STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2251 BY: RICE of the HOUSE

and

FISHER of the SENATE

COMMITTEE SUBSTITUTE

( PUBLIC HEALTH AND SAFETY - AMENDING 63 O.S. 1991, SECTIONS 1-1802 AND 1-1803 - OKLAHOMA CLEAN AIR ACT - RE-CREATING AN AIR QUALITY COUNCIL - AMENDING 63 O.S. 1991, SECTIONS 1-1701.1A AND 1.106.1 - REPEALING 63 O.S. 1991, SECTIONS 1-1804, 1-1805, 1-1806, 1-1807, AND 1-1808 - CODIFICATION -

EMERGENCY )

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-1802, is amended to read as follows:

Section 1-1802. ~~(A)~~ It is the general intent and purpose of the Oklahoma Clean Air Act to provide the means to achieve and maintain atmospheric purity necessary for the protection and enjoyment of human, plant or animal life and property in this state consistent with and limited by generally accepted social standards and requirements, desired employment and industrial development, area conditions, and the availability of economic and feasible controls.

~~(B) The following terms used in this act shall, unless the context otherwise requires, have the following meanings:~~

~~(a) Board is the State Board of Health.~~

~~(b) Department is the State Department of Health of the State of Oklahoma.~~

~~(c) Commissioner is the State Commissioner of Health or his designated representatives.~~

~~(d) Council is the Air Quality Council.~~

~~(e) Director is the Chief of Air Quality Services.~~

~~(f) Person is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, municipality or any other legal entity, or their representative, agent or assigns.~~

~~(g) Air pollution is the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as tend to or may be injurious to human, plant or animal life or to property, or which interferes with the comfortable enjoyment of life and property, excluding, however, all conditions pertaining to employer-employee relations.~~

~~(h) Air contaminants means the presence in the outdoor atmosphere of fumes, aerosol, mist, gas, smoke, vapor, particulate matter or any combination thereof which creates a condition of air pollution.~~

~~(C) The State Department of Health is hereby designated the administrative agency for the Oklahoma Clean Air Act for the state. The Department shall assist and cooperate with other groups interested in and affected by air pollution and is empowered to:~~

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

~~(b) 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.~~

~~(c) Encourage and conduct studies, investigations and research relating to air pollution and its causes, effects, prevention, control and abatement.~~

~~(d) Collect and disseminate information relating to air pollution, its prevention and control.~~

~~(e) 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.~~

~~(f) 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.~~

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

~~(h) Employ and compensate, within appropriations 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 this act and prescribe their powers and duties.~~

~~(i) 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.~~

~~(j) The Department is authorized to budget and receive duly appropriated monies for expenditures to carry out the provisions and purposes of the Oklahoma Clean Air Act.~~

~~(k) Bring appropriate court action to enforce final orders on determinations including obtaining injunctions or other proper relief in the district court of the county where any alleged~~

~~violation occurs or relief is determined necessary. Such action shall be brought in the name of the State Department of Health of the State of Oklahoma.~~

~~(l) The Commissioner of Health, 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, shall take such action as may be necessary to abate the alleged pollution.~~

~~(m) The Department is authorized to recommend to the Department of Public Safety, rules and regulations to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards.~~

~~(D) The State Board of Health is hereby authorized, after public hearing and approval by the Council, to adopt, amend or repeal rules and regulations for the control and abatement of air pollution and establishment of health and safety tolerance standards for discharge of air contaminants to the atmosphere and such additional rules and regulations, including 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.~~

~~(E) There is hereby re-created an Air Quality Council to represent the interests of the people of Oklahoma, which shall consist of seven (7) members, who shall be residents of Oklahoma, and appointed by the Governor with the advice and consent of the Senate, and shall have the respective qualifications as provided in paragraph (a) of this subsection.~~

~~(a) One member shall be selected from the engineering profession, and, as such, shall be a professional engineer and experienced in matters of air pollution equipment and control, who shall not be an employee of any unit of government.~~

~~One member shall be selected from industry in general, and, as such, shall be employed as a manufacturing executive carrying on a manufacturing business within the state.~~

~~One member shall be selected from a faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of air pollution control and evaluation.~~

~~One member shall be selected from the transportation industry.~~

~~One member shall be selected from the petroleum industry, and, as such, shall be employed by a petroleum company carrying on a petroleum refining business within the state, and, as such, shall be trained and experienced in matters of scientific knowledge of causes as well as effects of air pollution.~~

