 1, eff. July 1, 1997; Laws 1999, c. 413, § 4, eff. Nov. 1, 1999; Laws 2000, c. 364, § 1, emerg. eff. June 6, 2000; Laws 2002, c. 397, § 1, eff. Nov. 1, 2002; Laws 2004, c. 100, § 2, eff. July 1, 2004; Laws 2004, c. 430, § 11, emerg. eff. June 4, 2004; Laws 2009, c. 429, § 8, emerg. eff. June 1, 2009.

[FN1] 33 U.S.C.A. § 1256.

[FN2] 42 U.S.C.A. § 300F et seq.

[FN3] Title 17, § 500 et seq.

[FN4] Title 27A, § 3-5-101 et seq.

[FN5] 42 U.S.C.A. § 7401 et seq.

[FN6] 29 U.S.C.A. § 651 et seq.

[FN7] 42 U.S.C.A. § 9601 et seq.

[FN8] 42 U.S.C.A. § 11001 et seq.

[FN9] 33 U.S.C.A. § 1324.

[FN10] 33 U.S.C.A. § 1251 et seq.

[FN11] 42 U.S.C.A. § 7661 et seq.

[FN12] 33 U.S.C.A. § 1329 et seq.

[FN13] 49 U.S.C.A. § 5103 et seq.

[FN14] Title 63, § 683.1 et seq.

[FN15] 42 U.S.C.A. § 11001 et seq.

[FN16] Title 27A, § 4-2-101 et seq.

#### HISTORICAL AND STATUTORY NOTES

##### 1997 Main Volume

Laws 1993, c. 145, § 11 rewrote the section, which prior thereto read:

"A. Effective July 1, 1993, the following state environmental agencies shall have the specified jurisdictional areas of environmental responsibilities:

##### "SECRETARY OF ENVIRONMENT

"The Secretary of Environment or successor cabinet position shall have the following jurisdictional areas of environmental responsibilities:

"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 and

the Federal Environmental Protection Act. Such funds shall be disbursed to each state environmental agency based upon its statutory duties and responsibilities relating to environmental areas. Such funds shall be distributed to the appropriate state environmental agency within thirty (30) days of its receipt by the Secretary without any assessment of administrative fees or costs. Disbursement of other federal environmental funds shall not be subject to the Oklahoma Environmental Quality Act; and

"3. Chairperson of the executive environmental subcommittee.

"DEPARTMENT OF ENVIRONMENTAL QUALITY

"The Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility, except as otherwise provided in this section:

"1. All point source discharges except as otherwise provided in this section;

"2. Non-point-source discharges for industrial and municipal facilities;

"3. Groundwater quality and protection;

"4. Operator certification (water and waste/wastewater treatment plants);

"5. Public water supplies;

"6. Underground injection control for other than brine recovery, saltwater disposal or secondary or tertiary oil recovery;

"7. Air quality under the Federal Clean Air Act and applicable state law, except for indoor air quality and asbestos;

"8. Controlled industrial (hazardous) waste and solid waste;

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

"10. Radioactive waste;

"11. Sewage treatment and municipal waste facilities;

"12. Emergency response except for present authority granted to the Department of Civil Emergency Management;

"13. Public environmental information dissemination;

"14. Environmental laboratory services and certification;

"15. Hazardous substances; and

"16. Freshwater wellhead protection.

"OKLAHOMA WATER RESOURCES BOARD

"A. 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;
- "6. Wastewater project prioritization for funding from the state revolving fund;
- "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. Statewide water quality standards; and
- "10. Environmental and natural resources education within its jurisdictional areas.

"B. Except as otherwise provided by this section, any existing jurisdiction of the Oklahoma Water Resources Board over water quality including but not limited to point source and non-point-source pollution, and groundwater quality including, but not limited to, freshwater wellhead protection programs shall be transferred to the Department of Environmental Quality.

"C. Any existing jurisdiction of the Oklahoma Water Resources Board over underground storage tanks shall be transferred to the Corporation Commission.

#### "STATE DEPARTMENT OF AGRICULTURE

"A. The State Department of Agriculture shall have the following jurisdictional areas of environmental responsibility:

- "1. Non-point-source jurisdiction for agriculture, agribusiness, silviculture, feed yards, livestock markets and animal waste;
- "2. Pesticide control;
- "3. Forestry and nurseries; and
- "4. Fertilizer.

"B. Any existing jurisdiction of the Department of Agriculture over point source and non-point-source discharges requiring a federal National Pollutant Discharge Elimination Systems permit shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit, except for commercial manufacturers of fertilizers, grain, feed and agriculture chemicals, which shall be regulated by the Department of Environmental Quality.

"C. Except as provided in paragraph B of this subheading, the division of jurisdictional areas by this section shall not limit the existing jurisdiction of the State Department of Agriculture, nor extend the jurisdiction of the other state environmental agencies over agricultural activities.

#### "CORPORATION COMMISSION

"A. The Corporation Commission shall have the following jurisdictional areas of environmental responsibility:

- "1. Oil and gas drilling, development, production, and processing;

- "2. Transportation (motor, pipeline and railroads);
- "3. Saltwater injection;
- "4. Brine production;
- "5. Underground storage tanks (L.U.S.T. Trust Fund, Indemnity Program, and Regulation);
- "6. Aboveground storage tanks (commercial); and
- "7. Oil and gas regulation except as otherwise provided by paragraph B of this subheading.

"B. Any existing jurisdiction of the Corporation Commission over pollutant discharges from refineries, petrochemical manufacturing plants and natural gas liquid extraction plants shall be transferred to the Department of Environmental Quality, provided that any oil and gas drilling, development or production site requiring a federal N.P.D.E.S. permit shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit.

"C. Except as otherwise provided in paragraph B of this subheading, the division of jurisdictional areas by this section shall not limit the existing exclusive jurisdiction of the Corporation Commission, nor extend the existing jurisdiction of the other state environmental agencies, over oil and gas exploration and production activities.

#### "CONSERVATION COMMISSION

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

- "1. Soil conservation and erosion control;
- "2. Monitoring, evaluation and assessment of waters to determine the extent of non-point-source pollution and the development of conservation plans. Serve as the technical lead agency for Section 319 of the Federal Clean Water Act, except for activities related to industrial and municipal stormwater;
- "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, which may include, but not be limited to, funding for such purposes under Section 314 of the Federal Clean Water Act;
- "7. Complaint data management;
- "8. Coordinate environmental and natural resources education; and
- "9. Federal upstream flood control program.

#### "DEPARTMENT OF MINES

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

"1. Mining regulation; and

"2. Mining reclamation of active mines.

"B. Any existing jurisdiction of the Department of Mines over point source discharges requiring a federal National Pollutant Discharge Elimination Systems permit shall be transferred to the Department of Environmental Quality.

"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. Environmental and natural resources education within its area of jurisdiction.

"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; and

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

"DEPARTMENT OF LABOR

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

"1. Regulation of asbestos;

"2. Asbestos monitoring in public and private buildings; and

"3. Indoor air quality.

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

"DEPARTMENT OF CIVIL EMERGENCY MANAGEMENT

"The Department of Civil Emergency Management shall, insofar as authorized by statute on July 1, 1992, have the following jurisdictional areas of environmental responsibilities:

"1. Coordination of all emergency resources and activities relating to threats to citizens' life and property;

"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;

"3. Administer and conduct periodic exercises of emergency operations plans provided for in

subparagraph 2 of this subheading;

"4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders; and

"5. Continue existing program to develop and maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

"B. 1. Effective July 1, 1993, any existing jurisdiction of the Oklahoma State Department of Health over point source and non-point-source discharges of municipal facilities; underground injection for other than brine recovery, saltwater disposal or secondary or tertiary oil recovery; air quality under the Federal Clean Air Act and applicable state law, except for indoor air quality and asbestos; sewage and municipal waste facilities; hazardous substances; emergency response except for present authority granted to the Department of Civil Emergency Management; solid waste; controlled industrial (hazardous) waste; operator certification of water and waste/wastewater treatment; environmental laboratory services and certification; Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986; public water supplies; groundwater quality and protection; freshwater wellhead protection; radioactive waste; public environmental information dissemination; and any other environmental responsibility except as otherwise specified by this subsection shall be transferred to the Department of Environmental Quality.

"2. Any existing jurisdiction of the Oklahoma State Department of Health over wastewater project prioritization for funding from the state revolving fund shall be transferred to the Oklahoma Water Resources Board.

