

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 CurrentnessTitle 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 CO₂ sequestration facility, including any associated CO₂ 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 CO₂ sequestration facility, including any associated CO₂ 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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27A Okl.St. Ann. § 2-5-112

Oklahoma Statutes Annotated CurrentnessTitle 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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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 CurrentnessTitle 27A. Environment and Natural Resources (Refs & Annos)Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)^Article III. Department of Environmental Quality and Executive Director^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 ²⁰⁰⁵ 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 CurrentnessTitle 27A. Environment and Natural Resources (Refs & Annos)Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

^III Article III. Department of Environmental Quality and Executive Director

^IV 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>

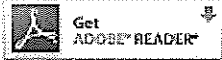
[Source: Added at 24 Ok Reg 297, eff 10-8-06 (emergency); Added at 24 Ok Reg 1274, eff 6-15-07]

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>

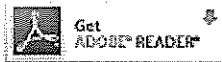
[Source: Added at 11 Ok Reg 977, eff 1-14-94 (emergency); Added at 11 Ok Reg 2031, eff 5-26-94; Amended at 17 Ok Reg 1889, eff 6-12-00; Amended at 21 Ok Reg 1518, eff 6-11-04]

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>

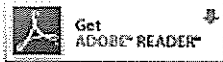
[Source: Added at 18 Ok Reg 1922, eff 6-11-01]

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

OK ADC 252:4-1-3

END OF DOCUMENT

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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 CurrentnessTitle 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 CurrentnessTitle 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

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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

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51 Okl.St.Ann. § 24A.1

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

^■ Chapter 1. General Provisions

^■ Oklahoma Open Records Act (Refs & Annos)

⇒§ 24A.1. Short title

Section 24A.1 et seq. of this title shall be known and may be cited as the "Oklahoma Open Records Act".

CREDIT(S)

Laws 1985, c. 355, § 1, eff. Nov. 1, 1985; Laws 1988, c. 68, § 1, eff. Nov. 1, 1988; Laws 1988, c. 187, § 1, emerg. eff. June 6, 1988; Laws 1996, c. 247, § 41, eff. July 1, 1996; Laws 1997, c. 2, § 10, emerg. eff. Feb. 26, 1997.

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Laws 1988, c. 68, § 1 rewrote the section, which prior thereto read:

"Sections 1 through 18 of this act shall be known as the 'Oklahoma Open Records Act'."

Laws 1988, c. 187, § 1 substituted "24A.19 and Section 7 of this act" for "24A.18 of this title and Section 2 of this act".

Laws 1996, c. 247, § 41 substituted "24A.22 of this title and Section 42" for "24A.19 of this title and Section 7".

The 1997 amendment rewrote the section, which prior thereto read:

"Sections 24A.1 through 24A.22 of this title and Section 42 of this act shall be known as the 'Oklahoma Open Records Act'."

Section 1 of Laws 1996, c. 209, amending this section, was repealed by Laws 1997, c. 2, § 26.

Title of Act:

An Act relating to officers; providing short title; stating purpose; defining terms; requiring public bodies and public officials to keep and maintain certain records for public inspection; providing for inspection and copying; providing exceptions; authorizing fees and procedures; providing for confidentiality of certain records; authorizing public inspection of certain law enforcement records; providing penalties; providing for civil liability; repealing 51 O.S.1981, section 24, which relates to inspection of public records; and providing an effective date. Laws 1985, c. 355.

LAW REVIEW AND JOURNAL COMMENTARIES

Open records in Oklahoma; where are we now? Ronald A. White, 57 Okla.B.J. 1831 (1986).

RESEARCH REFERENCES

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ALR Library

29 ALR 6th 507, Validity, Construction, and Application of State Statutes Implementing the Uniform Unclaimed Property Act or Its Predecessor--Modern Status.

Treatises and Practice Aids

24 Causes of Action 2d 227, Cause of Action for Termination of At-Will Employee in Violation of Public Policy.

3 Oklahoma Practice § 40.02, Definitions--Newsman.

3 Oklahoma Practice § 42.04, The Topical Privileges--Secrets of State and Other Official Information.

NOTES OF DECISIONS

Construction and application 1
Construction with other laws 2

1. Construction and application

Open Records Act did not preclude Oklahoma State Department of Health (OSDH) from adding, in declaratory judgment action challenging its refusal to disclose certain records concerning nursing facility residents, to the reasons for denying access that it stated to the plaintiff in the initial challenged determination, and thus OSDH could base its affirmative defenses in the declaratory judgment action on various state and federal statutes and rules despite the fact that its initial response to plaintiff's request merely explained that the records were covered under various federal acts and gave an address to which the request should be directed. Progressive Independence, Inc. v. Oklahoma State Dept. of Health, Okla.Civ.App. Div. 3, 174 P.3d 1005 (2007). Records 62

There is no provision in the Open Records Act which allows a court to balance an individual's interest in having records remain private and the public's interest in having access to the records. Nichols v. Jackson, Okla.Crim.App., 38 P.3d 228 (2001), opinion after certified question answered 55 P.3d 1044. Records 64

The Grand River Dam Authority is subject to the Open Meeting Act. Op.Atty.Gen. No. 02-44 (Nov. 21, 2002).

2. Construction with other laws

The Oklahoma Ethics Commission or any other public body may not make rules, policy or procedures that conflict with the Open Records Act ("Act") or its enabling legislation. Op.Atty.Gen. Opinion No. 06-35 (November 09, 2006), 2006 WL 3386751.

51 Okl. St. Ann. § 24A.1, OK ST T. 51 § 24A.1

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51 Okl.St. Ann. § 24A.2

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌘ Chapter 1. General Provisions

⌘ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.2. Public policy--Purpose of act**

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act [FN1] is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. Except as may be required by other statutes, public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act.

CREDIT(S)

Laws 1985, c. 355, § 2, eff. Nov. 1, 1985; Laws 1988, c. 187, § 2, emerg. eff. June 6, 1988.

[FN1] Title 51, § 24A.1 et seq.

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The 1988 amendment rewrote the section, which prior thereto read:

"As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power."

RESEARCH REFERENCES

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ALR Library

27 ALR 4th 680, What Are "Records" of Agency Which Must be Made Available Under State Freedom of Information Act.

169 ALR 653, Enforceability by Mandamus of Right to Inspect Public Records.

NOTES OF DECISIONS

Confidential privilege 3
Construction and application 1
Construction with other laws 2
Electronic mail 5
Timing of access 4

1. Construction and application

Unless a record falls within a statutorily prescribed exemption in the Open Records Act, the record must be made available for public inspection. Progressive Independence, Inc. v. Oklahoma State Dept. of Health, Okla.Civ.App. Div. 3, 174 P.3d 1005 (2007). Records ↩ 54

Employer did not violate any public policy when it terminated employee who refused to dismiss his counterclaim under the Open Records Act against a third party, as would enable employee to state a wrongful discharge claim under the public policy exception to the employment at will doctrine; while the Act expressly set forth the public policy concerning the people's right to know and be fully informed about their government, it was silent as to any public policy against conditioning continued employment on the abandonment of claims pursuant to the Act. Shero v. Grand Sav. Bank, Okla., 161 P.3d 298 (2007), rehearing denied. Labor And Employment ↩ 759

The legislature has determined by statute that the public's interest in having access is greater than an individual's interest in having records remain private, except where specific statutory exemption is given, however, such statutory provisions are always subject to interpretation to ensure compliance with constitutionally guaranteed rights. Nichols v. Jackson, Okla.Crim.App., 38 P.3d 228 (2001), opinion after certified question answered 55 P.3d 1044. Records ↩ 54

The Oklahoma Open Records Act does not apply to the Governor's Security and Preparedness Executive Panel because the Panel is not a "public body" and because the documents possibly created by the Panel are not "public records". Op.Atty.Gen. No. 02-5 (Feb. 7, 2002).

2. Construction with other laws

The Oklahoma Open Records Act does not require personal information submitted by an applicant and/or licensee to the Oklahoma State Department of Health to be publicly disclosed when it is required by the certified nursing aide and nursing aide trainee registry. Op.Atty.Gen. No. 01-7 (Feb. 16, 2001).

3. Confidential privilege

A municipality may withhold portions of a telephone bill or delete information on the bill only if a privilege of confidentiality exists which authorizes confidentiality of the information with the burden to establish a privilege of confidentiality upon the person or entity that seeks to establish it. Op.Atty.Gen. No. 95-97 (March 13, 1996).

4. Timing of access

University Hospitals Authority violated neither Open Meeting Act nor Open Records Act, even though copies of contract for long term lease of hospitals from University Trust to private hospital corporation were not made available to protestants of transaction until two days before meeting of Authority at which contract was approved, where contract was not completed until two days before meeting and was made available to protestants as soon as it came into existence. Petition of University Hospitals Authority, Okla., 953 P.2d 314 (1997), rehearing denied. Health ↩ 232; Records ↩ 62

5. Electronic mail

Electronic mail connected with the transaction of official business, the expenditure of public funds or

the administration of public property and created by or received by a state public body or a public body of a political subdivision constitutes a record and is subject to the Oklahoma Open Records Act. Op. Atty. Gen. No. 01-46 (Nov. 7, 2001).

51 Okl. St. Ann. § 24A.2, OK ST T. 51 § 24A.2

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51 Okl.St.Ann. § 24A.3

Oklahoma Statutes Annotated CurrentnessTitle 51. Officers (Refs & Annos)*Chapter 1. General Provisions*Oklahoma Open Records Act (Refs & Annos)⇒ **§ 24A.3. Definitions**

As used in this act: [FN1]

1. "Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean:

- a. computer software,
- b. nongovernment personal effects,
- c. unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Transportation Authority obtained in connection with the Authority's electronic toll collection system,
- d. personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body,
- e. any digital audio/video recordings of the toll collection and safeguarding activities of the Oklahoma Transportation Authority,
- f. any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at the facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park,
- g. a Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this act, or
- h. except as provided for in Section 2-110 of Title 47 of the Oklahoma Statutes,
 - (1) any record in connection with a Motor Vehicle Report issued by the Department of Public Safety, as prescribed in Section 6-117 of Title 47 of the Oklahoma Statutes,
 - (2) personal information within driver records, as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, which are stored and maintained by the Department of Public Safety, or
 - (3) audio or video recordings of the Department of Public Safety;

2. "Public body" shall include, but not be limited to, any office, department, board, bureau, commission, agency, trusteeship, authority, council, committee, trust or any entity created by a trust,

county, city, village, town, township, district, school district, fair board, court, executive office, advisory group, task force, study group, or any subdivision thereof, supported in whole or in part by public funds or entrusted with the expenditure of public funds or administering or operating public property, and all committees, or subcommittees thereof. Except for the records required by Section 24A.4 of this title, "public body" does not mean judges, justices, the Council on Judicial Complaints, the Legislature, or legislators;

3. "Public office" means the physical location where public bodies conduct business or keep records;

4. "Public official" means any official or employee of any public body as defined herein; and

5. "Law enforcement agency" means any public body charged with enforcing state or local criminal laws and initiating criminal prosecutions, including, but not limited to, police departments, county sheriffs, the Department of Public Safety, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Alcoholic Beverage Laws Enforcement Commission, and the Oklahoma State Bureau of Investigation.

CREDIT(S)

Laws 1985, c. 355, § 3, eff. Nov. 1, 1985; Laws 1987, c. 222, § 117, operative July 1, 1987; Laws 1988, c. 187, § 3, emerg. eff. June 6, 1988; Laws 1993, c. 39, § 1, eff. Sept. 1, 1993; Laws 1996, c. 209, § 2, eff. Nov. 1, 1996; Laws 1998, c. 315, § 4, emerg. eff. May 28, 1998; Laws 1998, c. 368, § 11, eff. July 1, 1998; Laws 2001, c. 355, § 1, emerg. eff. June 1, 2001; Laws 2002, c. 478, § 2, eff. July 1, 2002; Laws 2003, c. 3, § 42, emerg. eff. March 19, 2003; Laws 2004, c. 328, § 1, eff. July 1, 2004; Laws 2005, c. 199, § 4, eff. Nov. 1, 2005.

[FN1] Title 51, § 24A.1 et seq.

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The 1987 amendment, in subparagraph 1, rewrote the second sentence which prior thereto read: " 'Record' does not mean nongovernment personal effects temporarily coming into the possession of law enforcement or medical personnel"; in subparagraph 2 substituted "24A.4 of this title" for "4 of this act".

The 1988 amendment rewrote paragraph 1, which prior thereto read:

" 'Record' means all documents, including, but not limited to, any book, paper, photograph, microfilm, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. 'Record' does not mean nongovernment personal effects temporarily coming into the possession of law enforcement or medical personnel or material pertaining to financial information of private entities or research and development of products coming into the possession of the Oklahoma Development Finance Authority or the Oklahoma Center for the Advancement of Science and Technology which is determined by the respective board of directors to constitute confidential information;"

The 1993 amendment rewrote the second sentence of paragraph 1, which prior thereto read: "Record' does not mean nongovernment personal effects or, unless public disclosure is required by other laws or regulations, personal financial statements submitted to a public body for the purpose of obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body;"

The 1996 amendment, in paragraph 1, in the first sentence inserted "data files created by or used

with computer software," and in the second sentence inserted "computer software".

Laws 1998, c. 315, § 4, in paragraph 2, inserted "or any entity created by a trust", deleted "State" preceding "Legislature", and substituted "legislators" for "State Legislators"; and in paragraph 5, inserted "State" preceding "Bureau of Narcotics".

Laws 1998, c. 368, § 11 inserted "the Council on Judicial Complaints" in paragraph 2.

Laws 2001, c. 355, § 1, in paragraph 1, added the third sentence and made a nonsubstantive change.

Laws 2003, c. 478, § 2, in paragraph 1, added the fourth sentence and made a nonsubstantive change.

Laws 2003, c. 3, § 42, in paragraph 1, in the third sentence, inserted "or the Board of Trustees of the Quartz Mountain Arts and Conference and Nature Park" and added "or the Quartz Mountain Arts and Conference Center and Nature Park".

Section 3 of Laws 2002, c. 293, amending this section, was repealed by Laws 2003, c. 3, § 43.

Laws 2004, c. 328, § 1, in paragraph 1, in the first sentence, substituted "Transportation" for "Turnpike" and added the third sentence.