~~One member shall be selected from agriculture, and, as such, shall be engaged in or employed by a basic agricultural business or the processing of agricultural products.~~

~~One member shall be selected from the political subdivisions of the state, and, as such, shall be a member of the local government body of a city or town.~~

~~(b) Each member shall be appointed to serve a term of office of seven (7) years, except that the term of those first appointed shall expire as follows:~~

~~One at the end of one (1) year after date of appointment.~~

~~One at the end of two (2) years after date of appointment.~~

~~One at the end of three (3) years after date of appointment.~~

~~One at the end of four (4) years after date of appointment.~~

~~One at the end of five (5) years after date of appointment.~~

~~One at the end of six (6) years after date of appointment.~~

~~One at the end of seven (7) years after date of appointment.~~

~~The terms of all members shall continue until their successors have been duly appointed and qualified. If a vacancy occurs, the Governor shall appoint a person for the remaining portion of the unexpired term created by the vacancy. Four members of the Council shall constitute a quorum.~~

~~(c) The Council shall hold at least two regular meetings each calendar year at a place and time to be fixed by the Council. The Council shall select, at its first meeting following the passage of this act, one of its members to serve as chairman and another of its members to serve as vice-chairman. At the first regular meeting in each calendar year thereafter, the chairman and vice-chairman for the ensuing year shall be elected. Special meetings may be called by the chairman or by the Commissioner or by three members of the Council by delivery of written notice to each member of the Council.~~

~~(d) Members of the Council shall receive necessary travel expenses according to the provisions of the State Travel Reimbursement Act.~~

~~(F) The powers and duties of the Council shall be as follows:~~

~~(a) Recommend to the Board rules and regulations or amendments thereto for the controlling or prohibiting of air pollution and the establishment of health and safety tolerance for discharge of air contaminants in the state as may be consistent with the general intent and purposes of this act.~~

~~(b) Recommend to the Board such rules and regulations or any amendments thereto so that each may be applied in its terms and provisions as between particular types and conditions of air pollution or of air contamination, as between particular air contamination sources, and as between particular areas of the state, such as urban, suburban and rural areas.~~

~~(c) Recommend to the Board rules of practice and procedures for proceedings held pursuant to subsections (I) and (J).~~

~~(d) Hold hearings on codes, rules and regulations or any amendments or repeal thereof, and to appoint in appropriate cases a hearing officer to conduct such hearings. At such hearing, opportunity to be heard with respect to the subject thereof shall be given to the public.~~

~~(e) Said recommendations to the Board shall be in writing and concurred therein by at least four members of the Council.~~

~~(f) Compel the attendance of witnesses, receive such pertinent and relevant proof and other things as it may deem to be necessary, proper or desirable in order that it may effectively discharge its duties and responsibilities.~~

~~(g) Consider complaints and hold hearings as hereinafter provided in subsections (I) and (J).~~

~~(G) A Chief of Air Quality Service in the Department shall be appointed and employed by the Commissioner. The Chief of Air Quality Service shall be a graduate and licensed engineer with a degree in engineering or physical sciences, qualified by training and shall have at least five (5) years' experience in engineering, or environmental health or physical sciences, experienced in air pollution control equipment, measurement and control, and scientific and civic organizations in air pollution control, except that the Commissioner may waive these qualifications during the calendar year of 1975. The qualifications provided for in this act shall be in full effect in selecting any successor of the Chief of Air Quality Service after the expiration of calendar year 1975. The Chief of Air Quality Service shall have the following duties and powers:~~

~~(a) The Chief of Air Quality Service will perform those duties and responsibilities as he may be assigned by the Commissioner and as may be required for carrying out the Department's program on air pollution.~~

~~(b) The Chief of Air Quality Service shall attend all meetings of the Council, but shall not be entitled to a vote.~~

~~(c) The Chief of Air Quality Service shall, during the interim between meetings of the Council, handle such correspondence, obtain, assemble or prepare such reports and data as the Council may need in carrying out its responsibilities.~~

~~(d) The Chief of Air Quality Service shall make recommendations to the Council with respect to codes, rules, regulations and to air pollution prevention and abatement.~~

~~(e) The Chief of Air Quality Service shall be responsible for the investigation of complaints, violation of the code, rules and regulations, and to make inspection, observation and analyses of air pollution conditions, and make recommendations to the Council and to the Commissioner for the issuance of formal complaints, and for the prosecution of such complaints by the Department and shall have such other duties as the Commissioner may prescribe.~~