"3. Any existing jurisdiction of the Oklahoma State Department of Health over indoor air quality and asbestos, except for asbestos analysis which shall be performed under the supervision of the Department of Environmental Quality, shall be transferred to the Department of Labor as a function of its occupational safety and health jurisdiction.

"4. Except as otherwise provided by this paragraph, the Oklahoma State Department of Health shall retain the following jurisdictional areas of responsibility, currently within the Oklahoma State Department of Health's Environmental Health Services Division: occupational licensing services functions, food protection services, radiation and special hazards services, Cancer & Tumor Registry, milk program, day care center program, medical devices, barber shops, over-the-counter drugs, hotel and motel inspections, consumer product safety, bedding, public bathing place program, rabies control, vector control, noise control, and camp inspections.

"The Department of Environmental Quality shall assume any environmental jurisdiction from the Oklahoma State Department of Health in regard to the responsibilities outlined in this paragraph if such responsibilities include but are not limited to jurisdiction over air quality, sewage, solid waste, controlled industrial (hazardous) waste, and public water supplies.

"5. The Oklahoma State Department of Health and the Department of Environmental Quality may enter into interagency agreement contracts as necessary for the performance of local services."

Laws 1993, c. 324, § 6, in subsection B, in the introductory clause, deleted ", except as otherwise provided in this section" from the end; in subsection B.1, inserted "of pollutants and storm water to waters of the state which originate" and "and utilities, construction, trade, real estate and finance, services, public administration"; in subsection B.2, substituted a comma for "and" and inserted "and F"; deleted former subsection B.13, which read:

"Public environmental information dissemination;"

; redesignated former subsections B.14 to B.17 as subsections B.13 to B.16; in subsection D.1, in the

introductory clause, inserted "subsection B of this section and" and, in paragraph a, substituted "agricultural crop production" for "agriculture" and "agricultural services, livestock production" for "agribusiness"; rewrote subsection D.2.a, which prior thereto read:

"commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over dairy waste and wastewater including, but not limited to, discharges of pollutants and storm water and other pollution originating at such facilities,"

; deleted subsection D.2.c, which read:

"point source discharges from slaughterhouses"

; in subsection D.3, substituted "from sources specified in paragraph 1 of this subsection which require" for "and requiring" and added "and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture"; in subsection E.1, rewrote paragraphs g and i, which prior thereto read:

"g. tank farms outside the boundaries of refineries,

"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,"

, inserted paragraph j, and redesignated former paragraph j as paragraph k; inserted subsection E.3; redesignated former subsections E.3 and E.4 as subsections E.4 and E.5; in subsection E.4, substituted "For" for "Except as otherwise provided by this subsection, for", inserted "facility or", substituted "paragraph 1 of this subsection and any other oil and gas extraction facility or activity" for "this section and", inserted "or storm water", and substituted "federal" for "United States"; deleted former subsection E.5, which read:

"Any facility engaging in activities, when such activities are separately within the jurisdiction of the Department of Environmental Quality or the Corporation Commission, shall have said activities regulated separately by the Department of Environmental Quality and the Corporation Commission based upon each agency's jurisdictional responsibilities."

; in subsection E.6, inserted "have sole jurisdiction to"; rewrote subsection E.7, which prior thereto read:

"The Department of Environmental Quality shall have sole environmental jurisdiction for discharges of pollutants from refineries, petrochemical manufacturing plants and natural gas liquid extraction plants."

; inserted subsection E.8; rewrote subsection J.3, which prior thereto read:

"Indoor air quality as regulated by the federal Occupational and Health Act."

; and deleted subsection L, which read:

"Each state environmental agency shall have the authority to engage in environmental and natural resource education activities within their respective areas of environmental jurisdiction."

The 1994 amendment inserted subsection D.1.f; deleted subsection D.2.a.(2), which read:

"dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities,"

; and redesignated former subsections D.2.a.(3) and D.2.a.(4) as subsections D.2.a.(2) and D.2.a.(3).

Laws 1994, H.B. No. 1916 (c. 140) was vetoed by the Governor on April 30, 1994. Veto was overridden by the Oklahoma House of Representatives May 2, 1994 and by the Senate May 3, 1994 and filed with the Secretary of State on May 3, 1994.

#### CROSS REFERENCES

Pollutant discharge elimination system, agricultural, oil and gas activities not regulated except as specifically provided in this section, see Title 27A, § 2-6-201.

#### LAW REVIEW AND JOURNAL COMMENTARIES

Scaring the states into submission? Divergent approaches to environmental compliance. 35 Tulsa L.J. 193 (1999).

#### UNITED STATES CODE ANNOTATED

Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, see 49 U.S.C.A. § 5101 et seq.

#### UNITED STATES SUPREME COURT

Environmental regulation, solid waste, county flow control ordinances favoring public benefit corporation, Commerce Clause, see United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Management Authority, 2007, 127 S.Ct. 1786, 550 U.S. 330, 167 L.Ed.2d 655.

#### NOTES OF DECISIONS

Corporation Commission 1  
Court jurisdiction 2

##### 1. Corporation Commission

As between the Corporation Commission and any other state agency with responsibility for maintaining environmental quality, it is clear that only the Corporation Commission is given exclusive environmental jurisdiction in the area of oil and gas, including the exclusive jurisdiction, power and authority governing the disposition of deleterious substances incidental to petroleum production and to promulgate rules and regulations to prevent pollution of the surface and subsurface waters in the state. Meinders v. Johnson, Okla.Civ.App. Div. 3, 134 P.3d 858 (2005), certiorari denied. Environmental Law ¶ 162; Environmental Law ¶ 402

##### 2. Court jurisdiction

Only the district courts possess jurisdiction to award nuisance or negligence damages for pollution and cleanup, in connection with private rights disputes arising from mineral production. Meinders v. Johnson, Okla.Civ.App. Div. 3, 134 P.3d 858 (2005), certiorari denied. Mines And Minerals ¶ 125

District courts of Oklahoma possess jurisdiction in public nuisance actions to order cleanup of sites polluted as a result of mineral exploration when the Corporation Commission has not yet exercised its jurisdiction; district courts possess jurisdiction and authority to direct abatement of public nuisances, oil and gas law specifically recognizes the cumulative nature of the various statutes intended to prevent pollution of surface and subsurface waters and establishing mineral operators' civil responsibility for the creation or maintenance of a public nuisance, and statutes assigning jurisdictional areas of responsibility to the state's environmental agencies do not deprive district courts of their unlimited original jurisdiction of all justiciable matters in the absence of a clear expression of legislative intent to divest the district courts of their general jurisdiction. Meinders v. Johnson, Okla.Civ.App. Div. 3, 134 P.3d 858 (2005), certiorari denied. Mines And Minerals ¶ 125;

Waters And Water Courses (Am. 107(3))

27A Okl. St. Ann. § 1-3-101, OK ST T. 27A § 1-3-101

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

▣ Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

▣ Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒ **§ 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; [FN1]

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 limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee. 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, [FN2] 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 thirty (30) days of the change in ownership.

H. 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.

#### CREDIT(S)

Laws 1992, c. 215, § 12, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1813 and amended by Laws 1993, c. 145, §§ 49, 359, eff. July 1, 1993. Laws 1994, c. 373, § 16, eff. July 1, 1994; Laws 1995, c. 285, § 2, eff. July 1, 1996; Laws 1999, c. 284, § 1, emerg. eff. May 27, 1999; Laws 2000, c. 6, § 7, emerg. eff. March 20, 2000; Laws 2004, c. 83, § 1, emerg. eff. April 13, 2004; Laws 2004, c. 381, § 4, emerg. eff. June 3, 2004.

[FN1] 42 U.S.C.A. § 7661 et seq.

[FN2] Title 75, § 250 et seq.