Laws 2005, c. 199, § 4, rewrote paragraph 1, which prior thereto read:

"1. 'Record' means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property. "Record" does not mean computer software, nongovernment personal effects or, unless public disclosure is required by other laws or regulations, vehicle movement records of the Oklahoma Turnpike Authority obtained in connection with the Authority's electronic toll collection system, personal financial information, credit reports or other financial data obtained by or submitted to a public body for the purpose of evaluating credit worthiness, obtaining a license, permit, or for the purpose of becoming qualified to contract with a public body. "Record" does not mean any personal information provided by a guest at any facility owned or operated by the Oklahoma Tourism and Recreation Department or the Board of Trustees of the Quartz Mountain Arts and Conference Center and Nature Park to obtain any service at such facility or by a purchaser of a product sold by or through the Oklahoma Tourism and Recreation Department or the Quartz Mountain Arts and Conference Center and Nature Park. "Record" does not mean a Department of Defense Form 214 (DD Form 214) filed with a county clerk, including any DD Form 214 filed before the effective date of this act;"

LIBRARY REFERENCES

2009 Electronic Update

Records ¶30.

Westlaw Topic No. 326.

C.J.S. Records §§ 60, 62 to 63, 65, 93, 95.

RESEARCH REFERENCES

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139 ALR, Federal 225, What Constitutes "Trade Secrets and Commercial or Financial Information

Obtained from Person and Privileged or Confidential," Exempt from Disclosure Under Freedom of Information Act (5 U.S.C.A. § 552(B)(4)) (FOIA).

8 ALR 6th 117, What Constitutes Commercial or Financial Information, Exclusive of Trade Secrets, Exempt from Disclosure Under State Freedom of Information Acts--Specific Applications.

5 ALR 6th 327, What Constitutes Commercial or Financial Information, Exclusive of Trade Secrets, Exempt from Disclosure Under State Freedom of Information Acts--General Rules of Construction.

27 ALR 4th 680, What Are "Records" of Agency Which Must be Made Available Under State Freedom of Information Act.

169 ALR 653, Enforceability by Mandamus of Right to Inspect Public Records.

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1. Construction and application

In ruling on a request for disclosure under the Open Records Act, the public body and the reviewing court must consider that, pursuant to the intent of the Act, disclosure of information is to be favored over a finding of exemption. Progressive Independence, Inc. v. Oklahoma State Dept. of Health, Okla.Civ.App. Div. 3, 174 P.3d 1005 (2007). Records ¶¶ 65

Records of expenses incurred by legislators or employees of the Legislature in the performance of their official duties or authorized actions and which are reimbursed to them are subject to disclosure pursuant to Oklahoma Open Records Act regardless of which public body is asked for records, as long as such records are in the public body's custody, control or possession. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

A State-created Indian housing authority, as a State agency administering or operating public property, is subject to the provisions of the Oklahoma Open Records Act. Op.Atty.Gen. No. 03-28 (July 8, 2003).

2. Records

Tape recordings of implied consent hearings on revocation or suspension of driver's license are public "records" within the meaning of the Open Records Act, even though recording the hearings is permissive; although the hearing involves one person, the outcome of whether one arrested for driving under the influence of alcohol will be permitted to continue to drive on public roads is the business of all the people of the state. Fabian & Associates, P.C. v. State ex rel. Dept. of Public Safety, Okla., 100 P.3d 703 (2004). Records ¶¶ 54

Records relating to defense of convicted defendant, who had been represented by conflict counsel, could only be selectively sealed, given defendant's constitutional rights, general right of public to know as recognized by Open Records Act, and acknowledgement that records of money budgeted for and paid in defense were matter of public record since first payment. Nichols v. Jackson, Okla., 55 P.3d 1044 (2002). Records ¶¶ 32

Because records of expenses incurred by legislators and employees of the Legislature in performance

of their official duties or authorized actions and reimbursed to them are subject to disclosure pursuant to Oklahoma Open Records Act, copies of such records given to the Office of State Finance as part of its claims processing function are also subject to disclosure once within that office's custody, control or possession. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

The Open Records Act applies to materials in connection with the transaction of public business, the expenditure of public funds or the administering of public property that may be created by or come into the possession of any public officials of the Panel unless the materials fall into a category entitled to confidentiality or otherwise exempted from the Act, and such materials constitutes a "record" as defined in the Act. Op.Atty.Gen. No. 02-5 (Feb. 7, 2002).

Electronic mail connected with the transaction of official business, the expenditure of public funds or the administration of public property and created by or received by a state public body or a public body of a political subdivision constitutes a record and is subject to the Oklahoma Open Records Act. Op.Atty.Gen. No. 01-46 (Nov. 7, 2001).

Registries maintained by libraries that can be used to determine specific information accessed by identifiable individuals on Internet at given time are records pursuant to Open Records Act. Op.Atty.Gen. Opinion No. 05-19 (June 13, 2005), 2005 WL 1429033.

A county assessor does not have the authority pursuant to 68 O.S. 1991 and Supp.1996, §§ 2814-2846, 28 O.S. Supp.1996, § 60, or the Open Records Act, 51 O.S. 1991 and Supp.1996, §§ 24A.1--24A.24, to contract to sell public records that are regularly kept in computer-readable format to a private business for resale to the public. Op.Atty.Gen. No. 96-26 (Jan. 16, 1997).

Telephone bills received by a municipality for use of municipal landline and cellular phones by elected officials and administrative personnel are records open for public inspection pursuant to the Oklahoma Open Records Act at 51 O.S.Supp.1995, § 24A.3(1) and § 24A.5. Op.Atty.Gen. No. 95-97 (March 13, 1996).

The membership list of the Oklahoma Historical Society is a public record required to be made available for public inspection and copying under the Oklahoma Open Records Act. Op.Atty.Gen. No. 95-15 (March 2, 1995).

Taped telephone conversations made in connection with the bidding process between the State Treasurer and outside securities firms are state records pursuant to the Oklahoma Records Management Act (67 Okl.St.Ann. §§ 201 et seq.) and the Oklahoma Open Records Act (51 Okl.St.Ann. § 24A.1 et seq.). As such, the State Treasurer is not authorized to erase those records except under the process set forth for the destruction or disposition of state records and the Oklahoma Records Management Act, the Archives of Records Commission Act, and § 590 of the Oklahoma Criminal Code. Op.Atty.Gen. No. 93-2 (Feb. 22, 1993).

3. Sealing of records

Defendant was entitled to have particular paragraphs of findings of fact, conclusions of law, and orders made in denial of request of attorney for additional attorney fees and any other documents describing contents of those paragraphs, including attachments listing overhead expenses and overhead equipment, sealed, except to extent that request sought to keep from public view list of expenses associated with overhead and purchase of equipment and general references to budget expenses for travel and expert witness fees, and specifics as to travel destinations and utilization of expert witnesses should be excised before any document was released as public record. Nichols v. Jackson, Okla., 55 P.3d 1044 (2002). Records ¶ 32

4. Business records

Business records of insurer which came into possession of Insurance Commissioner after insurer was placed in receivership did not come within scope of term "record," and thus were not "government records" subject to public disclosure under Open Records Act. Farrimond v. State ex rel. Fisher, Okla.,

8 P.3d 872 (2000). Records ¶ 54

5. Physical form or characteristic

Electronic mail may be retained in electronic form or on paper; but, if it is on paper, then all significant material contained in the electronic mail needs to be retained in other records in the agency. Op.Atty.Gen. No. 01-46 (Nov. 7, 2001).

6. Public body

Health Insurance High Risk Pool is private entity whose records are not subject to disclosure under Oklahoma Open Records Act, given that Health Insurance High Risk Pool is not public body, nor is it administered by public officials for purposes of Oklahoma Open Records Act. Op.Atty.Gen. Opinion No. 05-39 (November 8, 2005), 2005 WL 3087218.

The Oklahoma Open Records Act does not apply to the Governor's Security and Preparedness Executive Panel because the Panel is not a "public body" and because the documents possibly created by the Panel are not "public records". Op.Atty.Gen. No. 02-5 (Feb. 7, 2002).

7. Exemptions to public disclosure

City did not waive credit worthiness exemption in Open Records Act for financial documents submitted by potential lessee, where city employee stated that she did not disclose financial documents or data contained in documents to anyone at anytime other than her attorneys in municipal counselor's office for sole purpose of defending city in action seeking disclosure, documents submitted by organization seeking disclosure of financial records contained no specific financial information, and information was not released to public. Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City, Okla., 73 P.3d 871 (2003). Records ¶ 59

Oklahoma Open Records Act does not require disclosure of communications among members of the Legislature, whether in written or electronic form. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

8. Communications with third parties

Because "the Legislature, or legislators" do not come within the Open Record Act's definition of "public body" - except for records of receipt of expenditures of public funds under 51 O.S.2001, § 24A.4 - the Oklahoma Open Records Act does not require disclosure of written or electronic communications with third parties in the possession of "the Legislature or legislators"; however, a copy of a written or electronic communication "created by" a third-party public body or official and sent to a legislator would be a record of the creating public body or official subject to the Oklahoma Open Records Act in its custody, control or possession. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

A written or electronic communication from a legislator sent to a third-party public body or official would become a "record" upon being "received by" the public body or official and thereby become subject to the Act in the custody, control or possession of the third-party public body or official. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

Written or electronic communication from employee of Legislature would become a "record" upon being "received by" a third-party public body or official and thereby become subject to the Oklahoma Open Records Act in the custody, control or possession of the third-party public body or official. 51 O.S.2001, § 24A.3(1), (2). Similarly, a copy of a written or electronic communication "created by" a third-party public body and sent to an employee within his or her scope and duties of the Legislature would be a record of the public body subject to the Act in the custody, control or possession of the creating agency. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

51 Okl. St. Ann. § 24A.3, OK ST T. 51 § 24A.3

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

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51 Okl.St.Ann. § 24A.4

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

[^]Chapter 1. General Provisions

[^]Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.4. Record of receipts and expenditures**

In addition to other records which are kept or maintained, every public body and public official has a specific duty to keep and maintain complete records of the receipt and expenditure of any public funds reflecting all financial and business transactions relating thereto, except that such records may be disposed of as provided by law.

CREDIT(S)

Laws 1985, c. 355, § 4, eff. Nov. 1, 1985.

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Counties ⇐94.

Municipal Corporations ⇐172.

States ⇐75, 76, 122, 123.

Westlaw Topic Nos. 104, 268, 360.

C.J.S. Counties §§ 134 to 136.

C.J.S. Municipal Corporations §§ 406 to 408.

C.J.S. States §§ 247 to 249, 373, 377 to 380, 388 to 389.

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Treatises and Practice Aids

3 Oklahoma Probate Law and Practice DIV III PT B 710:1-3-70, Records in General.

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Public body 2

1. Construction and application

Records of expenses incurred by legislators or employees of the Legislature in the performance of their official duties or authorized actions and which are reimbursed to them are subject to disclosure pursuant to Oklahoma Open Records Act regardless of which public body is asked for records, as long as such records are in the public body's custody, control or possession. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

2. Public body

Because "the Legislature, or legislators" do not come within the Open Record Act's definition of "public body" - except for records of receipt of expenditures of public funds under 51 O.S.2001, § 24A.4 - the

Oklahoma Open Records Act does not require disclosure of written or electronic communications with third parties in the possession of "the Legislature or legislators"; however, a copy of a written or electronic communication "created by" a third-party public body or official and sent to a legislator would be a record of the creating public body or official subject to the Oklahoma Open Records Act in its custody, control or possession. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

3. Communications with third parties

A written or electronic communication from a legislator sent to a third-party public body or official would become a "record" upon being "received by" the public body or official and thereby become subject to the Act in the custody, control or possession of the third-party public body or official. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

Written or electronic communication from employee of Legislature would become a "record" upon being "received by" a third-party public body or official and thereby become subject to the Oklahoma Open Records Act in the custody, control or possession of the third-party public body or official. 51 O.S.2001, § 24A.3(1), (2). Similarly, a copy of a written or electronic communication "created by" a third-party public body and sent to an employee within his or her scope and duties of the Legislature would be a record of the public body subject to the Act in the custody, control or possession of the creating agency. Op.Atty.Gen. Opinion No. 08-19, (July 23, 2008), 2008 WL 2930577.

51 Okl. St. Ann. § 24A.4, OK ST T. 51 § 24A.4

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

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51 Okl.St. Ann. § 24A.5

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

*Chapter 1. General Provisions*Oklahoma Open Records Act (Refs & Annos)**⇒ § 24A.5. Inspection, copying and/or mechanical reproduction of records--
Exemptions**

All records of public bodies and public officials shall be open to any person for inspection, copying, or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, Sections 24A.1 through 24A.28 of this title, does not apply to records specifically required by law to be kept confidential including:

- a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges,
- b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes,
- c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
- d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions; provided however, the Department of Public Safety shall not be required to assemble for the requesting person specific information, in any format, from driving records relating to any person whose name and date of birth or whose driver license number is not furnished by the requesting person.

The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names, dates of birth, and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person.

3. Any request for a record which contains individual records of persons, and the cost of copying, reproducing or certifying each individual record is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of record copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall the record copying fee exceed twenty-five cents (\$0.25) per page for records having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

- a. is solely for commercial purpose, or
- b. would clearly cause excessive disruption of the essential functions of the public body,

then the public body may charge a reasonable fee to recover the direct cost of record search and copying; however, publication in a newspaper or broadcast by news media for news purposes shall

not constitute a resale or use of a record for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy. The fee charged by the Department of Public Safety for a copy in a computerized format of a record of the Department shall not exceed the direct cost of making the copy unless the fee for the record is otherwise set by law.

Any public body establishing fees under this act shall post a written schedule of the fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, the index shall not be copied or mechanically reproduced for the purpose of sale of the information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one person shall be available at all times to release records during the regular business hours of the public body.

CREDIT(S)

Laws 1985, c. 355, § 5, eff. Nov. 1, 1985; Laws 1986, c. 213, § 1, emerg. eff. June 6, 1986; Laws 1986, c. 279, § 29, operative July 1, 1986; Laws 1988, c. 187, § 4, emerg. eff. June 6, 1988; Laws 1992, c. 231, § 2, emerg. eff. May 19, 1992; Laws 1993, c. 97, § 7, eff. Sept. 1, 1993; Laws 1996, c. 209, § 3, eff. Nov. 1, 1996; Laws 2000, c. 342, § 8, eff. July 1, 2000; Laws 2001, c. 137, § 1, emerg. eff. April 24, 2001; Laws 2005, c. 199, § 5, eff. Nov. 1, 2005; Laws 2006, c. 16, § 34, emerg. eff. March 29, 2006.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Laws 1986, c. 213, § 1, in subparagraph 1, substituted "The Oklahoma Open Records Act" for "This act" and in item c, inserted ", Section 301 et seq. of Title 25 of the Oklahoma Statutes"; inserted subparagraph 4; and redesignated former subparagraphs 4 and 5 as subparagraphs 5 and 6, respectively.