~~(f) The Chief of Air Quality Service shall keep a record of all meetings of the Council.~~

~~(g) The Chief of Air Quality Service will notify, at the direction of the chairman, the members of the Council of the time, place and purpose of each meeting.~~

~~(H) Complaints and investigations:~~

~~(a) In case any written complaint shall be filed with the Department and it shall have cause to believe, or in case the Director shall have cause to believe, that any person is violating any code, rule or regulation, this shall cause an investigation thereof to be made by the Chief of Air Quality Service.~~

~~(b) In making an investigation, the Chief of Air Quality Service, or authorized representative of the Commissioner, after notifying the person or persons in charge of the premises who shall have the option of accompanying the investigator, shall not be denied access at reasonable times in or upon any private or public property except private residences for the purpose of inspecting and investigating any condition which the Chief of Air Quality Service~~

~~shall have reasonable cause to believe to be an air pollution source.~~

~~(c) Such an investigation of air pollution by contaminants shall be evaluated in direct relation to the air contaminants' effect and damage at ground level point of contact on people, animals, vegetation and property. Such effects and damage shall be assessed in relation (1) to the source of cause for such effects, and (2) to the existing codes, rules and regulations. This procedure shall be the basis for determining whether or not any person is violating any code, rule or regulation covered by the Oklahoma Clean Air Act.~~

~~(I) Hearings:~~

~~(a) When, in the opinion of the Chief of Air Quality Service, such investigation discloses that a violation does exist, he shall by conference, conciliation and persuasion endeavor to the fullest extent possible to eliminate such violation.~~

~~In case of the failure by conference, conciliation and persuasion to correct or remedy any claimed violation and on recommendation by the Chief of Air Quality Service, the Commissioner may cause to have issued and served upon the person complained against a written notice, together with a copy of the formal complaint. The complaint shall specify the provisions of the statute, regulation or order alleged to be violated, the facts alleged to constitute a violation thereof, and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final and enforceable unless the person or persons named therein request in writing a hearing before the Council no later than fifteen (15) days after the date such order is served. In lieu of such order, the Council may require that the alleged violator appear before the Council at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered in person or by~~

~~registered mail to the alleged violator or violators not less than thirty (30) days before the time set for the hearing.~~

~~(b) The respondent to such a formal complaint may file a written answer thereto and may appear at such hearing in person or by representative, with or without counsel, and may make oral argument, offer testimony or cross-examine witnesses in support of the complaint to take any combination of such actions.~~

~~(c) In all proceedings before the Council with respect to any alleged violation of the Oklahoma Clean Air Act or any rule or regulation hereunder, the burden of proof shall be upon the Director.~~

~~(d) In making its determinations that the condition of air pollution exists, as that term is defined herein, the Council shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved including, but not limited to:~~

~~(1) The relationship of air pollution to the protection of health, general welfare and physical property of the people.~~

~~(2) The social and economic value of the air pollution source.~~

~~(3) The suitability or unsuitability of the air pollution source to the area in which it is located, including the question of priority of location in the area involved.~~

~~(4) The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such air pollution source.~~

~~(5) The quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause less air pollution or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors, among others, as existing physical conditions, topography, prevailing winds and velocities, zoning classifications, and also the fact that a rule or regulation and the degree of conformance~~

~~therewith may be proper as to an essentially residential area of the state, may not be proper as to a highly developed industrial area of the state.~~

~~(c) After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at the hearing upon such complaint, or, upon default in appearance of the respondent on the return day which shall be specified in the notice given as provided in paragraph (a) hereof, the Council shall make such final determination as it shall deem appropriate under the circumstances giving due regard to the matters required to be considered under paragraph (d) and subsection (J) below hereof, and the Council shall request the Commissioner to issue a final order in accordance with the Council's findings or take such action as indicated and notify the respondent thereof in writing by registered mail.~~

~~(f) Appeals from any order or determination of the Council shall be subject to review by the Board and then by the district court of the county where such alleged violation occurred.~~

~~(J) Variances:~~

~~(a) Any person seeking a variance shall do so by filing a petition for variance with the Chief of Air Quality Service. The Chief of Air Quality Service shall promptly investigate such petition and make a recommendation to the Council as to the disposition thereof. Upon receiving the recommendation of the Chief of Air Quality Service, the Council may, in its discretion, determine whether a hearing is necessary, or not, in granting a variance. Such hearing shall be held as provided in subsection (I) hereof, except the burden of proof shall be on the petitioner.~~