#### HISTORICAL AND STATUTORY NOTES

##### 2009 Electronic Update

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

##### 1997 Main Volume

The 1993 amendment, in subsection A, substituted "pursuant to the Oklahoma Clean Air Act" for "under this act"; in subsection B, in the introductory paragraph, in the first sentence, substituted "the Oklahoma Clean Air Act" for "this act", in paragraph 1, in the second sentence, substituted "the Oklahoma Clean Air Act" for "this act", "any rule" for "of any permit, regulation or standard" and "thereunder or any permit issued pursuant thereto" for "pursuant to this act", and in paragraph 3, substituted "rules" for "regulations, standards"; in subsection C, substituted "Rules" for "Regulations" in the first sentence and "rules" for "regulations" in the second sentence; in subsection D, in the first sentence, substituted "with regard to" for "as regards"; in subsection F, in the first sentence, substituted "by the Oklahoma Clean Air Act" for "under this act", and in the second sentence, substituted "such source" for "the source" in two places and "rule" for "regulation" and deleted "in question" from the end; and in subsection G, in paragraph 1.a, substituted "preparation" for "issuance" in two places and "draft" for "proposed", in paragraph 1.a.(2), inserted "to," "formal" and commas following "from" and "Department", in paragraph 1.b, in the first sentence substituted "draft" for "pending" and "the Oklahoma Clean Air Act" for "this act", in the third sentence inserted "formal", in the fifth sentence deleted "the first running of" following "date of", in the seventh sentence substituted "in this paragraph" for "for above", in the eighth sentence deleted "ten (10) days but no more than" following "least" and inserted "calendar", and deleted the ninth sentence which read: "The meeting, when possible, shall be scheduled to be held at least fifteen (15) days but no later than forty-five (45) days after the expiration of the thirty-day calendar period and not rescheduled except for proper cause.", in paragraph 1.c, in the first sentence substituted "draft" for "proposed" and in the fourth sentence substituted "presiding" for "hearing", in paragraph 1.e, substituted, in the first sentence, "when" for "where", and in the third sentence, "Director's" for "Chief's", in paragraph 2.a, in the first sentence, substituted "the Oklahoma Clean Air Act" for "this act", "rules" for "regulations" and "thereunder" for "pursuant to this act", and in the second sentence, substituted "Administrative

Law Judge" for "hearing examiner", in paragraph 2.b, in the first sentence, substituted "an Administrative Law Judge" for "a hearing examiner" and "Administrative Law Judge" for "hearing examiner", and in paragraph 2.c, substituted "such" for "a proposed", "the Oklahoma Clean Air Act" for "this act" and "rules" for "regulations".

The 1994 amendment rewrote subsection G.1, which prior thereto read:

"G. Public review.

"1. Public meetings.

"a. Any applicant for a construction permit for a new source or for the modification of an existing source, or for the renewal of an operating permit, and in such other instances as shall be specified by the Board by rule, shall, upon the preparation of a draft permit by the Department, publish notice of such preparation in at least one newspaper of general circulation in the nearest city or town in which the facility is located or is proposed to be located. The notice must include: (1) a description of the facility, its purpose and location or proposed location, (2) a statement that any person who may be adversely affected by emissions of air contaminants from the facility may submit written comments to, or request a formal public meeting from, the Department, or both, (3) a description of the manner in which written comments may be submitted, the manner in which any request for a meeting must be made, how the Department may be contacted for further information and where a copy of the draft permit will be available for inspection and copying, and is proposed to be located. The notice must include: (1) a description of the facility, its purpose and location or proposed location, (2) a statement that any person who may be adversely affected by emissions of air contaminants from the facility may submit written comments to, or request a formal public meeting from, the Department, or both, (3) a description of the manner in which written comments may be submitted, the manner in which any request for a meeting must be made, how the Department may be contacted for further information and where a copy of the draft permit will be available for inspection and copying, and (4) any other information which the Board may by rule specify.

"b. The applicant shall make available for thirty (30) calendar days from the date of publication of notice, in a location to be specified by the Department in the county where the source is located or is proposed to be located, a copy of the draft permit including the complete application, except for portions deleted under trade secret provisions of the Oklahoma Clean Air Act. The Department, in order to facilitate public review, shall prepare and attach proposed operating conditions. Upon the request of any person who may be adversely affected, the Department shall hold a formal public meeting. The person requesting the meeting must state in writing the basis for the request and what adverse effects are alleged. Said request must be made within thirty (30) days of the date of the published notice and must provide to the Department the name of the person or persons making the request and a current mailing address. Upon a determination that a reasonable basis for a meeting has been alleged, the Department shall immediately set a date for the meeting and shall cause to be mailed to all persons who requested the meeting, information concerning the date, time and place. The applicant shall also cause to be published in the manner provided in this paragraph, notice of the date, time and place and the purpose of the formal public meeting. Said notice shall be published at least thirty (30) calendar days prior to the meeting.

"c. At the meeting, which shall be attended by both the Department and the applicant, persons may submit oral or written statements concerning the draft permit; provided, however, that the person conducting the meeting, who shall be a representative of the Department, may set reasonable time limits for the presentation of oral comments and for any question and answer session. The purpose of this meeting shall be to inform the public concerning the permit and the operation of the source. Failure of the applicant to participate in good faith shall constitute grounds for the Department to deny the permit. The presiding officer shall have the discretion to conclude the comment period at the close of the hearing, or may extend or reopen the comment period as necessary.

"d. No person, including the applicant, shall raise any reasonably ascertainable issue in any future proceeding, unless the same issues shall have been raised at this meeting or before the close of the public comment period, and supported in writing, by appropriate argument and evidence as may be

available at the time.

"e. The Department shall consider all substantive comments which shall have been submitted in writing and prepare a written response thereto when possible within sixty (60) days. The Department shall mail to all persons participating in the public meeting or submitting written comments, who shall have requested notification and provided to the Department a mailing address, the written decision concerning the permit. Said decision shall also advise of the availability of the Director's response to public comments.

"f. Any person, including the applicant, adversely affected by the decision of the Department in issuing or denying the permit may, within fifteen (15) days of the Department's decision, request in writing a contested case hearing before the Department. Any permit issued without appeal under this subsection or which shall become a final order pursuant to a contested case hearing as provided for in paragraph (2) of this subsection and pursuant to the Administrative Procedures Act shall be enforceable by the Department."

; redesignated former subsection G.1.d as subsection G.2; in subsection G.2, inserted "about a permit", "a contested case hearing or" and "during public review", substituted "the formal public" for "this", and inserted "held on the draft permit"; redesignated former subsection G.1.f as subsection G.3; in subsection G.3, in the second sentence, deleted "paragraph (2) of" following "for in" and inserted "and the Code and rules promulgated thereunder"; redesignated former subsection G.2 as subsection G.4; redesignated former subsection G.3 as subsection H; and in subsection H.1, substituted "of the Code and rules promulgated thereunder;" for a comma.

The 1995 amendment, in subsection B, in the introductory clause, substituted "state" for "State of Oklahoma"; deleted former subsection G, which read:

"G. 1. This subsection shall apply to any contested case hearing held on any construction permit for a new source or for the modification of an existing source, or for the renewal of an operating permit, and in such other instances as shall be specified by the Board by rule.

"2. No person, including the applicant, shall raise any reasonably ascertainable issue about a permit in a contested case hearing or any future proceeding, unless the same issues shall have been raised during public review at the formal public meeting or before the close of the public comment period held on the draft permit, and supported in writing, by appropriate argument and evidence as may be available at the time.

"3. Any person, including the applicant, adversely affected by the decision of the Department in issuing or denying the permit may, within fifteen (15) days of the Department's decision, request in writing a contested case hearing before the Department. Any permit issued without appeal under this subsection or which shall become a final order pursuant to a contested case hearing as provided for in this subsection and pursuant to the Administrative Procedures Act and the Code and rules promulgated thereunder shall be enforceable by the Department.

"4. Contested case hearing.

"a. At any contested case hearing, the only issue before the Department shall be whether or not the permit, as issued, reissued or denied, shall have been in substantial compliance with the Oklahoma Clean Air Act and the rules of the Board promulgated thereunder. Both the applicant and the Department shall participate in contested case hearings as necessary parties unless and until one shall be released by the Administrative Law Judge.

"b. The Department may appoint an Administrative Law Judge who shall have full authority to conduct a contested case hearing. Upon conclusion of the hearing, the Administrative Law Judge shall prepare findings of fact, conclusions of law and recommendations for the Department's consideration. A contested case hearing shall be conducted in accordance with the Oklahoma Administrative Procedures Act and may be appealed thereunder; provided, however, that the final determination of the Department to issue, reissue or deny any permit shall not be subject to challenge in any other

proceeding. Standing to appeal the final determination of the Department shall also be limited to parties participating in the contested case hearing.

"c. The Department, upon a finding that such permit is not in substantial compliance with the Oklahoma Clean Air Act or the rules of the Board, shall have the authority to require such remediation as may be appropriate, or deny the permit."

; and redesignated former subsection H as subsection G.

27A Okl. St. Ann. § 2-5-112, OK ST T. 27A § 2-5-112

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-14-202

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

Article XIV. Oklahoma Uniform Environmental Permitting Act (Refs & Annos)

Part 2. Powers and Duties

⇒ **§ 2-14-202. Department of Environmental Quality--Powers and duties**

A. The Department is hereby authorized to implement and enforce the provisions of the Oklahoma Uniform Environmental Permitting Act [FN1] and rules promulgated thereunder.