Laws 1986, c. 279, § 29, in subparagraph 2 inserted the proviso; in subparagraph 3 inserted the first sentence, in the second sentence (the former first sentence) substituted "Otherwise a" for "A"; in the second paragraph of subparagraph 3 substituted "principal" for "principle".

The 1988 amendment, in paragraph 1, deleted subparagraph a, which read:

"records not discoverable under state law such as material prepared in anticipation of litigation or trial; or"

, redesignated former subparagraphs b and c as subparagraphs a and b, and in subparagraph a

inserted "privilege, the work product immunity from discovery"; and in paragraph 3, in the introductory paragraph, inserted the third sentence.

The 1992 amendment, in the introductory paragraph of paragraph 3, in the third sentence, substituted "Notwithstanding any state or local provision to the contrary, in" for "In".

The 1993 amendment inserted "and dates of birth or whose driver license numbers" in paragraph 2.

The 1996 amendment inserted the citation in the introductory clause of paragraph 1; in paragraph 2, added the second sentence; and in paragraph 3, in the introductory paragraph, in the second sentence substituted "or" for "and/or", in subparagraph a inserted "is" and substituted a comma for a semicolon, in subparagraph b substituted "would clearly" for "clearly would" and a comma for a semicolon, and in the last paragraph substituted "The" for "Said".

Laws 2000, c. 342, § 8, in paragraph 1, added subparagraph c, and made a nonsubstantive change.

Laws 2001, c. 137, § 1, in paragraph 1, added subparagraph d, and made a non substantive change.

Laws 2005, c. 199, § 5, in paragraph 1, in the introductory paragraph, substituted "Sections 24A.1 through 24A.28" for "Section 24A.1 et seq."; in paragraph 2, rewrote the first subparagraph, which prior thereto read:

"2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions, provided however, the Oklahoma Department of Public Safety shall not be required to assemble for the requesting person specific information requested from the Oklahoma Department of Public Safety's Driver License file relating to persons whose names and dates of birth or whose driver license numbers are not furnished by the requesting person."

; rewrote paragraph 3, which prior thereto read:

"3. Any request for a record which contains individual records of persons and the cost of copying, reproducing or certifying such individual record which is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of document copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall said document copying fee exceed twenty-five cents (\$0.25) per page for documents having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

"a. is solely for commercial purpose, or

"b. would clearly cause excessive disruption of the public body's essential functions,

"then the public body may charge a reasonable fee to recover the direct cost of document search; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of data for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy.

"Any public body establishing fees under this act shall post a written schedule of said fees at its principal office and with the county clerk.

"In no case shall a search fee be charged when the release of said documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

"The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information."

; and made other nonsubstantive changes.

Laws 2006, c. 16, § 34, in paragraph 2, in the second subparagraph, inserted ", and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule " and made a nonsubstantive change.

Section 1 of Laws 2005, c. 223, amending this section, was repealed by Laws 2006, c. 16, § 35.

CROSS REFERENCES

Local development increment district reports, exemption from copying fees provided under this section, see Title 51, § 24A.21.

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Westlaw Topic No. 326.
C.J.S. Records §§ 93 to 131.

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ALR Library

29 ALR 6th 507, Validity, Construction, and Application of State Statutes Implementing the Uniform Unclaimed Property Act or Its Predecessor--Modern Status.

8 ALR 6th 117, What Constitutes Commercial or Financial Information, Exclusive of Trade Secrets, Exempt from Disclosure Under State Freedom of Information Acts--Specific Applications.

5 ALR 6th 327, What Constitutes Commercial or Financial Information, Exclusive of Trade Secrets, Exempt from Disclosure Under State Freedom of Information Acts--General Rules of Construction.

Treatises and Practice Aids

1 Oklahoma Practice Ch. 5 § 2501, Privileges Recognized Only as Provided.

1 Oklahoma Practice Ch. 5 § 2509, Secrets of State and Other Official Information; Governmental Privileges.

1 Oklahoma Practice Ch. 7 § 2501-2513, Privileges and Rules of Confidentiality.

UNITED STATES SUPREME COURT

District court tax decisions as agency records of Department of Justice, alternative sources, see U.S. Dept. of Justice v. Tax Analysts, U.S. Dist. Col. 1989, 109 S.Ct. 2841, 492 U.S. 136, 106 L.Ed.2d 112.

Freedom of information,

Addresses of agency employees, see U.S. Dept. of Defense v. Federal Labor Relations Authority, 1994, 114 S.Ct. 1006, 510 U.S. 487, 127 L.Ed.2d 325.

Law enforcement exemption, confidential sources, presumptions, see U.S. Dept. of Justice v. Landano, U.S.N.J.1993, 113 S.Ct. 2014, 508 U.S. 165, 124 L.Ed.2d 84, on remand 873 F.Supp. 884.

Law enforcement records exemption, death scene photographs, privacy interest of family, public interest, see National Archives and Records v. Favish, 2004, 124 S.Ct. 1570.

Public interest test, Bureau of Land Management mailing list, see Bibles v. Oregon Natural Desert Ass'n, 1997, 117 S.Ct. 795, 519 U.S. 355, 167 A.L.R. Fed. 821, 136 L.Ed.2d 825, on remand 125 F.3d 1282.

Personnel and medical files exemption, similar files, interviews of Haitian nationals returned to Haiti, invasion of privacy, see U.S. Dept. of State v. Ray, U.S.Fla.1991, 112 S.Ct. 541, 502 U.S. 164, 116 L.Ed.2d 526.

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1. Construction and application

Private corporation was not required to obtain criminal records through individual requests to State Bureau of Investigation (OSBI) under specific statute, which had no provision for requests from commercial entities, but could employ request to Department of Corrections for several years' data under Open Records Act. Transportation Information Services, Inc. v. State ex rel. Oklahoma Dept. of Corrections, Okla., 970 P.2d 166 (1998), corrected. Records ¶ 62

Records created by a public body after receipt of a complaint must be open to public access and review under Open Records Act, unless there is express statutory exception. State ex rel. Oklahoma State Bd. of Medical Licensure and Supervision v. Migliaccio, Okla.App. Div. 3, 917 P.2d 483 (1996). Records ¶ 54

There is no provision in Open Records Act that allows court to balance individual's interest in having records remain private and public's interest in having access to records, and Legislature has determined that public's interest is greater except where specific statutory exemption is given. State ex rel. Oklahoma State Bd. of Medical Licensure and Supervision v. Migliaccio, Okla.App. Div. 3, 917 P.2d 483 (1996). Records ¶ 64

Provisions of the Open Records Act place the authority for making the initial determination as to what matters are exempt from disclosure upon the public body having possession of the records. Tulsa Tribune Co. v. Oklahoma Horse Racing Com'n, Okla., 735 P.2d 548 (1986). Records ¶ 62

Public body may establish reasonable procedures to protect integrity and organization of its records and to prevent excessive disruptions of its essential functions. Op.Atty.Gen. Opinion No. 06-35 (November 09, 2006), 2006 WL 3386751.

Use by requesting person of his or her own copying equipment is not prohibited by Act and must be permitted by public body as long as such person's copying process does not unreasonably disrupt essential functions of public body or result in defacing or loss of such records. Op.Atty.Gen. Opinion No. 06-35 (November 09, 2006), 2006 WL 3386751.

There is no requirement that the Ethics Commission or other public body supply an original document to the person requesting such record for inspection, copying and mechanical reproduction, as long as the copy furnished is a true and correct copy of the original. Op.Atty.Gen. Opinion No. 06-35 (November 09, 2006), 2006 WL 3386751.

Health Insurance High Risk Pool is private entity whose records are not subject to disclosure under Oklahoma Open Records Act, given that Health Insurance High Risk Pool is not public body, nor is it administered by public officials for purposes of Oklahoma Open Records Act. Op.Atty.Gen. Opinion No. 05-39 (November 8, 2005), 2005 WL 3087218.

2. Purpose

Purpose of the § 24 (Repealed; see, now, § 24A.1 et seq. of this title) is to allow public inspection for proper purposes during normal business hours of those records which the law requires public officials to keep and which pertain to their offices. Tulsa Tribune Co. v. Fulton, Okla., 696 P.2d 497 (1984). Records ¶ 50

3. Preemption

Federal Driver's Privacy Protection Act (DPPA), prohibiting states from disclosing personal information about automobile drivers except in enumerated situations, which conflicted with state freedom of information statutes, did not violate Tenth Amendment by invading powers reserved to states; DPPA neither commandeered state legislative process by requiring states to enact legislation regulating disclosure of personal information regarding drivers nor conscripted state officials to enforce federal law, activities prohibited by Tenth Amendment, but rather involved exercise of Commerce Clause power to legislate regarding driver information, with statute having preemptive effect on contrary

state legislation. State of Okl. ex rel. Oklahoma Dept. of Public Safety v. U.S., C.A.10 (Okla.)1998, 161 F.3d 1266, certiorari denied 120 S.Ct. 930, 528 U.S. 1114, 145 L.Ed.2d 810. Automobiles 136.5; Records 31; States 4.16(2)

4. Location of records

Public body that contracts with private vendor to provide electronic access to and reproduction of public body's records at another location or through world wide web is still required to provide access to records for inspection, copying, or mechanical reproduction at public body's office. Op.Atty.Gen. Opinion No. 05-3 (January 31, 2005), 2005 WL 292225.

If public body has more than one office location, records must be maintained and made available to public at office where records are located in ordinary course of business. Op.Atty.Gen. Opinion No. 05-3 (January 31, 2005), 2005 WL 292225.

5. Private vendor storage

Open Records Act does not prohibit public body from contracting with private vendor for record storage or for converting records to an approved electronic format; public body may use vendor to store records off site, but when person requests records, records must be retrieved from storage site and provided to requester at public body's office. Op.Atty.Gen. Opinion No. 05-3 (January 31, 2005), 2005 WL 292225.

6. Request for disclosure--In general

Requests for information from Department of Corrections (DOC) under Open Records Act did not have to be submitted on an inmate-by-inmate basis. Transportation Information Services, Inc. v. State ex rel. Oklahoma Dept. of Corrections, Okla., 970 P.2d 166 (1998), corrected. Records 62

Proper action for petitioner to pursue to obtain release of financial statements filed with the Horse Racing Commission was an application before the Commission seeking release of the requested information under the Open Records Act once impediment of district court's void protective order was removed and the Commission could act on the application. Tulsa Tribune Co. v. Oklahoma Horse Racing Com'n, Okla., 735 P.2d 548 (1986). Records 62

7. ---- Notice, request for disclosure

An individual whose interests are affected by a request for disclosure under the Open Records Act must be given notice of the determination made by the public body regarding the information requested. Tulsa Tribune Co. v. Oklahoma Horse Racing Com'n, Okla., 735 P.2d 548 (1986). Records 63

In order that an individual whose interests are affected by a request for disclosure under the Open Records Act might effectively act to protect those interests it is necessary that such an individual be provided written notice that a request has been made concerning information furnished by the individual and this notice should inform the individual of an opportunity to present written objection to release of the information, to be filed with the public body within a reasonable time following notification. Tulsa Tribune Co. v. Oklahoma Horse Racing Com'n, Okla., 735 P.2d 548 (1986). Records 62

8. Time

Elected county officers as defined in title 19, § 161, in performing recordkeeping duties, are required by the provisions of statute to make their records available to the public on weekday mornings and afternoons, excluding holidays, for approximately eight hours. Op.Atty.Gen. No. 83-219 (March 2, 1984).

9. Exemptions, generally

In determination of whether affected agency's records are exempt from Open Records Act, although both agency and reviewing court must consider Act's intention to favor disclosure of information over its withholding, if release of information in public body's custody would invade individual's privacy or damage affected party's commercial interests, statutory disclosure exemption for records not discoverable under state law such as material prepared in anticipation of litigation or trial would apply. Merrill v. Oklahoma Tax Com'n, Okla., 831 P.2d 634 (1992). Records ~~65~~ 57; Records ~~65~~ 58

Under the Open Records Act the legislature intended to provide exemptions from disclosure where the release of information possessed by a public body may be damaging to an individual. Tulsa Tribune Co. v. Oklahoma Horse Racing Com'n, Okla., 735 P.2d 548 (1986). Records ~~65~~ 58

Exemption to Open Records Act found in Ad Valorem Tax Code is limited only to "sworn lists of property" filed by taxpayer with county assessor and does not cover omitted property assessment sheets and notices sent by county assessor pursuant to unlisted personal property statute or records created or received in informal hearing process. Op.Atty.Gen. Opinion No. 05-50 (Dec. 21, 2005), 2005 WL 3734059.

A municipality may withhold portions of a telephone bill or delete information on the bill only if a privilege of confidentiality exists which authorizes confidentiality of the information with the burden to establish a privilege of confidentiality upon the person or entity that seeks to establish it. Op.Atty.Gen. No. 95-97 (March 13, 1996).

10. Excessive disruption of essential functions

Department of Correction's (DOC's) reasons for denying request of private corporation for seven years of data did not outweigh private corporation's interests in obtaining information, for use in its business of providing employment and criminal history information about potential employees; request did not involve excessive disruption of DOC's essential functions, and information could be segregated as requested. Transportation Information Services, Inc. v. State ex rel. Oklahoma Dept. of Corrections, Okla., 970 P.2d 166 (1998), corrected. Records ~~65~~ 62

Corporation, which was in business of providing employment and criminal background information on potential employees, was entitled to seven years' of public offender records on magnetic tape from Department of Corrections (DOC) under Open Records Act where it was prepared at all times to pay reasonable costs incurred by DOC in assembling information, request did not involve excessive disruption of DOC's essential functions, and information could be segregated as requested; same information would have been available to corporation if requested from local law enforcement agencies, as information sought fell within categories of crime-related documents available from such agencies. Transportation Information Services, Inc. v. State ex rel. Oklahoma Dept. of Corrections, Okla., 970 P.2d 166 (1998), corrected. Records ~~65~~ 62

11. Computerized records

Fact that records are available at some other physical location or over world wide web does not relieve public body of obligation to make records available at office, either in original or approved duplicated format. Op.Atty.Gen. Opinion No. 05-3 (January 31, 2005), 2005 WL 292225.