~~(b) The Council, herein, may grant individual variances beyond the limitations prescribed in the Oklahoma Clean Air Act, whenever it is found, upon presentation of adequate proof, that compliance with any provisions of this act, or any rule, regulation or~~

~~requirement established thereunder, will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people or to public health.~~

~~(c) In determining under what conditions and to what extent a variance from the Oklahoma Clean Air Act or any rule or regulation hereunder may be granted, the Council shall give due recognition to the progress which the person requesting such variance shall have made in eliminating or preventing air pollution. In such a case, the Council shall consider the reasonableness of granting a variance conditioned upon such person effecting a partial abatement of the particular air pollution over a period of time which it shall consider reasonable under the circumstances; or the Council, in conformity with the intent and purpose of the Oklahoma Clean Air Act to protect health, welfare and property, may prescribe other and different requirements with which the person who receives such variance shall comply.~~

~~(d) Any variance granted pursuant to the provisions of this section shall be granted for such period of time, not exceeding one (1) year, as shall be specified by the State Board of Health at the time of the grant of such variance. Any variance granted shall require that the person who receives it shall make such periodic reports to the Chief of Air Quality Service as the Council shall specify as to the progress which such person shall have made toward compliance with any rule or regulation as to which a variance has been granted. Such variance may be extended from year to year by affirmative action of the Board upon recommendation of the Council.~~

~~(K) It shall be unlawful to refuse to comply with any rule, regulation or order of the Council or the Board, or to in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or~~

~~attempt to interfere with the Council or Department and its personnel in the performance of any duty hereunder.~~

~~(L) Any person who violates any of the provisions of the Oklahoma Clean Air Act or the rules or regulations adopted pursuant to said act shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment in the county jail for not more than one (1) year, or a fine of not more than Five Hundred Dollars ($500.00) or by both such fine and imprisonment. Each day or part of a day during which such violation occurs shall constitute a separate offense.~~

~~(M) It shall be the further duty of the named state agency and any other state agency or other governmental entity called upon for assistance in the proper enforcement of the Oklahoma Clean Air Act to cooperate each with the other in its administration so as to accomplish the purposes set forth in said act.~~

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-1803, is amended to read as follows:

Section 1-1803. ~~(A)~~ A. Nothing in this act shall prevent cities ~~and~~, towns and counties from enacting ordinances or codes with respect to air pollution which will not conflict with the provisions of this act and which contain provisions ~~not lower~~ more stringent than those fixed by the operation of this act~~, and provided,~~; provided, however, that any city or town which has a population of less than three hundred thousand (300,000) persons according to the most current census may not enforce any ordinance or code regarding air pollution containing more stringent provisions unless and until such ordinance or code is reviewed by the Council and approved as to its reasonableness and technical feasibility. Provided further, ~~that~~ nothing in this act shall prevent cities and towns from summarily abating public nuisances as now provided by law. This provision shall not apply to any air pollution ordinances

or codes enacted by cities, towns or counties and in effect prior to the effective date of this provision.

~~(B)~~ B. Except for authority regarding abatement of public nuisances, no city, town, municipality, county or other political subdivision may enact or enforce any code, ordinance or rule which is more stringent than, or which is in conflict with any state or federal law, code or rule concerning the utilization of fuel in any flange-wheeled railroad rolling stock or which attempts to regulate or affect the emissions therefrom.

C. This act shall not be construed to limit, modify, or repeal or affect in any way the powers, duties or functions of the State Board of Agriculture, except to the extent necessary to comply with the Federal Clean Air Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1804.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The following terms used in this act shall, unless the context otherwise requires, have the following meanings:

1. "Act" means the Oklahoma Clean Air Act;

2. "Administrative Procedures Act" means the Oklahoma Administrative Procedures Act, 75 O.S. 1991, Section 250 et seq., as amended;

3. "Board" means the State Board of Health;

4. "Department" means the State Department of Health of the State of Oklahoma;

5. "Commissioner" means the State Commissioner of Health or his designated representative;

6. "Council" means the Air Quality Council;

7. "Chief" means the Chief of Air Quality Service;

8. "Federal Clean Air Act" means the Federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, including the Federal Clean Air Act Amendments of 1990;

9. "Person" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, municipality or any other legal entity, or their representative, agent or assign;

10. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as tend to be or may be injurious to human, plant or animal life or to property, or which interfere with the comfortable enjoyment of life and property, excluding, however, all conditions pertaining to employer-employee relations;