B. In addition to authority under the Oklahoma Environmental Quality Code, [FN2] the Department shall have the power and duty to:

1. Evaluate applications for administrative and technical completeness pursuant to requirements of the Code [FN2] and rules promulgated thereunder and, when necessary to determine such completeness, request changes, revisions, corrections, or supplemental submissions;
2. Evaluate notices related to applications for sufficiency of content and compliance and require that omissions or inaccuracies be cured;
3. Consider timely and relevant comments received;
4. Prepare responses to comments, draft and final denials, and draft, proposed and final permits;
5. Cooperate with federal agencies as is required for federal review or oversight of state permitting programs;
6. Consolidate processes related to multiple, pending applications filed by the same applicant for the same facility or site in accordance with rules of the Board; and
7. Otherwise exercise all incidental powers as necessary and proper to implement the provisions of the Oklahoma Uniform Environmental Permitting Act and rules promulgated thereunder.

CREDIT(S)

Laws 1994, c. 373, § 6, eff. July 1 1996; Laws 1995, c. 285, § 15, eff. July 1, 1996.

[FN1] Title 27A, § 2-14-101 et seq.

[FN2] Title 27A, § 2-1-101 et seq.

#### HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1995 amendment, in subsection B, in paragraph 1, substituted "Evaluate" for "Review permit" and "thereunder and," for "thereunder, and", in paragraph 2, substituted "Evaluate" for "Review" and inserted "and require that omissions or inaccuracies be cured", in paragraph 3, substituted "Consider" for "Review and consider", and rewrote paragraph 6, which prior thereto read:

"Enforce the provisions of the Oklahoma Uniform Environmental Permitting Act, rules promulgated thereunder, and permits and orders issued pursuant thereto; and"

27A Okl. St. Ann. § 2-14-202, OK ST T. 27A § 2-14-202

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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Okla. Admin. Code 252:100-8-1.3

OAC 252:100-8-1.3

OKLAHOMA ADMINISTRATIVE CODE  
TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL  
SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES  
PART 1. GENERAL PROVISIONS

Current through 8/17/2009  
252:100-8-1.3. Duty to comply

(a) An owner or operator who applies for a permit or authorization, upon notification of coverage, shall be bound by the terms and conditions therein.

(b) An owner or operator who violates any condition of a permit or authorization is subject to enforcement under the Oklahoma Clean Air Act.

<[General Materials \(GM\)](#) - References, Annotations, or Tables>

[Source: Added at 15 Ok Reg 2590, eff 6-25-98]

Okla. Admin. Code 252:100-8-1.3, OK ADC 252:100-8-1.3

OK ADC 252:100-8-1.3

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27A Okl.St. Ann. § 2-5-110

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

^Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

^Article V. Oklahoma Clean Air Act (Refs & Annos)

**⇒§ 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, any 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 Department shall promptly schedule the enforcement hearing before an Administrative Law Judge for the Department and notify the respondent.

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.

CREDIT(S)

Laws 1992, c. 215, § 10, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1811 and amended by Laws 1993, c. 145, §§ 47, 359, eff. July 1, 1993. Laws 1993, c. 324, § 13, eff. July 1, 1993; Laws 1999, c. 131, § 1, eff. Nov. 1, 1999; Laws 2001, c. 109, § 1, emerg. eff. April 18, 2001.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

Laws 1993, c. 145, § 47, in subsection A, in the first sentence, substituted "the Oklahoma Clean Air Act" for "this act" in two places and "rule" for "standard, rule or regulation"; in subsection D, in the third sentence, substituted "an enforcement" for "a" and "penalty" for "fine"; in subsection E, in the first sentence substituted "enforcement" for "administrative", in the third sentence inserted "enforcement", and in the fourth sentence substituted "Director" for "Chief" and inserted "enforcement"; and in subsection F, deleted "before the Department or the Council" following "proceedings" and "or regulation" following "rule" and substituted "Department" for "Chief".

Laws 1993, c. 324, § 13, in subsection E, in fourth sentence, substituted "Department" for "Director".

27A Okl. St. Ann. § 2-5-110, OK ST T. 27A § 2-5-110

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-3-502

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

<sup>^</sup> Article III. Department of Environmental Quality and Executive Director

<sup>^</sup> Part 5. General Regulation and Enforcement (Refs & Annos)

**⇒ § 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 [FN1] 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, [FN2] 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, [FN3] 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.

#### CREDIT(S)

Laws 1993, c. 145, § 26, eff. July 1, 1993; Laws 1994, c. 353, § 6, eff. July 1, 1994; Laws 1999, c. 381, § 5, emerg. eff. June 8, 1999.

[FN1] Title 27A, § 2-1-101 et seq.

[FN2] See Title 75, § 250.1 for composition of articles.

[FN3] Title 75, § 250 et seq.

#### HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1994 amendment, in subsection H.3.b, added "by the Executive Director".

#### NOTES OF DECISIONS

Citizen enforcement 2

Construction with other laws 1

##### 1. Construction with other laws

Oklahoma's public-participation provisions were "comparable" to federal law, for purpose of determination of whether state's enforcement action barred Clean Water Act (CWA) citizen suit; although Oklahoma notice provisions were not as detailed and Oklahoma statute was limited to persons having interest, state law provided for reasonable notice and statute, in combination with provisions of Oklahoma Open Meetings Act, was roughly comparable to federal law, particularly in light of delegation of enforcement authority by Environmental Protection Agency (EPA), in that it allowed interested person to petition for hearing after issuance of order if none was held previously. Paper, Allied-Industrial, Chemical And Energy Workers Intern. Union v. Continental Carbon Co., C.A.10 (Okla.)2005, 428 F.3d 1285. Environmental Law <sup>2005</sup> 226

Oklahoma's judicial-review provisions were "comparable" to federal law, for purpose of determination of whether state's enforcement action barred Clean Water Act (CWA) citizen suit; both statutes allowed aggrieved party to petition for review in district court, and while Oklahoma limited right of review to those who had been harmed and commenter under federal system could seek judicial review, such difference did not preclude determination of comparability between Oklahoma law and CWA with respect to judicial review. Paper, Allied-Industrial, Chemical And Energy Workers Intern. Union v. Continental Carbon Co., C.A.10 (Okla.)2005, 428 F.3d 1285. Environmental Law ¶ 226

## 2. Citizen enforcement

Only situation in which state could not control all aspects of enforcement of Clean Water Act (CWA) was when it was pursuing something less than judicial enforcement and citizen was pursuing injunction in federal court; consequently, citizen suit that sought injunctive relief could be maintained, although civil penalties were not available because state was pursuing remedy, albeit something less than judicial enforcement. Paper, Allied-Industrial, Chemical And Energy Workers Intern. Union v. Continental Carbon Co., C.A.10 (Okla.)2005, 428 F.3d 1285. Environmental Law ¶ 226; Environmental Law ¶ 700

27A Okl. St. Ann. § 2-3-502, OK ST T. 27A § 2-3-502

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-3-504

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

<sup>^</sup>▣ Article III. Department of Environmental Quality and Executive Director

<sup>^</sup>▣ Part 5. General Regulation and Enforcement (Refs & Annos)

**⇒§ 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: [FN1]

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.

CREDIT(S)

Laws 1993, c. 145, § 28, eff. July 1, 1993; Laws 1998, c. 186, § 1, eff. Nov. 1, 1998.

[FN1] Title 27A, § 2-1-101 et seq.

UNITED STATES SUPREME COURT

Conviction for operating hazardous waste facility without permit based on deviation from permit's terms, due process, see Bufferd v. C.I.R., 1993, 113 S.Ct. 927, 506 U.S. 523, 122 L.Ed.2d 306.

27A Okl. St. Ann. § 2-3-504, OK ST T. 27A § 2-3-504

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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Okla. Admin. Code 252:100-8-75

OAC 252:100-8-75

OKLAHOMA ADMINISTRATIVE CODE  
TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL  
SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES  
PART 11. VISIBILITY PROTECTION STANDARDS

Current through 8/17/2009

252:100-8-75. Visibility standards for existing stationary facilities

(a) The owner or operator of a BART-eligible source that emits any air pollutant which causes or contributes to visibility impairment in any mandatory Class I Federal area shall establish emissions limitations by the application of BART.

(1) The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reduction achievable for each BART-eligible source that is subject to BART.

(2) After the level of control that represents BART is determined, an emission limit representing this level of control must be established.