The electronic access system needs to be secure enough to preserve the records and safeguard them from destruction, mutilation and alteration if the agency wishes to allow a requestor access to specific data in an electric file; and, if the agency's system cannot provide the security, the agency needs to provide the requested information in a format in which the confidential information can be redacted. Op.Atty.Gen. No. 01-46 (Nov. 7, 2001).

State agency which has computerized its files of public records may, under statute, allow commercial entity access to specific data in that file in on-line manner, provided that system for permitting on-line access assures that records will be fully preserved and safeguarded from destruction, mutilation, and alteration. Op.Atty.Gen. No. 85-36 (April 30, 1986).

12. Election materials

Oklahoma Election Code [26 Okl.Stat. Ann. § 1-101 et seq.] supplies exclusive procedure for examination of election materials, and Open Records Act [51 Okl.Stat. Ann. § 24A.1 et seq.] does not provide alternative form of discovery procedure whereby any citizen may obtain access to election materials; it is only business records of Election Board, exclusive of ballots and similar election materials, which public may be entitled to obtain under Open Records Act. Milton v. Hayes, Okla., 770 P.2d 14 (1989). Records ↩ 54

13. Fees

Providing crime records to private corporation, which was in business of providing employment and criminal background information on potential employees, under Open Records Act was not "gift" prohibited by state law; no legal foundation for assertion that the state was losing value of difference between what the corporation could charge and what it would cost DOC to provide information, and DOC was permitted to charge what it would cost to provide service requested. Transportation Information Services, Inc. v. State ex rel. Oklahoma Dept. of Corrections, Okla., 970 P.2d 166 (1998), corrected. Records ↩ 55

Trial court's determination that taxpayer's records request from state agency was subject to search fee and copy fee under the Open Records Act was not clearly contrary to weight of evidence; public interest was as equally well served by public agencies performing their essential services without burdensome, disruptive records requests and providing release of information to taxpayers. McVarish v. New Horizons Community Counseling and Mental Health Services, Inc., Okla.App. Div. 2, 909 P.2d 155 (1995). Records ↩ 68

Inmate was not entitled to free copies of docket sheet and case index from criminal case requested under Open Records Act, despite determination in criminal proceedings that inmate was indigent; Act provides for collection of copy costs and does not authorize public body to supply free copies of documents to persons stating they are indigent and, in any event, inmate had adequate funds to pay costs for copies. Williams v. Austin, Okla.App. Div. 1, 890 P.2d 416 (1994). Records ↩ 68

Evidence supported finding that Tax Commission's fees of \$350 for microfiche copy of income tax filers index containing names and addresses of approximately 1.3 million persons who file tax returns and \$258 for computer tape copy of unclaimed property division's desk list containing information required to be published by Uniform Disposition of Unclaimed Property Act were reasonable; because of heavy workload, it would be disruptive of Commission's day-to-day critical functions to pull someone off their job to fill request for computer tape and many persons made copies of Commission records without incurring cost by using their own copying materials in Commission office. Merrill v. Oklahoma Tax Com'n, Okla., 831 P.2d 634 (1992). Records ↩ 68

Evidence supported finding that attorney's request to Tax Commission for microfilm copy of income tax filers index containing names and addresses of approximately 1.3 million persons who file tax returns and unclaimed property division's desk list containing information required to be published by Uniform Disposition of Unclaimed Property Act was "solely for commercial purposes" as required by statute for Tax Commission to charge fees including labor and administrative costs, although attorney contended that he intended to conduct independent audit of Commission to detect any wrongdoing on agency's part; when attorney was first asked his reason for requesting documents, he wrote that he wanted to use them in his law practice. Merrill v. Oklahoma Tax Com'n, Okla., 831 P.2d 634 (1992). Records ↩ 65

Furnishing electronic copies of instruments kept by clerk in computer-readable format is subject to fee limitations of Oklahoma Open Records Act, which allows search fee in some cases. Op. Atty. Gen. Opinion No. 05-21 (June 29, 2005), 2005 WL 1605978.

A county assessor may only charge the fees for records that are regularly kept in computer-readable format for delivery to a private business or resale to the public that are set forth in 28 O.S.

Supp.1996, § 60 and 51 O.S. Supp.1996, § 24A.5(3). Op.Atty.Gen. No. 96-26 (Jan. 16, 1997).

Insofar as copying or reproduction fees are concerned, a county assessor, under 51 O.S. Supp.1996, § 24A.5(3), may charge a "fee only for recovery of the reasonable, direct costs of [the] mechanical reproduction" of the requested computer-readable records. Op.Atty.Gen. No. 96-26 (Jan. 16, 1997).

A county assessor, pursuant to 51 O.S. Supp.1996, § 24A.5(3), may charge a search fee in connection with responding to a request for such records only if the request "is solely for commercial purpose" or "would clearly cause excessive disruption of the public body's essential functions. Op.Atty.Gen. No. 96-26 (Jan. 16, 1997).

Under statute, a public body subject to Open Records Act's requirements may not charge a special "search fee" to any member of the news media who is seeking information in the public interest, such as attempts by such persons to determine whether those entrusted with the affairs of government are honestly, faithfully, and competently performing their duties as public servants. Op.Atty.Gen. No. 88-35 (June 23, 1988).

14. Arrest records

Party had no right to notice and hearing before city released public records of his arrest under Open Records Act. City of Lawton v. Moore, Okla., 868 P.2d 690 (1993). Records ¶ 62

15. Pleadings

Pleadings in a criminal case, particularly the information, are "records" within the meaning of the Oklahoma Open Records Act and must be made available for public inspection once filed with the court clerk unless it has been sealed by a court or is protected by a privilege of confidentiality. Op.Atty.Gen. No. 99-58 (August 19, 1999).

16. Commercial interests

A public body in determining what materials may be exempted from disclosure or may be subject to deletion from other material which are subject to disclosure under the Open Records Act may consider the guidelines set out in title 12, § 3203 providing for the protection of information which would be damaging to the commercial interests of a party involved, as the Legislature clearly intended such protection to be applicable to the disclosure of information under the Open Records Act. Tulsa Tribune Co. v. Oklahoma Horse Racing Com'n, Okla., 735 P.2d 548 (1986). Records ¶ 59

17. Drug and alcohol testing

When a State employee is discharged because of a positive random drug testing result, the State must disclose the termination to potential employers doing employment checks on the employee, but may not disclose that the termination was for failure of a drug or alcohol test or for refusal to take such a test. Op.Atty.Gen. No. 97-79 (Oct. 13, 1997).

18. Foster care

Under former § 24 (Repealed; see, now, this section) the Department of Human Services must provide access to any list of licensed foster parents in Oklahoma County compiled and maintained by the Department of Human Services in the course of official business, as such a list would be a "public record" under Oklahoma law. Op.Atty.Gen. No. 82-69 (April 12, 1982).

19. Governor's office

Prior to amendment of mansion account law (title 74, § 7), Governor was not required to keep open for public inspection his records pertaining to his expenditure of legislatively appropriated funds for mansion account, since expenditure of such appropriation did not constitute records pertaining to office of Governor which were required by law to be kept within meaning of former § 24 (Repealed;

see, now, this section). Oklahoma City News Broadcasters Ass'n, Inc. v. Nigh, Okla., 683 P.2d 72 (1984). Records ↵ 54

20. Informants

There is no specific statutory authority to refuse to divulge information obtained from "confidential informers" relating to background investigation performed by Oklahoma State Bureau of Investigation, nor may OSBI refuse to divulge name of informer where no investigation of a violation of law is being conducted, unless individual who provided information has objected to its release, and agency has made a good faith finding that release of the information will be damaging to the objecting individual. Op.Atty.Gen. Nos. 86-39, 86-69 (June 20, 1986).

21. Judiciary

Although initial complaint filed with Council on Judicial Complaints is not included within statutory secrecy provisions (title 20, § 1658) as "part of the proceedings," it does not follow that a complaint is a public document as Council rules mandate confidentiality; complaint is not a "public document" as it is a record required by law to be kept secret and, hence, neither Council nor its ex officio secretary were required to answer interrogatories propounded by defendant in libel action inquiring whether complaint was still pending and any disposition thereof. Council on Judicial Complaints v. Maley, Okla., 607 P.2d 1180 (1980). Records ↵ 32

Copies of the findings and conclusions of the Council on Judicial Complaints which charge a member of the Judiciary with one of the grounds for removal specified in Const. Art. 7A, § 1 or title 20, § 1404 or otherwise charge such member of the Judiciary with wilful misconduct or malfeasance would not be public records under former § 24 (Repealed; see, now, this section) but would rather be subject to the secrecy requirements set forth in title 20, § 1658 and title 22, § 346. In those instances where the findings and conclusions of the Council on Judicial Complaints do not charge a member of the Judiciary with one of the grounds of removal otherwise charge such member with willful misconduct or malfeasance, copies of such findings and conclusions can, in the discretion of the Council on Judicial Complaints, be made public. Op.Atty.Gen. No. 78-240 (Dec. 28, 1978).

Documents comprising a background investigation performed by the Oklahoma State Bureau of Investigation for the Judicial Nominating Commission are confidential records and cannot be disclosed to the subject of the investigation or to the public. Op.Atty.Gen. No. 97-16 (Aug. 29, 1997).

22. Medicaid

Cost reports and audits which were filed with, and kept by, the Department of Human Services in accordance with its mandate under federal law to act as the reviewing and disbursing agent for the federal government in connection with the medicaid program in which various nursing homes participated were subject to public inspection under former § 24 (Repealed; see, now, this section) and, as such, were subject to being disclosed on request of newspaper absent evidence that they fell within some delineated exception. Tulsa Tribune Co. v. Fulton, Okla., 696 P.2d 497 (1984). Records ↵ 52; Records ↵ 54

Confidentiality was not a quid pro quo offered to nursing homes for filing cost reports and audits with the Department of Human Services in connection with the federal medicaid program and, hence, was not a basis for asserting that the cost reports and audits were exempt from disclosure under former § 24 (Repealed; see, now, this section). Tulsa Tribune Co. v. Fulton, Okla., 696 P.2d 497 (1984). Records ↵ 59

23. Mine inspector

Under the provisions of title 45, § 33 and former § 24 (Repealed; see, now, this section), all books and records of the Chief Mine Inspector pertaining to his office, not otherwise expressly made secret or confidential by statute, are open and available for public inspection for proper purposes, at proper and reasonable times and in a proper manner to any and all interested persons. Op.Atty.Gen. No. 78-

146 (May 10, 1978).

24. Motor vehicles

The records kept by the Oklahoma tag agents which indicate the existence or nonexistence of security interests retained in motor vehicles are matters of public record under former § 23.2b of title 47 (Repealed; see, now, § 1110 of title 47) and are to be accessible to all legitimate inquirers. Op.Atty.Gen. No. 81-8 (April 9, 1981).

25. Municipal bills or charges

Telephone bills received by a municipality for use of municipal landline and cellular phones by elected officials and administrative personnel are records open for public inspection pursuant to the Oklahoma Open Records Act at 51 O.S.Supp.1995, § 24A.3(1) and § 24A.5. Op.Atty.Gen. No. 95-97 (March 13, 1996).

26. Property records

Before amendment of Uniform Disposition of Unclaimed Property Act providing for confidentiality of filed reports, all unclaimed property records collected by Tax Commission in discharge of its responsibility under Act which were not statutorily required to be made public were exempt from purview of Open Records Act, although attorney contended that Open Records Act allowed access to all unclaimed property division records because they were not specifically required by law to be confidential and that he wanted to act as "private attorney general"; the reports contained individual financial information of type that would ordinarily be subject to court's protective order because it had potential to harm unclaimed property reporters' commercial interests. Merrill v. Oklahoma Tax Com'n, Okla., 831 P.2d 634 (1992). Records 59

Where a municipality has contracted with a nonprofit corporation to operate public property, records pertaining to the operation, maintenance or improvement of such property or the administration or performance of the contract are public records open for public inspection, even though such records may be kept and maintained in the custody of the nonprofit corporation. Op.Atty.Gen. No. 81-184 (July 23, 1981).

27. Schoolteachers

Teachers contracts, employee payroll claims, or any other public record reflecting the exact salaries of public school teachers and other public employees, are subject to the provisions of Former § 24 (Repealed; see, now, this section), and therefore are required to be kept open for public inspection. Op.Atty.Gen. No. 76-118 (March 15, 1976).

28. Tax returns

Former § 24 (Repealed; see, now, this section) prohibiting application of the open records law to income tax returns filed with the Oklahoma Tax Commission or other "records required by law to be kept secret" did not apply to cost reports and audits on nursing homes kept by the Department of Human Services in connection with its responsibilities under the federal medicaid program. Tulsa Tribune Co. v. Fulton, Okla., 696 P.2d 497 (1984).

The provisions of the Open Meeting Act [title 25, § 301 et seq.] are wholly applicable to the Oklahoma Tax Commission and the Commission is not exempt from the Act [title 25, § 301 et seq.] as a part of the "state judiciary" even though it performs adjudicative functions; however, in light of the provisions of title 68, § 205 and 26 U.S.C.A. §§ 6103 and 7213 and former 26 U.S.C.A. § 7217, concerning the confidentiality of tax returns and return information, and imposing state and federal criminal sanctions on the divulgence of such information, that portion of a proceeding before the Tax Commission involving the divulgence of tax returns and return information may be closed. The proceeding should be open until such time as confidential tax returns or return information must be divulged and then may be closed temporarily for the divulgence of the information and re-opened

again. In all other respects, meetings, hearings or proceedings of the Tax Commission can go into executive session for the purpose of discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee of the Commission, and under the holding of *Oklahoma Association of Municipal Attorneys, et al. v. State of Oklahoma*, 49 O.B.J. 719 (April 25, 1978), for purposes of confidential communications between a majority of the commissioners and staff attorneys, but only if such communications concern "a pending investigation, claim or action and disclosure of the matters discussed would seriously impair the ability of the Commission to process the claim or conduct the pending investigation, litigation or proceeding in the public interest." Op.Atty.Gen. No. 77-285 (May 31, 1978).

29. Electronic mail

Electronic mail connected with the transaction of official business, the expenditure of public funds or the administration of public property and created by or received by a state public body or a public body of a political subdivision constitutes a record and is subject to the Oklahoma Open Records Act. Op.Atty.Gen. No. 01-46 (Nov. 7, 2001).