11. "Air contaminants" means the presence in the outdoor atmosphere of fumes, aerosol, mist, gas, smoke, vapor, particulate matter or any combination thereof which creates a condition of air pollution;

12. "Chairman" means the Chairman of the Air Quality Council;

13. "Small Business Stationary Source" means a stationary source as defined in Section 507 (c) of the Federal Clean Air Act;

14. "Panel" means the Compliance Advisory Panel as created herein;

15. "Hearing examiner" means a person, duly licensed to practice law by the Supreme Court of Oklahoma, appointed to hear individual proceedings in accordance with the Administrative Procedures Act;

16. "Ambient air" means the surrounding outdoor air;

17. "Emission" means the release or discharge of any air contaminant or potential air contaminant into the ambient air;

18. "Hearing officer" means a person appointed to preside at public hearings held pursuant to the Administrative Procedures Act; and

19. "Hazardous air pollution" means any air pollutant listed in Section 112 of the Federal Clean Air Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1805.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Department 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 this act;

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

3. Enforce rules and regulations of the Board and orders of the Department and the Council;

4. 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;

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

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

7. 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;

8. 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;

9. 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;

10. 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 this act and prescribe their powers and duties;

11. 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;

12. 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;

13. 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 filean action under this act in district court. Such action shall be brought in the name of the State Department of Health;

14. 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;

15. Recommend rules and regulations to the Department of Public Safety, to the extent necessary and practicable for periodic

inspection and testing of motor vehicles to enforce compliance with applicable emission standards;

16. Periodically enter and inspect at reasonable times or during regular business hours, any source, facility or premises permitted or regulated by this act, for the purpose of obtaining samples or determining compliance with this act or any rule, regulation, permit condition or standard promulgated pursuant to this act, or to examine any records kept or required to be kept pursuant to this 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, as that term is defined in Section 1732 of Title 21 of the Oklahoma Statutes, necessary to determine compliance with this act or any rule, permit condition, order or standard promulgated pursuant to this act. Provided, however, 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 this 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. 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. Nothing in this section shall preclude an in camera examination of confidential information by a hearing examiner 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 this act, and delegate to any city-county health department that state authority necessary to implement the state program within the city-county jurisdiction.

a. Such delegation from the state shall only be made upon the condition that the local authority will maintain a program consistent with the state program. Said delegation shall include the authority and the responsibility to enforce this act and regulations of the Board, to operate a permitting program, and the authority to collect fees for sources within their jurisdiction and to use such fees in accordance with the purposes set forth in this act. Delegation of authority to collect fees shall include the authority and duty to establish a special fund in the manner provided for in the Oklahoma Air Quality Control Fund established elsewhere in this act or, alternatively, that the collected funds remain with the city-county health department to be used in accordance with the provisions of this act at that location; provided, however, that the Department shall require or perform, at least yearly, an audit verifying the expenditure of such funds for the purposes set forth herein.

b. Delegation from the state shall be made by written agreement and reviewed on a yearly basis. Said

agreement shall contain reasonable terms and conditions as may be necessary to assure compliance with the requirements of this act and the Federal Clean Air Act. Any delegation by the state shall not, however, deprive it of primary or concurrent jurisdiction nor shall it be construed to include any powers of the Council or the Board.

c. A final order in any administrative action brought by either the state or the city-county health department shall preclude an administrative action by the other for the same violation; and

20. Carry out all other duties, requirements and responsibilities necessary and proper for the implementation of this act and fulfilling the requirements of the Federal Clean Air Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1806.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Board is hereby authorized, after public hearing and approval by the Council, to adopt, amend or repeal rules and regulations for the prevention, control and abatement of air pollution and establishment of health and safety tolerance standards for discharge of air contaminants to the atmosphere and such additional rules and regulations, including 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.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1807.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

There is hereby re-created an Air Quality Council to represent the interests of the people of Oklahoma. The Council shall consist of nine (9) members who shall be residents of Oklahoma and appointed by the Governor with the advice and consent of the Senate.