(3) BART may be established as design, equipment, work practice, or other operational standards or combination thereof, when limitations on measurement technologies make emission standards infeasible, if such application achieves equivalent results. Such standard, to the degree possible, shall set forth the emission reduction to be achieved and must provide for compliance by means which achieve equivalent results.

(b) The determination of BART shall be made pursuant to the guidelines in Appendix Y of 40 CFR 51 in effect on July 6, 2005.

(c) The owner or operator of a BART-eligible source shall submit to the Director by December 1, 2006:

(1) an application for a waiver pursuant to OAC 252:100-8-73, or

(2) an application for an exemption pursuant to OAC 252:100-8-74.

(d) A BART-eligible source that has not applied for a waiver pursuant to OAC 252:100-8-73 or an exemption pursuant to OAC 252:100-8-74 shall submit to the Director a BART determination by March 30, 2007.

(e) The owner or operator of each BART-eligible source subject to BART shall install and operate BART no later than five years after EPA approves the Oklahoma Regional Haze SIP.

(f) The owner or operator of each source subject to BART shall maintain the control equipment required by this Part and establish procedures to ensure such equipment is properly and continuously operated and maintained.

(g) The owner or operator of any BART-eligible source that might cause or contribute to visibility

impairment in any mandatory Class I Federal area must provide a BART analysis at such times, as determined by the Administrator, as new technology for control of the pollutant becomes reasonably available if:

- (1) the pollutant is emitted by that BART-eligible source;
- (2) controls representing BART for the pollutant have not previously been required under this Part; and
- (3) the visibility impairment in any mandatory Class I Federal area is reasonably attributable to the emissions of that pollutant.

<General Materials (GM) - References, Annotations, or Tables>

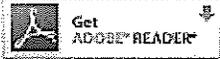
[Source: Added at 24 Ok Reg 297, eff 10-8-06 (emergency); Added at 24 Ok Reg 1274, eff 6-15-07]

Okla. Admin. Code 252:100-8-75, OK ADC 252:100-8-75

OK ADC 252:100-8-75

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Okla. Admin. Code 252:100-13-7

OAC 252:100-13-7

OKLAHOMA ADMINISTRATIVE CODE  
TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL  
SUBCHAPTER 13. OPEN BURNING

Current through 8/17/2009  
252:100-13-7. Allowed open burning

When not prohibited by law or ordinance, the following types of burning are allowed, provided the conditions and requirements in 252:100-13-9 have been met:

(1) **Fire training.** Open burning of human-made structures for the purpose of fire training is allowed as provided for in Oklahoma Clean Air Act, 27A O.S., § 2-5-106.1. Industrial and commercial facilities and fire training schools conducting on-site live burn fire training are not subject to this provision.

(2) **Elimination of hazards.** Provided prior authorization is obtained from the local fire chief, open burning is allowed for the elimination of:

(A) A fire hazard that cannot be abated by any other means.

(B) A dangerous or hazardous material when there is no other practical or lawful method of abatement or disposal if authorization is also received from the DEQ prior to such burning.

(3) **Recreational and ceremonial fires.** Open burning is allowed for camp fires and other fires used solely for recreational purposes, ceremonial occasions, or non-commercial preparation of food.

(4) **Land management and land clearing operations.** Open burning is allowed for the following land management and land clearing operations.

(A) Fires purposely set to forest, crop or range lands for a specific reason in the management of forests, crops or game, in accordance with practices recommended by the Oklahoma Department of Wildlife Conservation, the Oklahoma State Department of Agriculture, and the United States Forest Service.

(B) Fires purposely set for land clearing operations if conducted at least 500 feet upwind of any occupied residence other than those located on the property on which the burning is conducted, except that such burning must be conducted in open-pit incinerators in counties or areas that are or have been designated nonattainment.

(5) **Burning of domestic refuse.** Where no collection and disposal service is reasonably available, domestic refuse may be burned on the property where the waste is generated.

(6) **Hydrocarbon burning.** Open burning of hydrocarbons is allowed for:

(A) The disposal of spilled hydrocarbons or the waste products of oil exploration, development, refining or processing operations which cannot be feasibly recovered or otherwise disposed of in a legal manner. Notice must be given to the DEQ prior to such burning.

(B) The disposal of waste hydrocarbons through a flare. The owner or operator shall be required to use a smokeless flare if a condition of air pollution is determined to exist by the DEQ.

(7) **Open-pit incinerator.** Except for hazardous material, any combustible material or refuse that is allowed to be burned under this Subchapter may be burned in an open-pit incinerator that is properly designed and operated for the control of smoke and particulate matter. The owner or operator of the open-pit incinerator shall not accept any material owned by other persons and shall not transport any material to the property where the open-pit incinerator is located in order to burn the material.

(8) **Yard brush.** Yard brush may be burned on the property where the waste is generated.

<[General Materials \(GM\)](#) - References, Annotations, or Tables>

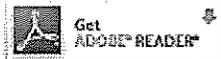
[Source: Added at 11 Ok Reg 977, eff 1-14-94 (emergency); Added at 11 Ok Reg 2031, eff 5-26-94; Amended at 17 Ok Reg 1889, eff 6-12-00; Amended at 21 Ok Reg 1518, eff 6-11-04]

Okla. Admin. Code 252:100-13-7, OK ADC 252:100-13-7

OK ADC 252:100-13-7

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27A Okl.St. Ann. § 2-5-105

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

^Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

^Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒**§ 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 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; [FN1]
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. 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;

17. 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;

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

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

20. 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. [FN2]

CREDIT(S)

Laws 1992, c. 215, § 4, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1805.1 and amended by Laws 1993, c. 145, §§ 42, 359, eff. July 1, 1993. Laws 1998, c. 314, § 6, eff. July 1, 1998; Laws 2002, c. 397, § 2, eff. Nov. 1, 2002.

[FN1] 42 U.S.C.A. § 7661a(b)(10).

[FN2] 42 U.S.C.A. § 7401 et seq.

#### HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1993 amendment, in paragraph 1 substituted "the Oklahoma Clean Air Act" for "this act"; inserted paragraph 2; redesignated former paragraphs 2 to 19 as paragraphs 3 to 20; in paragraph 4 deleted "and regulations" following "rules"; in paragraph 11 substituted "the Oklahoma Clean Air Act"

for "this act"; rewrote paragraph 14, which prior thereto read:

"Bring appropriate court action to enforce this act, including final orders on determinations and obtaining injunctions or other proper relief in the district court of the county where any alleged violation occurs or relief is determined necessary. The department, in furtherance of its statutory powers, and notwithstanding any provision of law to the contrary, shall have the independent authority to file an action under this act in district court. Such action shall be brought in the name of the State Department of Health."

; in paragraph 16, deleted "regulations" following "rules"; in paragraph 17, in the first sentence, substituted "the Department" for "this act" and "the Oklahoma Clean Air Act" for "this act" in two places, deleted ", regulation, permit condition or standard" following "rule", inserted "thereunder or permit condition prescribed", and substituted "thereto" for "to this act"; in paragraph 18, in the first sentence, deleted ", as that term is defined in Section 1732 of Title 21 of the Oklahoma Statutes," following "secrets", substituted "the Oklahoma Clean Air Act" for "this act", deleted ", permit condition, order or standard" following "rule", inserted "thereunder, or any permit condition prescribed or order issued", and substituted "thereto" for "to this act", in the second sentence, substituted "The" for "Provided, however, the", in the third sentence, substituted "the Oklahoma Clean Air Act" for "this act", deleted the former fifth sentence which read: "The term 'trade secret', for the purpose of this act, shall not be construed to include data concerning the amount, emission rate or identification of any air contaminant emitted by any source, nor shall it include the contents of any proposed or final permit.", and in the fifth sentence, substituted "an Administrative Law Judge" for "a hearing examiner"; in paragraph 20, substituted "the Oklahoma Clean Air Act" for "this act, and delegate"; inserted the designation of paragraph 21; in paragraph 21, in the introductory clause, inserted "Delegate", in subparagraph a, substituted "the Oklahoma Clean Air Act" for "this act" in two places, in the second sentence substituted "may" for "shall" and "rules" for "regulations", and in the third sentence added "either:", inserted designations of divisions (1) and (2), rewrote division (1), which prior thereto read:

"establish a special fund in the manner provided for in the Oklahoma Air Quality Control Fund established elsewhere in this act or, alternatively, that"

, in division (2) inserted "allow" and substituted "the Oklahoma Clean Air Act" for "this act", in subparagraph b, in the first sentence, substituted "the Oklahoma Clean Air Act" for "this act" and added ", 42 U.S.C., Section 7401 et seq.", and in the second sentence substituted "this state" for "it", and in subparagraph c, substituted "Department" for "state"; and in paragraph 22, substituted "the Oklahoma Clean Air Act" for "this act".