30. Indian housing authority records

The names and addresses of the participants contained in the records of a State-created Indian housing authority are subject to disclosure under the Oklahoma Open Records Act because no exemption applies and no other provision of law requires their confidentiality. Op.Atty.Gen. No. 03-28 (July 8, 2003).

31. Presumptions and burden of proof

Unless a record falls within a statutorily prescribed exemption in the Open Records Act, the record must be made available for public inspection; the public body urging an exemption has the burden to establish the applicability of such exemption. *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City, Okla.*, 73 P.3d 871 (2003). Records ¶ 54; Records ¶ 65

In ruling on a request for disclosure the public body and the reviewing court must consider that, pursuant to the intent of the Open Records Act, disclosure of information is to be favored over a finding of exemption and the party urging the exemption of materials from disclosure will have the burden of proof to show the applicability of such an exemption. *Tulsa Tribune Co. v. Oklahoma Horse Racing Com'n, Okla.*, 735 P.2d 548 (1986). Records ¶ 50; Records ¶ 65

32. Review

Legislature, by amendments to Open Records Act, intended to obviate *Tulsa Tribune* holding that potentially aggrieved individual had standing to challenge public body's release of records under Act. *State ex rel. Oklahoma State Bd. of Medical Licensure and Supervision v. Migliaccio, Okla.App. Div. 3*, 917 P.2d 483 (1996). Records ¶ 63

Agency decision as to whether its records are exempt from Open Records Act may be reviewed by district court in suit for injunctive and/or declaratory relief. *Merrill v. Oklahoma Tax Com'n, Okla.*, 831 P.2d 634 (1992). Records ¶ 63

51 Okl. St. Ann. § 24A.5, OK ST T. 51 § 24A.5

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51 Okl.St.Ann. § 24A.6

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌘ Chapter 1. General Provisions

⌘ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.6. Public body maintaining less than 30 hours of regular business per week--
Inspection, copying or mechanical reproduction of records**

A. If a public body or its office does not have regular business hours of at least thirty (30) hours a week, the public body shall post and maintain a written notice at its principal office and with the county clerk where the public body is located which notice shall:

1. Designate the days of the week when records are available for inspection, copying or mechanical reproduction;
2. Set forth the name, mailing address, and telephone number of the individual in charge of the records; and
3. Describe in detail the procedures for obtaining access to the records at least two days of the week, excluding Sunday.

B. The person requesting the record and the person authorized to release the records of the public body may agree to inspection, copying, or mechanical reproduction on a day and at a time other than that designated in the notice.

CREDIT(S)

Laws 1985, c. 355, § 6, eff. Nov. 1, 1985.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 51.

Westlaw Topic No. 326.

C.J.S. Records §§ 97, 99.

51 Okl. St. Ann. § 24A.6, OK ST T. 51 § 24A.6

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51 Okl.St.Ann. § 24A.7

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌚ Chapter 1. General Provisions

⌚ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.7. Personnel records--Confidentiality--Inspection and copying**

A. A public body may keep personnel records confidential:

1. Which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline, or resignation; or
2. Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications submitted by persons not hired by the public body, and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.

B. All personnel records not specifically falling within the exceptions provided in subsection A of this section shall be available for public inspection and copying including, but not limited to, records of:

1. An employment application of a person who becomes a public official;
2. The gross receipts of public funds;
3. The dates of employment, title or position; and
4. Any final disciplinary action resulting in loss of pay, suspension, demotion of position, or termination.

C. Except as may otherwise be made confidential by statute, an employee of a public body shall have a right of access to his own personnel file.

D. Public bodies shall keep confidential the home address, telephone numbers and social security numbers of any person employed or formerly employed by the public body.

CREDIT(S)

Laws 1985, c. 355, § 7, eff. Nov. 1, 1985; Laws 1990, c. 257, § 6, emerg. eff. May 23, 1990; Laws 1994, c. 177, § 1, eff. Sept. 1, 1994; Laws 2005, c. 116, § 2, eff. Nov. 1, 2005.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

The 1990 amendment rewrote subsection A.2, which prior thereto read:

"Where disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, or employment applications submitted by persons not hired by the public body."

The 1994 amendment added subsection D.

Laws 2005, c. 116, § 2, in subsection D, inserted “, telephone numbers and social security numbers”.

LIBRARY REFERENCES

2009 Electronic Update

Records ~~58~~ 58.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 104 to 105, 107.

RESEARCH REFERENCES

2009 Electronic Update

Treatises and Practice Aids

Termination of Employment § 39:38, Access to Personnel and Medical Files.

NOTES OF DECISIONS

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1. Construction and application

Entitlement to confidentiality under Open Records Act as employee of Board of Medical Licensure and Supervision is clearly intended to apply to internal employees of a public body, and not those licensed by that body. State ex rel. Oklahoma State Bd. of Medical Licensure and Supervision v. Migliaccio, Okla.App. Div. 3, 917 P.2d 483 (1996). Records ~~58~~ 58

2. State agencies

Individual state agencies are employers for purposes of statute. Op.Atty.Gen. No. 97-48 (Dec. 10, 1997).

State agencies, as employers, may disclose a current or former employee's job performance information and/or employee's service evaluation to prospective employers only if such disclosure is done with the consent or at the request of the current or former employee. Op.Atty.Gen. No. 97-48 (Dec. 10, 1997).

An agency employer, in its discretion, may disclose employee service evaluations done in compliance with the Oklahoma Personnel Act, and/or job performance information of former or current employees, if such disclosure is done at the request of or with the consent of the current or former employee, even though said evaluations and/or information may be kept confidential under the Oklahoma Open Records Act. Op.Atty.Gen. No. 97-48 (Dec. 10, 1997).

3. Employees

Public bodies other than state agencies may keep the telephone numbers of public employees confidential if disclosure of the telephone numbers would constitute a clearly unwarranted invasion of personal privacy. Op.Atty.Gen. No. 99-30 (July 19, 1999).

While records of Oklahoma State Bureau of Investigation relating to background investigation of an employee may not be disclosed to general public, an employee of the agency is entitled, under this section, to review his or her background investigation as part of his or her own personnel file.

Op. Atty. Gen. Nos. 86-39, 86-69 (June 20, 1986).

4. Service ratings

Copies of employee service ratings furnished to the Office of Personnel Management pursuant to 74 O.S. Supp. 1995, § 840-4.17(F) are records of the employing agency, and, if they have been designated by the agency as confidential, they do not lose that status upon a copy being furnished to the Office of Personnel Management. Op. Atty. Gen. No. 95-68 (Feb. 7, 1996).

5. Drug and alcohol testing

When a State employee is discharged because of a positive random drug testing result, the State must disclose the termination to potential employers doing employment checks on the employee, but may not disclose that the termination was for failure of a drug or alcohol test or for refusal to take such a test. Op. Atty. Gen. No. 97-79 (Oct. 13, 1997).

51 Okl. St. Ann. § 24A.7, OK ST T. 51 § 24A.7

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

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51 Okl.St. Ann. § 24A.8

Oklahoma Statutes Annotated CurrentnessTitle 51. Officers (Refs & Annos)

⌕ Chapter 1. General Provisions

⌕ Oklahoma Open Records Act (Refs & Annos)⇒ **§ 24A.8. Law enforcement records--Disclosure**

A. Law enforcement agencies shall make available for public inspection, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;
2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;
3. A chronological list of incidents pertaining to the arrest, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred; and
4. Radio logs, including a chronological listing of the calls dispatched.

B. Law enforcement agencies shall make available for public inspection, if kept, the following records:

1. Conviction information, including the name of any person convicted of a criminal offense;
2. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;
3. A crime summary, including an agency summary of crimes reported and public calls for service by classification or nature and number; and
4. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of discharge or escape of the prisoner.

C. Except for the records listed in subsections A and B of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

D. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

E. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act [FN1] shall be made available for public inspection in a manner to be determined by the Department.

F. The Council on Law Enforcement Education and Training (C.L.E.E.T.) shall keep confidential all records it maintains pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and deny release of records relating to any employed or certified full-time officer, reserve officer, retired officer or other person; teacher lesson plans, tests and other teaching materials; and personal communications concerning individual students except under the following circumstances:

1. To verify the current certification status of any peace officer;
2. As may be required to perform the duties imposed by Section 3311 of Title 70 of the Oklahoma Statutes;
3. To provide to any peace officer copies of the records of that peace officer upon submitting a written request;
4. To provide, upon written request, to any law enforcement agency conducting an official investigation, copies of the records of any peace officer who is the subject of such investigation;
5. To provide final orders of administrative proceedings where an adverse action was taken against a peace officer; and
6. Pursuant to an order of the district court of the State of Oklahoma.

G. The Department of Public Safety shall keep confidential:

1. All records it maintains pursuant to its authority under Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway Patrol Division, the Communications Division, and other divisions of the Department relating to:

- a. training, lesson plans, teaching materials, tests, and test results,
- b. policies, procedures, and operations, any of which are of a tactical nature, and
- c. the following information from radio logs:
 - (1) telephone numbers,
 - (2) addresses other than the location of incidents to which officers are dispatched, and
 - (3) personal information which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725; and

2. For the purpose of preventing identity theft and invasion of law enforcement computer systems, except as provided in Title 47 of the Oklahoma Statutes, all driving records.

CREDIT(S)

Laws 1985, c. 355, § 8, eff. Nov. 1, 1985; Laws 1989, c. 212, § 8, eff. Nov. 1, 1989; Laws 2000, c. 349, § 2, eff. Nov. 1, 2000; Laws 2001, c. 5, § 29, emerg. eff. March 21, 2001; Laws 2005, c. 199, § 6, eff. Nov. 1, 2005; Laws 2006, c. 16, § 36, emerg. eff. March 29, 2006.

[FN1] Title 57 § 581 et seq.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

The 1989 amendment added subsection D.

Laws 2000, c. 349, § 2, in subsection A, paragraph 8, made gender-neutral changes; and in subsection D, deleted "not" following "shall" and added "in a manner to be determined by the Department".

Laws 2001, c. 5, § 29, added subsection E.

Section 1 of Laws 2000, c. 226, amending this section, was repealed by Laws 2001, c. 5, § 30.

Laws 2005, c. 199, § 6, rewrote the section, which prior thereto read:

"A. Law enforcement agencies shall make available for public inspection, if kept, the following records:

"1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;

"2. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer;

"3. Conviction information, including the name of any person convicted of a criminal offense;

"4. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person;

"5. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer and a brief summary of what occurred;

"6. A crime summary, including a departmental summary of crimes reported and public calls for service by classification or nature and number;

"7. Radio logs, including a chronological listing of the calls dispatched; and

"8. Jail registers, including jail blotter data or jail booking information recorded on persons at the time of incarceration showing the name of each prisoner with the date and cause of his commitment, the authority committing the prisoner, whether committed for a criminal offense, a description of the prisoner, and the date or manner of his discharge or escape.

"B. Except for the records listed in subsection A of this section and those made open by other state or local laws, law enforcement agencies may deny access to law enforcement records except where a court finds that the public interest or the interest of an individual outweighs the reason for denial.

"C. Nothing contained in this section imposes any new recordkeeping requirements. Law enforcement records shall be kept for as long as is now or may hereafter be specified by law. Absent a legal requirement for the keeping of a law enforcement record for a specific time period, law enforcement agencies shall maintain their records for so long as needed for administrative purposes.

"D. Registration files maintained by the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act shall be made available for public inspection in a manner to be determined by the Department."

Laws 2006, c. 16, § 36, in subsection F, inserted paragraph 4 and redesignated former paragraphs 4 and 5 as paragraphs 5 and 6.

Section 1 of Laws 2005, c. 35, amending this section, was repealed by Laws 2006, c. 16, § 37.

LIBRARY REFERENCES

2009 Electronic Update

Records ¶60.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 107 to 111.

RESEARCH REFERENCES

2009 Electronic Update

Encyclopedias

7 Am. Jur. Proof of Facts 3d 345, Negligent Hiring of Security Guard.

Forms

2A Vernon's Oklahoma Forms 2d § 13.8, Wiretapping.

UNITED STATES SUPREME COURT

Regulation of access to names and addresses of arrestees, see Los Angeles Police Dept. v. United Reporting Publishing Corp., 1999, 120 S.Ct. 483.

NOTES OF DECISIONS

Construction and application 1

Production of records 2

Traffic collision reports 4

Traffic offenses 3

1. Construction and application

Only those records of the Oklahoma County Sheriff's Department Bomb Squad which fall under the provisions of 51 O.S. 1991, § 24A.8(A) are subject to release under the Oklahoma Open Records Act. Op.Atty.Gen. No. 96-10 (June 13, 1996).

Records used for internal detection and investigation of crimes are not public in nature; however, administrative records are within the purview of former § 24 (Repealed; see, now, this section) and open to public inspection. Whether a record is public in nature is a question of fact that can only be determined from the type and purpose of the record maintained, its use, and the statutes, ordinances, and policies pertaining to the individual law enforcement entity maintaining the record in question. Op.Atty.Gen. No. 79-172 (July 20, 1979).

Jail register, police blotter, and recorded electronic transactions with police department are in general subject to former § 24 (Repealed; see, now, this section). Op.Atty.Gen. No. 84-119 (March 12, 1985).

2. Production of records

Police officer did not violate Oklahoma Open Records Act by failing to produce documents requested by former city employee being investigated for ticket scalping scheme; officer had no duty to produce any documents under Act because law enforcement agencies, not individual officers, are required by Act to produce records. Primas v. City of Oklahoma City, C.A.10 (Okla.)1992, 958 F.2d 1506. Records
62

3. Traffic offenses

There is no prohibition in the laws of this State against the Department of Public Safety furnishing to the news media, law enforcement officials, or private individuals, lists of names and addresses of persons whose operators' licenses have been revoked or suspended. Op.Atty.Gen. No. 72-194 (July 18, 1972).