1. Members of the Council shall have the respective qualifications as follows:

a. one member shall be selected from the engineering profession, and, as such, shall be a professional engineer and experienced in matters of air pollution equipment and control, who shall not be an employee of any unit of government,

b. one member shall be selected from industry in general, and, as such, shall be employed as a manufacturing executive carrying on a manufacturing business within the State of Oklahoma,

c. one member shall be selected from a faculty of an institution of higher learning of university status and shall be experienced in matters of scientific knowledge and competent in matters of air pollution control and evaluation,

d. one member shall be selected from the transportation industry,

e. one member shall be selected from the petroleum industry, and, as such, shall be employed by a petroleum company carrying on a petroleum refining business within the state, and, as such, shall be trained and experienced in matters of scientific knowledge of causes as well as effects of air pollution,

f. one member shall be selected from agriculture, and, as such, shall be engaged in or employed by a basic agricultural business or the processing of agricultural products,

g. one member shall be selected from the political subdivisions of the state, and, as such, shall be a member of the local government body of a city or town,

h. one member, whose first term shall expire on June 15, 1998, shall be selected from the general public, and

i. one member, whose first term shall expire on June 15, 1999, shall be selected from the electric utilities industry, and as such, shall be knowledgeable in matters of air pollution and control.

2. Each member shall be appointed to serve a term of office of seven (7) years, except that the term of those first appointed shall expire as follows:

One at the end of one (1) year after date of appointment.

One at the end of two (2) years after date of appointment.

One at the end of three (3) years after date of appointment.

One at the end of four (4) years after date of appointment.

One at the end of five (5) years after date of appointment.

One at the end of six (6) years after date of appointment.

One at the end of seven (7) years after date of appointment.

The terms of all members shall be deemed to have expired on June 15th of the year of expiration, and shall continue until successors have been duly appointed and qualified. If a vacancy occurs, the Governor shall appoint a person for the remaining portion of the unexpired term created by the vacancy. Five members of the Council shall constitute a quorum.

3. The Council shall hold at least two regular meetings each calendar year at a place and time to be fixed by the Council. The Council shall select, at its first meeting following the passage of this act, one of its members to serve as chairman and another of its members to serve as vice-chairman. At the first regular meeting in each calendar year thereafter, the chairman and vice-chairman for the ensuing year shall be elected. Special meetings may be called, and any meeting may be canceled, by the chairman, or the

Commissioner, or by three members of the Council by delivery of written notice to each member of the Council and to the Chief.

4. Members of the Council shall each be entitled to receive reasonable and necessary travel expenses according to the provisions of the State Travel Reimbursement Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1808.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

1. Recommend to the Board rules and regulations 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 this act. Said recommendations may include, but not be limited to, regulations 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. Adopt rules of practice and procedure applicable to proceedings before the Council;

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

4. A rule or regulation, 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 and regulations, 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, and the Council shall take into consideration, in this connection, all factors found by it to be proper and just, including existing physical conditions, economic impact, topography, population, prevailing wind directions and velocities, and the fact that a rule or regulation 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 as authorized elsewhere in this act, 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 this act. The Council is also empowered to appoint a hearing examiner 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 Commissioner issue a final order in accordance with their findings or take such action as indicated and notify the respondent thereof in writing.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1809 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A Chief of Air Quality Service having those qualifications required by the state merit system shall be appointed and employed by the Commissioner and shall have the following duties and powers:

1. Perform those duties and responsibilities as may be assigned by the Commissioner and as may be required for carrying out the Department's program on air pollution;

2. The Chief, or his designee, shall attend all meetings of the Council and the Panel, but shall not be entitled to a vote;

3. Serve as secretary to both the Council and the Panel;

4. Make recommendations to the Council with respect to rules, regulations and air pollution prevention and abatement;

5. Investigate citizen complaints, violations of this act and the rules and regulations; make inspections, observations and analyses of air pollution conditions; and make recommendations to the Council and to the Commissioner for the issuance of formal complaints and for the prosecution of such complaints by the Department;

6. Keep a record of all meetings of the Council and the Panel; and

7. Notify the members of the Council and the Panel of the time, place and purpose of their respective meetings.

B. Citizen Complaints.

1. In case any written citizen complaint shall be filed with the Department and it shall have cause to believe, or should the Department have other cause to believe, that any person is violating this act, or any order, rule, regulation, standard or permit condition, this shall cause an investigation thereof to be made by the Chief. In making an investigation, the Chief or authorized representative of the Commissioner, after notifying the person or persons in charge of the premises who shall have the option of accompanying the investigator, shall not be denied access at reasonable times to any private or public property for the purpose of inspecting and investigating any condition which the Chief shall have reasonable cause to believe to be an air contaminant source.

2. Upon completion of an investigation undertaken pursuant to a written citizen complaint, but no later than thirty (30) days from receipt of the complaint, the Chief shall file a written report setting forth his findings, a copy of which shall be sent to the complainant and the alleged violator. The report shall clearly indicate with particularity any violations, or if no violations are found, shall contain a statement to that effect.