Section 1 of Laws 1993, c. 47, amending this section, was repealed by Laws 1994, c. 2, § 34.

#### UNITED STATES SUPREME COURT

Environmental protection, Clean Air Act, prevention of significant deterioration program, construction of major air pollutant emitting facility, state permitting authority, best available control technology, EPA stop construction orders, see A.D.E.C. v. E.P.A., 2004, 124 S.Ct. 983.

27A Okl. St. Ann. § 2-5-105, OK ST T. 27A § 2-5-105

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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Okla. Admin. Code 252:4-1-3

OAC 252:4-1-3

OKLAHOMA ADMINISTRATIVE CODE  
TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE  
SUBCHAPTER 1. GENERAL PROVISIONS

Current through 8/17/2009  
252:4-1-3. Organization

(a) **Environmental Quality Board.** The Environmental Quality Board consists of thirteen (13) members, appointed by the Governor with the advice and consent of the Senate, selected from the environmental profession, general industry, hazardous waste industry, solid waste industry, water usage, petroleum industries, agriculture industries, conservation districts, local city or town governments, rural water districts, and statewide nonprofit environmental organizations. (See further 27A O.S. § 2-2-101.)

(b) **Advisory Councils.** There are seven advisory councils, each consisting of nine (9) members appointed by the Speaker of the House of Representatives, the President Pro Tempore of the Senate or the Governor. (See further 27A O.S. § 2-2-201 and 59 O.S. § 1101 et seq.)

(c) **DEQ.** The DEQ consists of the following divisions: Administrative Services, Air Quality, Land Protection, Water Quality, Environmental Complaints and Local Services, Customer Services and the State Environmental Laboratory.

<General Materials (GM) - References, Annotations, or Tables>

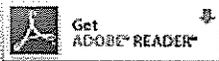
[Source: Added at 18 Ok Reg 1922, eff 6-11-01]

Okla. Admin. Code 252:4-1-3, OK ADC 252:4-1-3

OK ADC 252:4-1-3

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27A Okl.St. Ann. § 2-5-106

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

^Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

^Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒**§ 2-5-106. Rules**

The Board is hereby authorized, after public rulemaking hearing and approval by the Council, to:

1. Promulgate, amend or repeal rules for the prevention, control and abatement of air pollution and for establishment of health and safety tolerance standards for discharge of air contaminants to the atmosphere; and
2. Promulgate such additional rules including but not limited to permit fees, as it deems necessary to protect the health, safety and welfare of the public and fulfill the intent and purpose of these provisions.

CREDIT(S)

Laws 1992, c. 215, § 5, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1806.1 and amended by Laws 1993, c. 145, §§ 43, 359, eff. July 1, 1993.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1993 amendment, in the introductory clause, inserted "rulemaking" and substituted a colon for "adopt" at the end; inserted the designations of paragraphs 1 and 2; in paragraph 1, inserted "Promulgate," deleted "and regulations" following "rules", inserted "for" preceding "establishment"; and in paragraph 2, inserted "Promulgate such", deleted "and regulations" following "rules", and inserted "but not limited to".

27A Okl. St. Ann. § 2-5-106, OK ST T. 27A § 2-5-106

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-5-110

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

↳ Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

↳ Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒ **§ 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, any 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 Department shall promptly schedule the enforcement hearing before an Administrative Law Judge for the Department and notify the respondent.

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.

CREDIT(S)

Laws 1992, c. 215, § 10, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1811 and amended by Laws 1993, c. 145, §§ 47, 359, eff. July 1, 1993. Laws 1993, c. 324, § 13, eff. July 1, 1993; Laws 1999, c. 131, § 1, eff. Nov. 1, 1999; Laws 2001, c. 109, § 1, emerg. eff. April 18, 2001.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

Laws 1993, c. 145, § 47, in subsection A, in the first sentence, substituted "the Oklahoma Clean Air Act" for "this act" in two places and "rule" for "standard, rule or regulation"; in subsection D, in the third sentence, substituted "an enforcement" for "a" and "penalty" for "fine"; in subsection E, in the first sentence substituted "enforcement" for "administrative", in the third sentence inserted "enforcement", and in the fourth sentence substituted "Director" for "Chief" and inserted "enforcement"; and in subsection F, deleted "before the Department or the Council" following "proceedings" and "or regulation" following "rule" and substituted "Department" for "Chief".

Laws 1993, c. 324, § 13, in subsection E, in fourth sentence, substituted "Department" for "Director".

27A Okl. St. Ann. § 2-5-110, OK ST T. 27A § 2-5-110

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-2-104

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

^Article II. Environmental Quality Board and Councils

^Part 1. Environmental Quality Board

⇒**§ 2-2-104. Board rules incorporating by reference federal provisions--No effect on rules from subsequent changes in federal provisions**

Insofar as permitted by law and upon recommendation from the appropriate Council, rules promulgated by the Environmental Quality Board may incorporate a federal statute or regulation by reference. Any Board rule which incorporates a federal provision by reference incorporates the language of the federal provision as it existed at the time of the incorporation by reference. Any subsequent modification, repeal or invalidation of the federal provision shall not be deemed to affect the incorporating Board rule.

CREDIT(S)

Laws 1994, c. 353, § 3, eff. July 1, 1994.

27A Okl. St. Ann. § 2-2-104, OK ST T. 27A § 2-2-104

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-5-107

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

^Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

^Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒**§ 2-5-107. Air Quality Council--Powers and duties**

The powers and duties of the Council shall be as follows:

1. The Council shall recommend to the Board rules or amendments thereto for the prevention, control and prohibition of air pollution and for the establishment of health and safety tolerances for discharge of air contaminants in the state as may be consistent with the general intent and purposes of the Oklahoma Clean Air Act. [FN1] The recommendations may include, but need not be limited to, rules required to implement the following:

- a. a comprehensive state air permitting program,
- b. an accidental release prevention program,
- c. a program for the regulation and control of toxic and hazardous air contaminants,
- d. a program for the regulation and control of acid deposition,
- e. a small business program, and
- f. a system of assessing and collecting fees;

2. The Council shall recommend rules of practice and procedure applicable to proceedings before the Council;

3. Before recommending any permanent rules, or any amendment or repeal thereof to the Board, the Council shall hold a public rulemaking hearing. The Council shall have full authority to conduct such hearings, and may appoint a hearing officer;

4. A rule, or any amendment thereof, recommended by the Council may differ in its terms and provisions as between particular conditions, particular sources, and particular areas of the state. In considering rules, the Council shall give due recognition to the evidence presented that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere, which may cause a need for air control in one area of the state, may not cause need for air control in another area of the state. The Council shall take into consideration, in this connection, all factors found by it to be proper and just, including but not limited to existing physical conditions, economic impact, topography, population, prevailing wind directions and velocities, and the fact that a rule and the degrees of conformance therewith which may be proper as to an essentially residential area of the state may not be proper either as to a highly developed industrial area of the state or as to a relatively unpopulated area of the state;

5. Recommendations to the Board shall be in writing and concurred upon by at least five members of the Council;

6. The Council shall have the authority and the discretion to provide a public forum for the discussion of issues it considers relevant to the air quality of the state, and to:

- a. pass nonbinding resolutions expressing the sense of the Council,

- b. make recommendations to the Department concerning the need and the desirability of conducting public meetings, workshops and seminars, and
- c. hold public hearings to receive public comment in fulfillment of federal requirements regarding the State Implementation Plan and make recommendations to the Department concerning the plan; and

7. The Council shall have the authority to conduct individual proceedings, to issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, to administer oaths, and to take testimony and receive such pertinent and relevant proof as it may deem to be necessary, proper or desirable in order that it may effectively discharge its duties and responsibilities under the Oklahoma Clean Air Act. The Council is also empowered to appoint an Administrative Law Judge to conduct individual proceedings and prepare such findings of fact, conclusions of law and proposed orders as they may require. Upon issuance of a proposed order, the Council shall request that the Executive Director issue a final order in accordance with their findings or take such action as indicated and notify the respondent thereof in writing.

#### CREDIT(S)

Laws 1992, c. 215, § 7, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1808.1 and amended by Laws 1993, c. 145, §§ 44, 359, eff. July 1, 1993. Laws 1994, c. 353, § 7, eff. July 1, 1994.

[FN1] Title 27A, § 2-5-101 et seq.