4. Traffic collision reports

Traffic collision reports do not fall within one of the eight categories of crime-related documents

required to be open-listed in law enforcement section of the Open Records Act, and thus they may be withheld if police department's interest is sufficient to outweigh interest of person seeking disclosure. Cummings & Associates, Inc. v. City of Oklahoma City ex rel. Oklahoma City Police Dept., Okla., 849 P.2d 1087 (1993). Records ↵ 54; Records ↵ 64

Lawyers seeking access to police department's traffic collision reports by date, without providing names of parties or other information relating to particular accident, were not entitled to disclosure under Open Records Act; where reports were not separated from crime incident reports in data entry section so that computer was unable to generate list of accidents using only date absent development of special computer program, lawyers' desired use of reports for target mail solicitation of clients from those injured in automobile collisions, though not violating Rules of Professional Conduct, did not outweigh the department's interest in withholding reports without receiving the basic information required of other persons requesting copies. Cummings & Associates, Inc. v. City of Oklahoma City ex rel. Oklahoma City Police Dept., Okla., 849 P.2d 1087 (1993). Records ↵ 54; Records ↵ 64

51 Okl. St. Ann. § 24A.8, OK ST T. 51 § 24A.8

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

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51 Okl.St. Ann. § 24A.9

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

↗ Chapter 1. General Provisions

↗ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.9. Personal notes and personally created material--Confidentiality**

Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a public body prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a public project.

CREDIT(S)

Laws 1985, c. 355, § 9, eff. Nov. 1, 1985.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 57.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 103, 105.

51 Okl. St. Ann. § 24A.9, OK ST T. 51 § 24A.9

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

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51 Okl.St.Ann. § 24A.10

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

↗ Chapter 1. General Provisions

↗ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.10. Voluntarily supplied information--Records providing unfair competitive advantage--Department of Commerce records--Public utility records--Confidentiality--Disclosure**

A. Any information, records or other material heretofore voluntarily supplied to any state agency, board or commission which was not required to be considered by that agency, board or commission in the performance of its duties may, within thirty (30) days from June 6, 1988, be removed from the files of such agency, board or commission by the person or entity which originally voluntarily supplied such information. Provided, after thirty (30) days from the effective date of this act, [FN1] any information voluntarily supplied shall be subject to full disclosure pursuant to this act. [FN2]

B. If disclosure would give an unfair advantage to competitors or bidders, a public body may keep confidential records relating to:

1. Bid specifications for competitive bidding prior to publication by the public body; or
2. Contents of sealed bids prior to the opening of bids by a public body; or
3. Computer programs or software but not data thereon; or
4. Appraisals relating to the sale or acquisition of real estate by a public body prior to award of a contract; or
5. The prospective location of a private business or industry prior to public disclosure of such prospect except for records otherwise open to inspection such as applications for permits or licenses.

C. Except as set forth hereafter, the Oklahoma Department of Commerce may keep confidential:

1. Business plans, feasibility studies, financing proposals, marketing plans, financial statements or trade secrets submitted by a person or entity seeking economic advice from the Oklahoma Department of Commerce; and
2. Information compiled by the Oklahoma Department of Commerce in response to those submissions.

The Oklahoma Department of Commerce may not keep confidential that submitted information when and to the extent the person or entity submitting the information consents to disclosure.

D. Although they must provide public access to their records, including records of the address, rate paid for services, charges, consumption rates, adjustments to the bill, reasons for adjustment, the name of the person that authorized the adjustment, and payment for each customer, public bodies that provide utility services to the public may keep confidential credit information, credit card numbers, telephone numbers, social security numbers, bank account information for individual customers, and utility supply and utility equipment supply contracts for any industrial customer with a connected electric load in excess of two thousand five hundred (2,500) kilowatts if public access to such contracts would give an unfair advantage to competitors of the customer; provided that, where a public body performs billing or collection services for a utility regulated by the Corporation Commission pursuant to a contractual agreement, any customer or individual payment data obtained or created by the public body in performance of the agreement shall not be a record for purposes of

this act.

CREDIT(S)

Laws 1985, c. 355, § 10, eff. Nov. 1, 1985; Laws 1988, c. 187, § 5, emerg. eff. June 6, 1988; Laws 1996, c. 209, § 4, eff. Nov. 1, 1996; Laws 2004, c. 186, § 1, emerg. eff. May 3, 2004; Laws 2006, c. 18, § 1, eff. Nov. 1, 2006; Laws 2007, c. 6, § 1, eff. Nov. 1, 2007; Laws 2008, c. 284, § 1, eff. Nov. 1, 2008.

[FN1] O.S.L.1988, c. 187, § 5, emerg. eff. June 6, 1988.

[FN2] Title 51, § 24A.1 et seq.

HISTORICAL AND STATUTORY NOTES

2009 Electronic Update

Laws 2008, c. 284, § 1, in subsection D, deleted "name," preceding "address," and inserted "consumption rates, adjustments to the bill, reasons for adjustment, the name of the person that authorized the adjustment,".

2008 Main Volume

The 1988 amendment inserted subsection A; designated the existing text as subsection B; and added subsection C.

The 1996 amendment added subsection D.

Laws 2004, c. 186, § 1, in subsection A, in the first sentence, substituted "June 6, 1988" for "the effective date of this act"; in subsection D, added "; provided that, where a public body performs billing or collection services for a utility regulated by the Corporation Commission pursuant to a contractual agreement, any customer or individual payment data obtained or created by the public body in performance of the agreement shall not be a record for purposes of this act".

Laws 2006, c. 18, § 1, in subsection D, inserted "social security numbers,".

Laws 2007, c. 6, § 1, in subsection D, inserted ", and utility supply and utility equipment supply contracts for any industrial customer with a connected electric load in excess of two thousand five hundred (2,500) kilowatts if public access to such contracts would give an unfair advantage to competitors of the customer" and made a nonsubstantive change.

ADMINISTRATIVE CODE REFERENCES

2008 Main Volume

Law enforcement and driver license records, restriction on disclosure of records providing unfair competitive advantage, see Okla. Admin. Code 595:1-9-3.

LIBRARY REFERENCES

2009 Electronic Update

Records ¶59.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 106.

RESEARCH REFERENCES

2009 Electronic Update

Treatises and Practice Aids

3 Oklahoma Practice § 42.03, The Topical Privileges--Trade Secrets.

51 Okl. St. Ann. § 24A.10, OK ST T. 51 § 24A.10

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

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51 Okl.St. Ann. § 24A.10a

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌘ Chapter 1. General Provisions

⌘ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.10a. Oklahoma Medical Center--Market research and marketing plans--Confidentiality**

The Oklahoma Medical Center may keep confidential market research conducted by and marketing plans developed by the Oklahoma Medical Center if the Center determines that disclosure of such research or plans would give an unfair advantage to competitors of the Oklahoma Medical Center regarding marketing research and planning, public education, and advertising and promotion of special and general services provided by the Oklahoma Medical Center.

CREDIT(S)

Laws 1988, c. 266, § 22, operative July 1, 1988.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐59.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 106.

51 Okl. St. Ann. § 24A.10a, OK ST T. 51 § 24A.10a

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

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
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51 Okl.St. Ann. § 24A.11

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

 Chapter 1. General Provisions

 Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.11. Library, archive or museum materials--Confidentiality**

A. A public body may keep confidential library, archive, or museum materials donated to the public body to the extent of any limitations imposed as a condition of the donation and any information which would reveal the identity of an individual who lawfully makes a donation to or on behalf of a public body including, but not limited to, donations made through a foundation operated in compliance with Sections 5-145 and 4306 of Title 70 of the Oklahoma Statutes.

B. If library, archive, or museum materials are donated to a public body and the donation may be claimed as a tax deduction, the public body may keep confidential any information required as a condition of the donation except the date of the donation, the appraised value claimed for the donation, and a general description of the materials donated and their quantity.

CREDIT(S)

Laws 1985, c. 355, § 11, eff. Nov. 1, 1985; Laws 1992, c. 231, § 3, emerg. eff. May 19, 1992.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

The 1992 amendment rewrote subsection A, which prior thereto read:

"A public body may keep confidential library, archive, or museum materials donated to the public body to the extent of any limitations imposed as a condition of the donation or any information which would reveal the identity of an individual who lawfully makes a donation to a public body if anonymity of the donor is a condition of the donation."

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐58.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 104 to 105, 107.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

A public body has discretion to keep the identity of a donor confidential in absence of a law which requires or prohibits confidentiality. Op. Atty. Gen. No. 02-027 (July 9, 2002).

51 Okl. St. Ann. § 24A.11, OK ST T. 51 § 24A.11

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

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51 Okl.St. Ann. § 24A.12

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌘ Chapter 1. General Provisions

⌘ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.12. Litigation files and investigatory files of Attorney General, district or municipal attorney--Confidentiality**

Except as otherwise provided by state or local law, the Attorney General of the State of Oklahoma and agency attorneys authorized by law, the office of the district attorney of any county of the state, and the office of the municipal attorney of any municipality may keep its litigation files and investigatory reports confidential.

CREDIT(S)

Laws 1985, c. 355, § 12, eff. Nov. 1, 1985; Laws 1988, c. 187, § 6, emerg. eff. June 6, 1988.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

The 1988 amendment inserted "and agency attorneys authorized by law".

LAW REVIEW AND JOURNAL COMMENTARIES

Ethical issues in administrative hearings: commingling functions, bias and confidentiality. Rabindranath Ramana, 70 Okla.B.J. 2263 (1999).

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 60.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 107 to 111.

51 Okl. St. Ann. § 24A.12, OK ST T. 51 § 24A.12

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51 Okl.St. Ann. § 24A.13

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

^¶ Chapter 1. General Provisions

^¶ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.13. Federal records--Confidentiality**

Records coming into the possession of a public body from the federal government or records generated or gathered as a result of federal legislation may be kept confidential to the extent required by federal law.

CREDIT(S)

Laws 1985, c. 355, § 13, eff. Nov. 1, 1985.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 55.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 101.

NOTES OF DECISIONS

Certified nursing aide and nursing aide trainee registry 1

1. Certified nursing aide and nursing aide trainee registry

The Oklahoma Open Records Act does not require personal information submitted by an applicant and/or licensee to the Oklahoma State Department of Health to be publicly disclosed when it is required by the certified nursing aide and nursing aide trainee registry. Op. Atty. Gen. No. 01-7 (Feb. 16, 2001).

51 Okl. St. Ann. § 24A.13, OK ST T. 51 § 24A.13

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

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51 Okl.St.Ann. § 24A.14

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌚ Chapter 1. General Provisions

⌚ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.14. Personal communications relating to exercise of constitutional rights-- Confidentiality**

Except for the fact that a communication has been received and that it is or is not a complaint, a public official may keep confidential personal communications received by the public official from a person exercising rights secured by the Constitution of the State of Oklahoma or the Constitution of the United States. The public official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right.

CREDIT(S)

Laws 1985, c. 355, § 14, eff. Nov. 1, 1985.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 58.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 104 to 105, 107.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Records created by a public body after receipt of a complaint must be open to public access and review under Open Records Act, unless there is express statutory exception. State ex rel. Oklahoma State Bd. of Medical Licensure and Supervision v. Migliaccio, Okla.App. Div. 3, 917 P.2d 483 (1996). Records ⇐ 54

Except for the fact that a complaint about a dentist, dental hygienist, or dental assistant has been received, the members and employees of the Board of Governors of Registered Dentists may, in their discretion, keep confidential complaints about dentists, dental hygienists, and dental assistants, as provided in this section; but the Board member or employee's written response to such complaint may be kept confidential only to the extent necessary to protect the identity of the person making the complaint. Op.Att'y.Gen. No. 88-79 (April 17, 1989).

51 Okl. St. Ann. § 24A.14, OK ST T. 51 § 24A.14

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

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51 Okl.St. Ann. § 24A.15

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

☞ Chapter 1. General Provisions

☞ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.15. Crop and livestock reports--Public warehouse financial statements--Confidentiality**

A. The Division of Agricultural Statistics, Oklahoma Department of Agriculture, also known as the Oklahoma Crop and Livestock Reporting Service, may keep confidential crop and livestock reports provided by farmers, ranchers, and agri-businesses to the extent the reports individually identify the providers.

B. The State Board of Agriculture is authorized to provide for the confidentiality of any financial statement filed pursuant to Section 9-22 of Title 2 of the Oklahoma Statutes. Copies of such financial statements may only be obtained upon written request to the Commissioner of Agriculture.

Upon good cause shown, and at the discretion of the Commissioner of Agriculture, such financial statements may be released.

CREDIT(S)

Laws 1985, c. 355, § 15, eff. Nov. 1, 1985; Laws 1988, c. 259, § 14, emerg. eff. June 29, 1988.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

The 1988 amendment designated the existing text as subsection A; and added subsection B.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 59.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 106.

51 Okl. St. Ann. § 24A.15, OK ST T. 51 § 24A.15

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51 Okl.St.Ann. § 24A.16

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

^¶ Chapter 1. General Provisions

^¶ Oklahoma Open Records Act (Refs & Annos)

⇒§ 24A.16. Educational records and materials--Confidentiality

A. Except as set forth in subsection B of this section, public educational institutions and their employees may keep confidential:

1. Individual student records;
2. Teacher lesson plans, tests and other teaching material; and
3. Personal communications concerning individual students.

B. If kept, statistical information not identified with a particular student and directory information shall be open for inspection and copying. "Directory information" includes a student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational institution attended by the student. Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as directory information with respect to each student attending the institution or agency and shall allow a reasonable period of time after the notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without prior consent of the parent or guardian or the student if the student is eighteen (18) years of age or older.

C. A public school district may release individual student records for the current or previous school year to a school district at which the student was previously enrolled for purposes of evaluating educational programs and school effectiveness.

CREDIT(S)

Laws 1985, c. 355, § 16, eff. Nov. 1, 1985; Laws 1986, c. 116, § 1, emerg. eff. April 9, 1986; Laws 2003, c. 430, § 1, eff. July 1, 2003.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

The 1986 amendment, in subsection B, added the third sentence.

Laws 2003, c. 430, § 1, in subsection B, rewrote the second sentence, which prior thereto read:

"Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's or guardian's prior consent or the student's himself if he is eighteen (18) years of age or older."

; and added subsection C.

CROSS REFERENCES

State higher education institutions, prohibition of agreements to sell student data for the purpose of marketing consumer credit, see Title 70, § 3245.

LIBRARY REFERENCES

2009 Electronic Update

Records ¶58.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 104 to 105, 107.

NOTES OF DECISIONS

Directory information 1

High school equivalency program 2

1. Directory information

Public educational institutions are required, under subdivision (B) of this section, to grant access to any existing lists of former college students to any person who requests it, but this obligation is limited to directory information and it excludes specifically other types of information, whose disclosure would be violative of applicable federal law; moreover, disclosure is not permitted with respect to individuals who, exercising their rights under 20 U.S.C.A. § 1232g(a)(5)(B) or subdivision (B) of this section, have objected to such disclosure. Op.Atty.Gen. No. 86-152 (1-9-87).