3. Within fifteen (15) days of receipt of the Chief's determination, the complainant may request to address the Air Quality Council and set forth his grievance. In such case, the Chief shall schedule the complainant to appear before the Council at the earliest regularly scheduled meeting and shall notify by mail both the complainant and the person whose activities are the source of the complaint. The Council shall allow the complainant a reasonable amount of time in which to present his grievance, and

shall allow the alleged violator and the Chief a time to respond, after which the Council shall make any appropriate recommendations. This proceeding shall not be construed as an individual proceeding, nor shall the attendance of any person be required.

4. Whenever the Council has reason to believe that a violation of any air quality rule or regulation has occurred, and finds that the Chief has taken no action, the Council may either request the Chief to take appropriate action or may require that the alleged violator appear before the Council at a time and place specified in the notice and answer the charge complained of in an individual proceeding. The notice shall be delivered in person or by certified mail to the alleged violator or violators not less than thirty (30) days before the time set for the hearing, and state with specificity the nature of the violation or violations.

5. Nothing in this section shall be construed to preclude the informal disposition of any matter by stipulation, agreed settlement, consent order or default.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1810 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person seeking a variance from any provision of this act, or from any applicable air quality rule or regulation, shall do so by filing a petition for variance with the Chief, who shall promptly investigate such petition and make a recommendation to the Council as to the disposition thereof. Upon receiving the recommendation of the Chief, the Council may, in its discretion, determine whether or not a hearing is necessary in granting a variance. Such hearing shall be held as provided in the Administrative Procedures Act, except the burden of proof shall be on the petitioner. The petitioner shall be notified by the Chief of the time and place of the hearing.

B. The Council may grant individual variances beyond the limitations prescribed in the Oklahoma Clean Air Act, whenever it is found, upon presentation of adequate proof, that compliance with any provision of this act, or any rule or regulation established hereunder, will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people or to public health. The Council may also propose rules applicable to such variances.

C. In determining under what conditions and to what extent a variance from the Oklahoma Clean Air Act or any rule or regulation hereunder may be granted, the Council shall give due recognition to the progress which the person requesting such variance shall have made in eliminating or preventing air pollution. In such a case, the Council shall consider the reasonableness of granting a variance conditioned upon such person effecting a partial abatement of the particular air pollution over a period of time which it shall consider reasonable under the circumstances.

D. If the Council deems proper, such an incremental compliance schedule may be imposed and shall contain a date or dates certain by which compliance with otherwise applicable rules or regulations or provisions of the act shall be achieved. The Council may also include provisions whereby a penalty of up to Ten Thousand Dollars ($10,000.00) per day may be assessed for failure to achieve compliance by the date(s) specified in the compliance schedule, if any, and taking into account conditions beyond the control of the applicant.

E. The Council, in conformity with the intent and purpose of the Oklahoma Clean Air Act to protect health, welfare and property, may also prescribe other and different requirements with which the person who receives such variance shall comply.

F. Any variance granted pursuant to the provisions of this section shall constitute a final order, shall be in writing, and shall be granted for a period of time not to exceed three (3) years. Any variance so granted shall require to be submitted to the Chief such periodic reports as the Council shall specify as to the progress which such person shall have made toward compliance with any rule or regulation as to which a variance has been granted. Such variance may, for good cause shown, be extended on a year-to-year basis by affirmative action of the Council.

G. Nothing in this section shall be construed to preclude the informal disposition of any matter by stipulation, agreed settlement, consent order or default.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1811 of Title 63, unless there is created a duplication in numbering, reads as follows:

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, this act or any standard, rule or regulation promulgated by the Board, any order of the Department or Council, or any condition of any permit issued by the Department pursuant to this 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 one hundred eighty (180) days 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 a hearing may assess an administrative fine 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 administrative hearing. Said order shall contain language to that effect. Upon such request the hearing shall promptly be set before the Department unless the respondent requests that the hearing be held before the Air Quality Council. In such case, the Chief shall schedule the hearing before the Council and notify the respondent and the Department.

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

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.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1812 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Department shall have the authority, pursuant to rules of the Board, to implement a field citation program establishing appropriate violations for which field citations assessing administrative penalties may be issued. No citation shall assess a penalty in excess of One Thousand Dollars ($1,000.00) per day, or part of a day, per violation, nor exceed a combined limit of Five Thousand Dollars ($5,000.00) per day. Provided further, no field citation shall be valid unless reviewed for legal sufficiency by the service within ten (10) days of issuance.