#### HISTORICAL AND STATUTORY NOTES

##### 1997 Main Volume

The 1993 amendment, in paragraph 1, in the introductory clause, deleted "and regulations" following "rules" and substituted "the Oklahoma Clean Air Act" for "this act"; in paragraph 2, substituted "Recommend" for "Adopt"; in paragraph 3, substituted "permanent rules," for "rules, regulations" and inserted "rulemaking"; in paragraph 4, in the first sentence deleted "or regulation" following "rule", in the second sentence deleted "and regulations" following "rules" and substituted a period for ", and the" at the end thereby creating the third sentence, and in the third sentence inserted "The" and "but not limited to" and deleted "or regulation" following "rule"; and in paragraph 7, in the first sentence deleted "as authorized elsewhere in this act" following "proceedings" and substituted "the Oklahoma Clean Air Act" for "this act", and in the second sentence substituted "an Administrative Law Judge" for "a hearing examiner".

The 1994 amendment, in paragraph 1, in the first sentence substituted "The Council shall recommend" for "Recommend", and in the second sentence substituted "The" for "Said", inserted "need", and substituted "rules" for "regulations"; in paragraph 2, substituted "The Council shall recommend" for "Recommend"; and in paragraph 7, in the third sentence, substituted "Executive Director" for "Commissioner".

27A Okl. St. Ann. § 2-5-107, OK ST T. 27A § 2-5-107

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-5-114

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

▣ Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

▣ Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒ **§ 2-5-114. Implementation and enforcement of federal emission standards--Oil and gas well and equipment emissions**

A. The Department shall have the authority to establish a program for the implementation and enforcement of the federal emission standards and other requirements under Section 112 of the Federal Clean Air Act [FN1] for hazardous air pollutants and for the prevention and mitigation of accidental releases of regulated substances under Section 112(r) of the Federal Clean Air Act. [FN2]

1. Except as otherwise provided by paragraph 2 of this subsection, to assure that such program shall be consistent with, and not more stringent than, federal requirements:

a. any rule recommended by the Council and promulgated by the Board regarding hazardous air pollutants and regulated substances shall only be by adoption by reference of final federal rules, and

b. shall include the federal early reduction program under Section 112(i) (5) of the Federal Clean Air Act. [FN3]

2. The Board may promulgate, pursuant to recommendation by the Council, rules which establish emission limitations for hazardous air pollutants which are more stringent than the applicable federal standards, upon a determination by the Council that more stringent standards are necessary to protect the public health or the environment.

B. The Department shall also have the authority to establish a separate and distinct program only for the control of the emission of those toxic air contaminants not otherwise regulated by a final emission standard under Section 112(d) of the Federal Clean Air Act. [FN4]

1. Such program shall consist of permanent rules establishing:

a. appropriate emission limitations, work practice standards, maximum acceptable ambient concentrations or control technology standards necessary for the protection of the public health or the environment, and

b. emissions monitoring or process monitoring requirements necessary to assure compliance with the requirements of this section.

2. Paragraph 1 of this subsection shall not be construed as requiring readoption of existing rules regarding toxic air contaminants.

C. Regulation of any hazardous air pollutant pursuant to a final emission standard promulgated under Section 112(d) of the Federal Clean Air Act, shall preclude its regulation as a toxic air contaminant under subsection B of this section.

D. Emissions from any oil or gas exploration or production well with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well with its associated equipment, such emissions shall not be aggregated for any purpose under this section.

E. The Department shall not list oil and gas production wells with their associated equipment as an area source category, except that the Department may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of one million (1,000,000) if the Department determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

F. Nothing in this section shall be construed to limit authority established elsewhere in the Oklahoma Clean Air Act. [FN5]

#### CREDIT(S)

Laws 1992, c. 215, § 14, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1815 and amended by Laws 1993, c. 145, §§ 51, 359, eff. July 1, 1993.

[FN1] 42 U.S.C.A. § 7412.

[FN2] 42 U.S.C.A. § 7412(r).

[FN3] 42 U.S.C.A. § 7412(i)(5).

[FN4] 42 U.S.C.A. § 7412(d).

[FN5] Title 27A, § 2-5-101 et seq.

#### HISTORICAL AND STATUTORY NOTES

##### 1997 Main Volume

The 1993 amendment, in subsection A, in the introductory paragraph, added "of the Federal Clean Air Act", in paragraph 1, in the introductory clause substituted "Except as otherwise provided by paragraph 2 of this subsection, to" for "To", and in paragraph 2, substituted "The Board may promulgate" for "Notwithstanding paragraph 1 of this subsection, the Board may adopt" and added "or the environment"; in subsection B.1, in subparagraph a, added "or the environment", and in subparagraph b substituted "requirements of this section" for "above requirements"; and in subsection F, substituted "the Oklahoma Clean Air Act" for "this act".

27A Okl. St. Ann. § 2-5-114, OK ST T. 27A § 2-5-114

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-5-117

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

^Ⓜ Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

^Ⓜ Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒§ 2-5-117. **Civil actions--Injunction--Abatement--Civil penalties**

A. The Department shall have the authority to commence a civil action for a permanent or temporary injunction or other appropriate relief, or to require abatement of any emission or correction of any contamination, or to seek and recover a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) per day for each violation, or all of the above, in any of the following instances:

1. Whenever any person has violated or is in violation of any applicable provision of the Oklahoma Clean Air Act, [FN1] or any rule promulgated thereunder;

2. Whenever any person has commenced construction, modification or operation of any source, or operates any source in violation of the requirement to have a permit, or violates or is in violation of any substantive provision or condition of any permit issued pursuant to the Oklahoma Clean Air Act; or

3. Whenever any person has violated any order of the Department or the Council or any requirement to pay any fee, fine or penalty owed to the state pursuant to the Oklahoma Clean Air Act.

B. The district attorney or attorneys having jurisdiction shall have primary authority and responsibility for prosecution of any civil or criminal violations under the Oklahoma Clean Air Act and for the collection of any delinquent fees, penalties or fines assessed pursuant to the Oklahoma Clean Air Act and shall be entitled to recover reasonable costs of collection, including attorney fees, and an appropriate fee of up to fifty percent (50%) for collecting delinquent fees, penalties or fines.

CREDIT(S)

Laws 1992, c. 215, § 17, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1818 and amended by Laws 1993, c. 145, §§ 54, 359, eff. July 1, 1993.

[FN1] Title 27A, § 2-5-101 et seq.

#### HISTORICAL AND STATUTORY NOTES

1997 Main Volume

The 1993 amendment substituted "the Oklahoma Clean Air Act" for "this act" throughout the section; in subsection A, in paragraph 1, substituted "promulgated thereunder" for ", regulation or standard established under this act"; and in subsection B, inserted ", penalties" in two places.

#### 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.

27A Okl. St. Ann. § 2-5-117, OK ST T. 27A § 2-5-117

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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27A Okl.St. Ann. § 2-5-112

Oklahoma Statutes Annotated Currentness

Title 27A. Environment and Natural Resources (Refs & Annos)

⌘ Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

⌘ Article V. Oklahoma Clean Air Act (Refs & Annos)

⇒ **§ 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; [FN1]

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 limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee. 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, [FN2] 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 thirty (30) days of the change in ownership.

H. 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.

#### CREDIT(S)

Laws 1992, c. 215, § 12, emerg. eff. May 15, 1992. Renumbered from Title 63, § 1-1813 and amended by Laws 1993, c. 145, §§ 49, 359, eff. July 1, 1993. Laws 1994, c. 373, § 16, eff. July 1, 1994; Laws 1995, c. 285, § 2, eff. July 1, 1996; Laws 1999, c. 284, § 1, emerg. eff. May 27, 1999; Laws 2000, c. 6, § 7, emerg. eff. March 20, 2000; Laws 2004, c. 83, § 1, emerg. eff. April 13, 2004; Laws 2004, c. 381, § 4, emerg. eff. June 3, 2004.

[FN1] 42 U.S.C.A. § 7661 et seq.

[FN2] Title 75, § 250 et seq.