Effect of Family Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § 1232g, on requirement of subdivision (B) of this section for public access to "directory information" is that school district trying to retain federal funding may only provide public access to information contained in "directory information" by complying with requirements of 20 U.S.C.A. § 1232(a)(5)(B). Op.Atty.Gen. No. 85-167 (Nov. 5, 1985).

2. High school equivalency program

The records of the State Board of Education relating to the General Educational Development (GED) High School Equivalency Certificate Program are public records and would be subject to former § 24 (Repealed; see, now, this section). Op.Atty.Gen. No. 78-209 (Dec. 13, 1978).

51 Okl. St. Ann. § 24A.16, OK ST T. 51 § 24A.16

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51 Okl.St. Ann. § 24A.16a

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

^Chapter 1. General Provisions

^Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.16a. Higher education--Donor or prospective donor information--Confidentiality**

Institutions or agencies of The Oklahoma State System of Higher Education may keep confidential all information pertaining to donors and prospective donors to or for the benefit of the institutions or agencies.

CREDIT(S)

Laws 2007, c. 170, § 2, emerg. eff. May 31, 2007.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐58.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 104 to 105, 107.

51 Okl. St. Ann. § 24A.16a, OK ST T. 51 § 24A.16a

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

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51 Okl.St.Ann. § 24A.17

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌚ Chapter 1. General Provisions

⌚ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.17. Violations--Penalties--Civil liability**

A. Any public official who willfully violates any provision of the Oklahoma Open Records Act, [FN1] upon conviction, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both such fine and imprisonment.

B. Any person denied access to records of a public body or public official:

1. May bring a civil suit for declarative or injunctive relief, or both, but such civil suit shall be limited to records requested and denied prior to filing of the civil suit; and

2. If successful, shall be entitled to reasonable attorney fees.

C. If the public body or public official successfully defends a civil suit and the court finds that the suit was clearly frivolous, the public body or public official shall be entitled to reasonable attorney fees.

D. A public body or public official shall not be civilly liable for damages for providing access to records as allowed under the Oklahoma Open Records Act.

CREDIT(S)

Laws 1985, c. 355, § 17, eff. Nov. 1, 1985; Laws 2005, c. 199, § 7, eff. Nov. 1, 2005.

[FN1] Title 51, § 24A.1 et seq.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Laws 2005, c. 199, § 7, rewrote section, which prior thereto read:

"A. Any public official who willfully violates any provision of the Oklahoma Open Records Act, upon conviction, shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a period not exceeding one (1) year, or by both such fine and imprisonment.

"B. Any person denied access to a record of a public body or public official may bring a civil suit for declarative and/or injunctive relief and, if successful, shall be entitled to reasonable attorney fees. If the public body or public official successfully defends a civil suit and the court finds that the suit was clearly frivolous, the public body or public official shall be entitled to reasonable attorney fees.

"C. A public body or public official shall not be civilly liable for damages for providing access to records as allowed under the Oklahoma Open Records Act."

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 61.

Westlaw Topic No. 326.

C.J.S. Records §§ 95, 99 to 100, 104, 112 to 131.

NOTES OF DECISIONS

Attorney fees 2

Construction and application 1

Standing 3

1. Construction and application

This section would not apply to Horse Racing Commission's decision to refuse to release information as long as the Commission was acting in good faith. Tulsa Tribune Co. v. Oklahoma Horse Racing Com'n, Okla., 735 P.2d 548 (1986).

2. Attorney fees

Private corporation which obtained mandamus relief directing Department of Corrections to provide information requested under Open Records Act was entitled to statutory award of fees incurred on appeal under statute providing for award to prevailing plaintiffs in such suits. Transportation Information Services, Inc. v. State ex rel. Oklahoma Dept. of Corrections, Okla., 970 P.2d 166 (1998), corrected. Mandamus ⇐ 190

3. Standing

Connection between nonprofit organization representing taxpayers and attorneys who requested that city disclose financial documents used to determine credit worthiness of potential lessee of city property was sufficient to support nonprofit organization's standing to appeal city's refusal to disclose such documents, even though organization was not incorporated until after request for disclosure was made, where attorneys who submitted requests were listed as incorporators of organization. Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City, Okla., 73 P.3d 871 (2003). Records ⇐ 63

51 Okl. St. Ann. § 24A.17, OK ST T. 51 § 24A.17

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

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51 Okl.St. Ann. § 24A.18

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

❏ Chapter 1. General Provisions

❏ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.18. Additional recordkeeping not required**

Except as may be required in Section 24A.4 of this title, this act does not impose any additional recordkeeping requirements on public bodies or public officials.

CREDIT(S)

Laws 1985, c. 355, § 18, eff. Nov. 1, 1985; Laws 2005, c. 199, § 8, eff. Nov. 1, 2005.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Laws 2005, c. 199, § 8, substituted "24A.4" for "4" and "title" for "act".

LIBRARY REFERENCES

2009 Electronic Update

Records ¶50.

Westlaw Topic No. 326.

C.J.S. Records §§ 93 to 96.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Genuine issue of material fact as to whether a new record would be created by Oklahoma State Department of Health (OSDH) when deleting personal identifiers to make the requested records concerning nursing facility residents "not resident-identifiable, while preserving connections between records of the same individual," precluded summary judgment in declaratory judgment action brought against OSDH to compel disclosure of the records under Open Records Act. Progressive Independence, Inc. v. Oklahoma State Dept. of Health, Okla.Civ.App. Div. 3, 174 P.3d 1005 (2007). Judgment ¶181(15.1)

51 Okl. St. Ann. § 24A.18, OK ST T. 51 § 24A.18

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

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51 Okl.St. Ann. § 24A.19

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌘ Chapter 1. General Provisions

⌘ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.19. Research records--Confidentiality**

In addition to other records that a public body may keep confidential pursuant to the provisions of the Oklahoma Open Records Act, a public body may keep confidential:

1. Any information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent or copyright the research, or any other proprietary rights any entity may have in the research or the results of the research including, but not limited to, trade secrets and commercial or financial information obtained from an entity financing or cooperating in the research, research protocols, and research notes, data, results, or other writings about the research; and

2. The specific terms and conditions of any license or other commercialization agreement relating to state owned or controlled technology or the development, transfer, or commercialization of the technology. Any other information relating to state owned or controlled technology or the development, transfer, or commercialization of the technology which, if disclosed, will adversely affect or give other persons or entities an advantage over public bodies in negotiating terms and conditions for the development, transfer, or commercialization of the technology. However, institutions within The Oklahoma State System of Higher Education shall:

- a. report to the Oklahoma State Regents for Higher Education as requested, on forms provided by the Regents, research activities funded by external entities or the institutions, the results of which have generated new intellectual property, and
- b. report to the Oklahoma State Regents for Higher Education annually on forms provided:
 - (1) expenditures for research and development supported by the institution,
 - (2) any financial relationships between the institution and private business entities,
 - (3) any acquisition of an equity interest by the institution in a private business,
 - (4) the receipt of royalty or other income related to the sale of products, processes, or ideas by the institution or a private business entity with which the institution has established a financial arrangement,
 - (5) the gains or losses upon the sale or other disposition of equity interests in private business entities, and
 - (6) any other information regarding technology transfer required by the Oklahoma State Regents for Higher Education.

The reports required in subparagraphs a and b of this paragraph shall not be deemed confidential and shall be subject to full disclosure pursuant to the Oklahoma Open Records Act.

CREDIT(S)

Laws 1988, c. 68, § 2, eff. Nov. 1, 1988; Laws 1999, c. 287, § 1, emerg. eff. May 27, 1999.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

The 1999 amendment rewrote the section, which prior thereto read:

"In addition to other records that a public body may keep confidential pursuant to the provisions of the Oklahoma Open Records Act, a public body may keep confidential any information related to research, the disclosure of which could affect the conduct or outcome of the research, the ability to patent or copyright the research, or any other proprietary rights any entity might have in the research or the results of the research; including, but not limited to, trade secrets and commercial or financial information obtained from an entity financing or cooperating in the research, research protocols, and research notes, data, results or other unpublished writings about the research."

LIBRARY REFERENCES

2009 Electronic Update

Records ¶59.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 106.

51 Okl. St. Ann. § 24A.19, OK ST T. 51 § 24A.19

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

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51 Okl.St. Ann. § 24A.20

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

↗ Chapter 1. General Provisions

↗ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.20. Records in litigation or investigation file--Access**

Access to records which, under the Oklahoma Open Records Act, [FN1] would otherwise be available for public inspection and copying, shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file. However, a law enforcement agency may deny access to a copy of such a record in an investigative file if the record or a true and complete copy thereof is available for public inspection and copying at another public body.

CREDIT(S)

Laws 1988, c. 187, § 7, emerg. eff. June 6, 1988.

[FN1] Title 51, § 24A.1 et seq.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 60.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 107 to 111.

51 Okl. St. Ann. § 24A.20, OK ST T. 51 § 24A.20

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

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51 Okl.St. Ann. § 24A.21

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌘ Chapter 1. General Provisions

⌘ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.21. Increment district reports--Exemption from copying fees**

The fees that may be charged by a public body pursuant to the provisions of paragraph 3 of Section 24A.5 of Title 51 of the Oklahoma Statutes shall not be charged when a state agency or taxing entity located within the boundaries of any district created pursuant to the provisions of the Local Development Act [FN1] request a copy of the reports required by subsections A and B of Section 18 of this act. [FN2]

CREDIT(S)

Laws 1992, c. 342, § 21.

[FN1] Title 62, § 850 et seq.

[FN2] Title 62, § 867.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐68.

Westlaw Topic No. 326.

C.J.S. Records §§ 95, 99, 112, 119 to 121, 128 to 131.

51 Okl. St. Ann. § 24A.21, OK ST T. 51 § 24A.21

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

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51 Okl.St. Ann. § 24A.22

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

[^]Chapter 1. General Provisions

[^]Oklahoma Open Records Act (Refs & Annos)

 ⇒ **§ 24A.22. Public utilities--Confidential books, records and trade secrets**

A. The Corporation Commission shall keep confidential those records of a public utility, its affiliates, suppliers and customers which the Commission determines are confidential books and records or trade secrets.

B. As used in this section, "public utility" means any entity regulated by the Corporation Commission, owning or operating for compensation in this state equipment or facilities for:

1. Producing, generating, transmitting, distributing, selling or furnishing electricity;
2. The conveyance, transmission, or reception of communication over a telephone system; or
3. Transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public.

CREDIT(S)

Laws 1994, c. 315, § 12, eff. July 1, 1994.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐59.

 Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 106.

51 Okl. St. Ann. § 24A.22, OK ST T. 51 § 24A.22

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

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51 Okl.St. Ann. § 24A.23

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌕ Chapter 1. General Provisions

⌕ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.23. Department of Wildlife Conservation--Confidentiality of information relating to hunting and fishing licenses**

A. The Department of Wildlife Conservation shall keep confidential the information provided by persons, including the name and address of the person, applying for or holding any permit or license issued by the Department, to the extent the information individually identifies the person. The Department may use the information for Department purposes or allow the United States Fish and Wildlife Service to use the information for survey purposes only. The Department shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. The provisions of subsection A of this section shall not apply to information provided by persons applying for or holding a commercial hunting or fishing license.

CREDIT(S)

Laws 1996, c. 32, § 1, eff. July 1, 1996.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 54.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 101, 103 to 104.

51 Okl. St. Ann. § 24A.23, OK ST T. 51 § 24A.23

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

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51 Okl.St.Ann. § 24A.24

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌘ Chapter 1. General Provisions

⌘ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.24. Office of Juvenile System Oversight--Confidentiality of investigatory records and notes**

Unless otherwise provided by law, the Office of Juvenile System Oversight may keep its investigatory records and notes confidential, unless ordered by a court of competent jurisdiction to disclose the information.

CREDIT(S)

Laws 1996, c. 247, § 42, eff. July 1, 1996.

HISTORICAL AND STATUTORY NOTES

2008 Main Volume

Editorially renumbered from Title 51, § 24A.23 to avoid duplication in numbering.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 60.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 100, 107 to 111.

51 Okl. St. Ann. § 24A.24, OK ST T. 51 § 24A.24

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

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51 Okl.St. Ann. § 24A.25

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌕ Chapter 1. General Provisions

⌕ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.25. Order of court for removal of materials from public record**

Any order of the court for removal of materials from the public record shall require compliance with the provisions of paragraphs 2 through 7 of subsection C of Section 3226 of Title 12 of the Oklahoma Statutes.

CREDIT(S)

Laws 2000, c. 172, § 4, eff. Nov. 1, 2000.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 21.

Westlaw Topic No. 326.

C.J.S. Records §§ 57 to 59.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

There is no provision in the Open Records Act which allows a court to balance an individual's interest in having records remain private and the public's interest in having access to the records. Nichols v. Jackson, Okla.Crim.App., 38 P.3d 228 (2001), opinion after certified question answered 55 P.3d 1044. Records ⇐ 64

The legislature has determined by statute that the public's interest in having access is greater than an individual's interest in having records remain private, except where specific statutory exemption is given, however, such statutory provisions are always subject to interpretation to ensure compliance with constitutionally guaranteed rights. Nichols v. Jackson, Okla.Crim.App., 38 P.3d 228 (2001), opinion after certified question answered 55 P.3d 1044. Records ⇐ 54

51 Okl. St. Ann. § 24A.25, OK ST T. 51 § 24A.25

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51 Okl.St. Ann. § 24A.26

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

↳ Chapter 1. General Provisions

↳ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.26. Intergovernmental self-insurance pools**

An intergovernmental self-insurance pool may keep confidential proprietary information, such as actuarial reports, underwriting calculations, rating information and records that are created based on conclusions of such information that are developed through the operation of the intergovernmental self-insurance pool.

CREDIT(S)

Laws 2000, c. 226, § 2, eff. Nov. 1, 2000.

HISTORICAL AND STATUTORY NOTES

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LIBRARY REFERENCES

2009 Electronic Update

Records ⇨ 53.

Westlaw Topic No. 326.

C.J.S. Records §§ 99 to 111.

51 Okl. St. Ann. § 24A.26, OK ST T. 51 § 24A.26

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51 Okl.St. Ann. § 24A.27

Oklahoma Statutes Annotated Currentness

Title 51. Officers (Refs & Annos)

⌚ Chapter 1. General Provisions

⌚ Oklahoma Open Records Act (Refs & Annos)

⇒ **§ 24A.27. Vulnerability assessments of critical assets in water and wastewater systems**

A. Any state environmental agency or public utility shall keep confidential vulnerability assessments of critical assets in both water and wastewater systems. State environmental agencies or public utilities may use the information for internal purposes or allow the information to be used for survey purposes only. The state environmental agencies or public utilities shall allow any public body to have access to the information for purposes specifically related to the public bodies function.

B. For purposes of this section:

1. "State environmental agencies" includes the:

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

2. "Public Utility" means any individual, firm, association, partnership, corporation or any combination thereof, municipal corporations or their lessees, trustees and receivers, owning or operating for compensation in this state equipment or facilities for:

- a. producing, generating, transmitting, distributing, selling or furnishing electricity,
- b. the conveyance, transmission, reception or communications over a telephone system,
- c. transmitting directly or indirectly or distributing combustible hydrocarbon natural or synthetic natural gas for sale to the public, or
- d. the transportation, delivery or furnishing of water for domestic purposes or for power.

CREDIT(S)

Laws 2003, c. 166, § 1, emerg. eff. May 5, 2003.

LIBRARY REFERENCES

2009 Electronic Update

Records ⇐ 53.

Westlaw Topic No. 326.
C.J.S. Records §§ 99 to 111.

51 Okl. St. Ann. § 24A.27, OK ST T. 51 § 24A.27

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. § 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 CO₂ sequestration facility, including any associated CO₂ 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 CO₂ sequestration facility, including any associated CO₂ 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 (c) 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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27A Okl.St.Ann. § 2-3-101

Oklahoma Statutes Annotated CurrentnessTitle 27A. Environment and Natural Resources (Refs & Annos)Chapter 2. Oklahoma Environmental Quality Code (Refs & Annos)

⌚ Article III. Department of Environmental Quality and Executive Director

⌚ Part 1. Department of Environmental Quality

⇒§ 2-3-101. Creation--Powers and duties--Disclosure of interests--Employee classification--Programs--Departmental offices and divisions--Annual report--Environmental Quality Report--Environmental services contracts

A. There is hereby created the Department of Environmental Quality.

B. Within its jurisdictional areas of environmental responsibility, the Department of Environmental Quality, through its duly designated employees or representatives, shall have the power and duty to:

1. Perform such duties as required by law; and

2. Be the official agency of the State of Oklahoma, as designated by law, to cooperate with federal agencies for point source pollution, solid waste, hazardous materials, pollution, Superfund, water quality, hazardous waste, radioactive waste, air quality, drinking water supplies, wastewater treatment and any other program authorized by law or executive order.

C. Any employee of the Department in a technical, supervisory or administrative position relating to the review, issuance or enforcement of permits pursuant to this Code [FN1] who is an owner, stockholder, employee or officer of, or who receives compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department of Environmental Quality shall disclose such interest to the Executive Director. Such disclosure shall be submitted for Board review and shall be made a part of the Board minutes available to the public. This subsection shall not apply to financial interests occurring by reason of an employee's participation in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.

D. The Executive Director, Deputy Director, and all other positions and employees of the Department at the Division Director level or higher shall be in the unclassified service.

E. The following programs are hereby established within the Department of Environmental Quality:

1. An air quality program which shall be responsible for air quality;

2. Water programs which shall be responsible for water quality, including, but not limited to point source and nonpoint source pollution within the jurisdiction of the Department, public and private water supplies, public and private wastewater treatment, water protection and discharges to waters of the state;

3. Land protection programs which shall be responsible for hazardous waste, solid waste, radiation, and municipal, industrial, commercial and other waste within its jurisdictional areas of environmental responsibility pursuant to Section 1-3-101 of this title; and

4. Special projects and services programs which shall be responsible for duties related to planning, interagency coordination, technical assistance programs, laboratory services and laboratory certification, recycling, education and dissemination of information.

F. Within the Department there are hereby created:

1. The complaints program which shall be responsible for intake processing, investigation, mediation

and conciliation of inquiries and complaints received by the Department and which shall provide for the expedient resolution of complaints within the jurisdiction of the Department; and

2. The customer assistance program which shall be responsible for advising and providing to licensees, permittees and those persons representing businesses or those persons associated with and representing local political subdivisions desiring a license or permit, the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Code. The customer assistance program shall coordinate with other programs of the Department to assist businesses and municipalities in complying with state statutes and rules governing environmental areas. The customer assistance program shall also be responsible for advising and providing assistance to persons desiring information concerning the Department's rules, laws, procedures, licenses or permits, and forms used to comply with the Oklahoma Environmental Quality Code.

G. The Department shall be responsible for holding administrative hearings as defined in Section 2-1-102 of this title and shall provide support services related to them, including, but not limited to, giving required notices, maintaining the docket, scheduling hearings, and maintaining legal records.

H. 1. The Department shall prepare and submit an annual report assessing the status of the Department's programs to the Board, the Governor, the President Pro Tempore of the State Senate, and the Speaker of the Oklahoma House of Representatives by January 1 of each year. The annual status report shall include: the number of environmental inspections made within the various regulatory areas under the Department's jurisdiction; the number of permit applications submitted within the various regulatory areas under the Department's jurisdiction; the number of permits issued within the various regulatory areas under the Department's jurisdiction; the number and type of complaints filed with the Department; the number of resolved and unresolved Department complaints; a list of any permits and complaints which failed to be either completed or resolved within the Department's established time frames and an explanation of why the Department was unable to meet said time frames; the number and kinds of services provided corporations, businesses, cities, towns, schools, citizen groups and individuals by the customer assistance programs; a summary of the Department's environmental education efforts; the number and type of administrative hearings held and their outcomes; a detailed description of any promulgated and pending emergency or permanent rules requested by the Department and the current status of pending rules within the rulemaking process; the number of notices of violations issued by the Department within the various regulatory areas under its jurisdiction; the amount of penalties collected by the Department within the various regulatory areas under its jurisdiction; and any other information which the Department believes is pertinent.

2. Beginning January 1, 1995, and on or before January 1 of every year thereafter, the Department shall prepare an Oklahoma Environmental Quality Report which outlines the Department's annual needs for providing environmental services within its jurisdictional areas. The report shall reflect any new federal mandates and any state statutory or constitutional changes recommended by the Department within its jurisdictional areas. The Oklahoma Environmental Quality Report shall be reviewed, amended, and approved by the Board. The Department shall transmit an approved copy of the Oklahoma Environmental Quality Report to the Governor, President Pro Tempore of the State Senate, and Speaker of the House of Representatives.

3. The Executive Director shall establish such divisions and such other programs and offices as the Executive Director may determine necessary to implement and administer programs and functions within the jurisdiction of the Department pursuant to the Oklahoma Environmental Quality Code.

I. 1. The Department may contract with other governmental entities to provide environmental services. Such contracts may include duties related to providing information to the public regarding state environmental services, resources, permitting requirements and procedures based upon the ability, education and training of state environmental agency employees.

2. The Department, in conjunction with the state environmental agencies, may develop a program for the purpose of training government employees to provide any needed environmental services; provided, that the investigation of complaints regarding, or inspections of, permitted sites or facilities

shall not be performed by employees of other agencies, unless otherwise authorized by law.

CREDIT(S)

Laws 1992, c. 398, § 9, eff. Jan. 1, 1993. Renumbered from Title 27A, § 9 and amended by Laws 1993, c. 145, §§ 16, 359, eff. July 1, 1993. Laws 1993, c. 324, § 5, eff. July 1, 1993; Laws 1995, c. 246, § 1, eff. Nov. 1, 1995; Laws 2002, c. 139, § 1, emerg. eff. April 29, 2002.

[FN1] Title 27A, § 2-1-101 et seq.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

Laws 1993, c. 145, § 16 rewrote the section, which prior thereto read:

"A. 1. Effective January 1, 1993, there is hereby created the Department of Environmental Quality. Except as otherwise specifically provided by the Legislature, and until July 1, 1993, the Department of Environmental Quality shall:

"a. assist the transition coordinator in the performance of his duties pursuant to the provisions of Section 4 of this act relating to transitional authority,

"b. assist the Environmental Quality Board, as necessary, in the promulgation of rules necessary to implement the programs and functions within the jurisdiction of the Department of Environmental Quality,

"c. be responsible for the operation of the twenty-four-hour statewide toll-free telephone communication service whereby any person may report alleged violations of or information concerning the pollution laws of this state,

"d. initiate a search for appropriate and adequate office space needed for purposes of implementing the Oklahoma Environmental Quality Act to be leased at such time as provided by the Legislature. Until such time as specified by the Legislature, space shall be provided to the Department of Environmental Quality to the extent necessary to implement the provisions of the Oklahoma Environmental Quality Act in the state building in which the Oklahoma State Department of Health is located, 1000 N.E. 10th Street, Oklahoma City, Oklahoma, and

"e. perform such other duties designated to it by the Governor.

"2. For the purposes of this section, the transition coordinator shall serve as the Executive Director of the Department until July 1, 1993, or until an Executive Director has been appointed by the Board.

"B. Effective July 1, 1993, within its jurisdictional areas of environmental responsibility, the Department of Environmental Quality shall have the power and duty to:

"1. Issue, renew, deny or suspend, revoke or refuse to renew licenses or permits pursuant to the provisions of the Oklahoma Environmental Quality Act;

"2. Assess those administrative penalties as otherwise specifically authorized by law against any person or entity who violates any of the provisions of the Oklahoma Environmental Quality Act or any rule promulgated thereunder;

"3. Employ, direct, discharge and define the duties and set the salaries of such office personnel as deemed necessary by the Executive Director;

"4. Request criminal prosecution proceedings as authorized by law against any person or entity who

has violated any of the provisions of the Oklahoma Environmental Quality Act or any rule promulgated pursuant thereto;

"5. Investigate alleged violations of the Oklahoma Environmental Quality Act or of the rules or orders of the Executive Director;

"6. 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;

"7. Encourage and conduct studies, investigations and research relating to pollution and its causes, effects, prevention, control and abatement;

"8. Collect and disseminate information relating to pollution, its prevention and control;

"9. Enter into agreements for, accept, use, disburse and administer grants of money, personnel and property from the federal government or any department or agency thereof, or from any state or state agency, or from any other source, to promote and carry on in this state any program relating to environmental services and pollution control;

"10. Determine, charge and receive fees to be collected for services and permits, to file other papers, to make copies of documents, to make prints of maps and drawings, and to certify copies of documents, maps and drawings as authorized by law;

"11. Be the official agency of the State of Oklahoma, as designated by law, to cooperate with federal agencies for point source pollution, solid waste, hazardous materials and wastes, pollution, Superfund, water quality, controlled industrial (hazardous) waste, radioactive waste, air quality and sewage and any other program authorized by law;

"12. Provide a toll-free hot line for environmental complaints;

"13. Cause investigations, inquiries and inspections to be made, and hold hearings and issue orders according to the Administrative Procedures Act. The Executive Director or his representative shall have the right of access to any premises for such purpose at any reasonable time, upon presentation of identification;

"14. Authorize persons in the Department of Environmental Quality to conduct investigations, inquiries and hearings, and to perform other acts that the Executive Director is authorized or required to conduct or perform personally;

"15. Issue subpoenas for the attendance of witnesses and the production of books and records at any hearing to be conducted by the Department;

"16. Enforce the provisions of the Oklahoma Environmental Quality Act within the jurisdictional areas of the Department of Environmental Quality; and

"17. Exercise all incidental powers which are necessary and proper to implement the purposes of the Oklahoma Environmental Quality Act.

"C. Effective July 1, 1993, there is hereby created within the Department of Environmental Quality:

"1. the air quality division which shall be responsible for air quality and such other areas designated to it by the Executive Director;

"2. The water quality division which shall be responsible for water quality, including, but not limited to point source and non-point-source pollution within the jurisdiction of the Department, permitting, water protection, industrial and municipal discharges and such other areas designated to it by the Executive Director;

"3. The waste management division which shall be responsible for controlled industrial (hazardous) waste, solid waste and such other areas within the jurisdiction of the Department designated to it by the Executive Director;

"4. Special project division which shall be responsible for duties related to recycling, education, citizen dissemination of information and other duties deemed appropriate by the Executive Director;

"5. An administration and planning division which shall be responsible for interagency coordination and such other responsibilities within the jurisdiction of the Department designated to it by the Executive Director. Within the division there is hereby created:

"a. the Office of Complaints, Investigation and Mediation which shall be responsible for intake processing, investigation, mediation and conciliation of inquiries and complaints received by the Department. The Office of Complaints, Investigation and Mediation shall provide for the expedient resolution of complaints within the jurisdiction of the Department and shall provide a written response to each complainant,

"b. the Office of Business Advocate which will be responsible for advising and providing licensees, or permittees or those persons desiring to obtain a license or permit the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Act. The Office of Business Advocate shall intercede with other divisions or offices of the Department to assist businesses and other state agencies in complying with state statutes and rules governing environmental areas,

"c. The Office of Local Government Advocate which will be responsible for advising and providing licensees or permittees, or those persons associated with and representing local political subdivisions desiring a license or permit, the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Act. The Office of Local Government Advocate shall intercede with other divisions or offices of the Department to assist municipalities in complying with state statutes and rules governing environmental areas, and

"d. the Office of Hearing Examiners, whose sole responsibility will be the hearing of individual proceedings; and

"6. Such other divisions and offices as the Executive Director may determine necessary to implement programs and functions within the jurisdiction of the Department pursuant to the Oklahoma Environmental Quality Act.

"D. The provisions of this section shall not limit the existing exclusive jurisdiction of the Corporation Commission, except as to refineries, petrochemical manufacturing plants and natural gas liquid extraction plants, nor extend the existing jurisdiction of any other state environmental agency, over oil and gas exploration and production activities."

Laws 1993, c. 324, § 5 deleted subsection B.3, which read:

"Act as natural resource trustee to implement the federal Oil Pollution Act of 1990 (P.L. No. 101-380), as it exists or may be amended, and to establish and manage a revolving fund in relation to such duties."

; and in subsection H.4, added the second sentence.

The 1995 amendment deleted the second sentence of subsection G.3, which read: "In establishing such divisions and offices the Executive Director shall consult with and advise the Environmental Management Oversight Task Force as created by Section 349 of this act."

27A Okl. St. Ann. § 2-3-101, OK ST T. 27A § 2-3-101

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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