#### HISTORICAL AND STATUTORY NOTES

##### 2009 Electronic Update

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

##### 1997 Main Volume

The 1993 amendment, in subsection A, substituted "pursuant to the Oklahoma Clean Air Act" for "under this act"; in subsection B, in the introductory paragraph, in the first sentence, substituted "the Oklahoma Clean Air Act" for "this act", in paragraph 1, in the second sentence, substituted "the Oklahoma Clean Air Act" for "this act", "any rule" for "of any permit, regulation or standard" and "thereunder or any permit issued pursuant thereto" for "pursuant to this act", and in paragraph 3, substituted "rules" for "regulations, standards"; in subsection C, substituted "Rules" for "Regulations" in the first sentence and "rules" for "regulations" in the second sentence; in subsection D, in the first sentence, substituted "with regard to" for "as regards"; in subsection F, in the first sentence, substituted "by the Oklahoma Clean Air Act" for "under this act", and in the second sentence, substituted "such source" for "the source" in two places and "rule" for "regulation" and deleted "in question" from the end; and in subsection G, in paragraph 1.a, substituted "preparation" for "issuance" in two places and "draft" for "proposed", in paragraph 1.a.(2), inserted "to," "formal" and commas following "from" and "Department", in paragraph 1.b, in the first sentence substituted "draft" for "pending" and "the Oklahoma Clean Air Act" for "this act", in the third sentence inserted "formal", in the fifth sentence deleted "the first running of" following "date of", in the seventh sentence substituted "in this paragraph" for "for above", in the eighth sentence deleted "ten (10) days but no more than" following "least" and inserted "calendar", and deleted the ninth sentence which read: "The meeting, when possible, shall be scheduled to be held at least fifteen (15) days but no later than forty-five (45) days after the expiration of the thirty-day calendar period and not rescheduled except for proper cause.", in paragraph 1.c, in the first sentence substituted "draft" for "proposed" and in the fourth sentence substituted "presiding" for "hearing", in paragraph 1.e, substituted, in the first sentence, "when" for "where", and in the third sentence, "Director's" for "Chief's", in paragraph 2.a, in the first sentence, substituted "the Oklahoma Clean Air Act" for "this act", "rules" for "regulations" and "thereunder" for "pursuant to this act", and in the second sentence, substituted "Administrative

Law Judge" for "hearing examiner", in paragraph 2.b, in the first sentence, substituted "an Administrative Law Judge" for "a hearing examiner" and "Administrative Law Judge" for "hearing examiner", and in paragraph 2.c, substituted "such" for "a proposed", "the Oklahoma Clean Air Act" for "this act" and "rules" for "regulations".

The 1994 amendment rewrote subsection G.1, which prior thereto read:

"G. Public review.

"1. Public meetings.

"a. Any applicant for a construction permit for a new source or for the modification of an existing source, or for the renewal of an operating permit, and in such other instances as shall be specified by the Board by rule, shall, upon the preparation of a draft permit by the Department, publish notice of such preparation in at least one newspaper of general circulation in the nearest city or town in which the facility is located or is proposed to be located. The notice must include: (1) a description of the facility, its purpose and location or proposed location, (2) a statement that any person who may be adversely affected by emissions of air contaminants from the facility may submit written comments to, or request a formal public meeting from, the Department, or both, (3) a description of the manner in which written comments may be submitted, the manner in which any request for a meeting must be made, how the Department may be contacted for further information and where a copy of the draft permit will be available for inspection and copying, and is proposed to be located. The notice must include: (1) a description of the facility, its purpose and location or proposed location, (2) a statement that any person who may be adversely affected by emissions of air contaminants from the facility may submit written comments to, or request a formal public meeting from, the Department, or both, (3) a description of the manner in which written comments may be submitted, the manner in which any request for a meeting must be made, how the Department may be contacted for further information and where a copy of the draft permit will be available for inspection and copying, and (4) any other information which the Board may by rule specify.

"b. The applicant shall make available for thirty (30) calendar days from the date of publication of notice, in a location to be specified by the Department in the county where the source is located or is proposed to be located, a copy of the draft permit including the complete application, except for portions deleted under trade secret provisions of the Oklahoma Clean Air Act. The Department, in order to facilitate public review, shall prepare and attach proposed operating conditions. Upon the request of any person who may be adversely affected, the Department shall hold a formal public meeting. The person requesting the meeting must state in writing the basis for the request and what adverse effects are alleged. Said request must be made within thirty (30) days of the date of the published notice and must provide to the Department the name of the person or persons making the request and a current mailing address. Upon a determination that a reasonable basis for a meeting has been alleged, the Department shall immediately set a date for the meeting and shall cause to be mailed to all persons who requested the meeting, information concerning the date, time and place. The applicant shall also cause to be published in the manner provided in this paragraph, notice of the date, time and place and the purpose of the formal public meeting. Said notice shall be published at least thirty (30) calendar days prior to the meeting.

"c. At the meeting, which shall be attended by both the Department and the applicant, persons may submit oral or written statements concerning the draft permit; provided, however, that the person conducting the meeting, who shall be a representative of the Department, may set reasonable time limits for the presentation of oral comments and for any question and answer session. The purpose of this meeting shall be to inform the public concerning the permit and the operation of the source. Failure of the applicant to participate in good faith shall constitute grounds for the Department to deny the permit. The presiding officer shall have the discretion to conclude the comment period at the close of the hearing, or may extend or reopen the comment period as necessary.

"d. No person, including the applicant, shall raise any reasonably ascertainable issue in any future proceeding, unless the same issues shall have been raised at this meeting or before the close of the public comment period, and supported in writing, by appropriate argument and evidence as may be

available at the time.

"e. The Department shall consider all substantive comments which shall have been submitted in writing and prepare a written response thereto when possible within sixty (60) days. The Department shall mail to all persons participating in the public meeting or submitting written comments, who shall have requested notification and provided to the Department a mailing address, the written decision concerning the permit. Said decision shall also advise of the availability of the Director's response to public comments.

"f. Any person, including the applicant, adversely affected by the decision of the Department in issuing or denying the permit may, within fifteen (15) days of the Department's decision, request in writing a contested case hearing before the Department. Any permit issued without appeal under this subsection or which shall become a final order pursuant to a contested case hearing as provided for in paragraph (2) of this subsection and pursuant to the Administrative Procedures Act shall be enforceable by the Department."

; redesignated former subsection G.1.d as subsection G.2; in subsection G.2, inserted "about a permit", "a contested case hearing or" and "during public review", substituted "the formal public" for "this", and inserted "held on the draft permit"; redesignated former subsection G.1.f as subsection G.3; in subsection G.3, in the second sentence, deleted "paragraph (2) of" following "for in" and inserted "and the Code and rules promulgated thereunder"; redesignated former subsection G.2 as subsection G.4; redesignated former subsection G.3 as subsection H; and in subsection H.1, substituted "of the Code and rules promulgated thereunder;" for a comma.

The 1995 amendment, in subsection B, in the introductory clause, substituted "state" for "State of Oklahoma"; deleted former subsection G, which read:

"G. 1. This subsection shall apply to any contested case hearing held on any construction permit for a new source or for the modification of an existing source, or for the renewal of an operating permit, and in such other instances as shall be specified by the Board by rule.

"2. No person, including the applicant, shall raise any reasonably ascertainable issue about a permit in a contested case hearing or any future proceeding, unless the same issues shall have been raised during public review at the formal public meeting or before the close of the public comment period held on the draft permit, and supported in writing, by appropriate argument and evidence as may be available at the time.

"3. Any person, including the applicant, adversely affected by the decision of the Department in issuing or denying the permit may, within fifteen (15) days of the Department's decision, request in writing a contested case hearing before the Department. Any permit issued without appeal under this subsection or which shall become a final order pursuant to a contested case hearing as provided for in this subsection and pursuant to the Administrative Procedures Act and the Code and rules promulgated thereunder shall be enforceable by the Department.

"4. Contested case hearing.

"a. At any contested case hearing, the only issue before the Department shall be whether or not the permit, as issued, reissued or denied, shall have been in substantial compliance with the Oklahoma Clean Air Act and the rules of the Board promulgated thereunder. Both the applicant and the Department shall participate in contested case hearings as necessary parties unless and until one shall be released by the Administrative Law Judge.

"b. The Department may appoint an Administrative Law Judge who shall have full authority to conduct a contested case hearing. Upon conclusion of the hearing, the Administrative Law Judge shall prepare findings of fact, conclusions of law and recommendations for the Department's consideration. A contested case hearing shall be conducted in accordance with the Oklahoma Administrative Procedures Act and may be appealed thereunder; provided, however, that the final determination of the Department to issue, reissue or deny any permit shall not be subject to challenge in any other

proceeding. Standing to appeal the final determination of the Department shall also be limited to parties participating in the contested case hearing.

"c. The Department, upon a finding that such permit is not in substantial compliance with the Oklahoma Clean Air Act or the rules of the Board, shall have the authority to require such remediation as may be appropriate, or deny the permit."

; and redesignated former subsection H as subsection G.

27A Okl. St. Ann. § 2-5-112, OK ST T. 27A § 2-5-112

Current with chapters of the First Regular Session of the 52nd Legislature (2009) effective August 26, 2009.

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