1. Any person to whom a field citation is issued may elect to pay the penalty assessment or to request a hearing. The assessment shall become final and payable unless the request for hearing is made in writing within fifteen (15) days of the citation. Upon such request, the hearing shall be promptly set before the Department unless the respondent shall request that the hearing be set before the Council. In such case the Chief shall schedule the hearing before the Council and notify the respondent and the Department.

2. Payment of a penalty required by a field citation shall not be construed as an admission of liability or guilt and shall preclude further assessment of administrative penalties for the same violation. It shall not, however, be a defense to further enforcement by the Department for a subsequent violation or to an assessment of the statutory maximum penalty for criminal violations pursuant to other authority in the Oklahoma Clean Air Act.

3. In determining the amount of any penalty to be assessed pursuant to this section, the person issuing a field citation shall

take into account the seriousness of the violation, any good faith efforts to comply with applicable requirements and other factors determined by rule to be relevant.

B. Qualifications of persons authorized to issue field citations shall be set by the Department, but shall include as a minimum:

1. Completion of a special course of study developed by the Department specifically for the training of persons for this purpose;

2. A minimum of three (3) years' experience in the air quality service enforcement program;

3. A job classification commensurate with the duties and responsibilities of the individual; and

4. Approval by the Chief.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1813 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Upon the effective date of permitting regulations promulgated under this 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, 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 Board, to implement a comprehensive permitting program for the State of Oklahoma consistent with the requirements of this 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 this act, or of any permit, regulation or standard promulgated pursuant to this act;

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;

3. Revise any permit for cause or automatically reopen it to incorporate newly applicable regulations, standards 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, no less frequently than annually, 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 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. Regulations of the Board may set de minimis limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee, or be subject to public review. Any source so exempted, however, shall remain under jurisdiction of the Department and shall be subject to any applicable regulations or general permit requirements.

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, as regards 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. 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 under this act. Any permit applicable to the 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 regulation, or compliance schedule set forth in any variance or order regarding or applicable to the source in question. 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 or constructive knowledge which would lead a reasonable person to know of the violation. It shall be the responsibility of the transferor to notify the Department in writing within ten (10) days of the change in ownership.

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 issuance of a proposed permit by the Department, publish notice of such issuance 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 or request a 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 proposed 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 pending permit including the complete application, except for portions deleted

under trade secret provisions of this 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 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 first running 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 for above, notice of the date, time and place and the purpose of the meeting. Said notice shall be published at least ten (10) days but no more than thirty (30) days prior to the meeting. 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.

c. At the meeting, which shall be attended by both the Department and the applicant, persons may submit oral or written statements concerning the proposed 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 hearing 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 where 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 Chief'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.

2. 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 this act and the regulations of the Board promulgated pursuant to this act. Both the applicant and the Department shall participate in contested case hearings as necessary parties unless and until one shall be released by the hearing examiner.

b. The Department may appoint a hearing examiner who shall have full authority to conduct a contested case hearing. Upon conclusion of the hearing, the hearing examiner 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 a proposed permit is not in substantial compliance with this act or the

regulations of the Board, shall have the authority to require such remediation as may be appropriate, or deny the permit.

3. Operating permits for new sources.

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

(1) the construction permit was issued pursuant to the public review requirements, 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.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1814 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Upon the effective date of regulations promulgated pursuant to this act establishing a schedule of permit fees, the owner or operator of any source required to have a permit shall be subject to pay to the Department or, upon delegation, the appropriate city-county authority:

1. A fee sufficient to cover the reasonable cost of reviewing and acting upon any application for a construction or operating permit for any source;

2. An annual operating permit fee sufficient to cover the reasonable costs, both direct and indirect, of implementing and enforcing the permit program authorized by this act and the Federal Clean Air Act, including, but not to be limited to:

a. the costs of reviewing and acting upon any permit renewal,

b. emissions and ambient monitoring, for those costs incurred under the permitting program,

c. preparing generally applicable regulations or guidance,

d. modeling, monitoring, analyses and demonstrations,

e. preparing inventories and tracking emissions, and

f. inspections and enforcement.

B. The annual operating fee may be imposed in graduated yearly increases as necessary to cover the above costs, but for any major source, affected source, or any source, including an area source, subject to standards or regulations under Section 111 or 112 of the Federal Clean Air Act, any source required to have a permit under parts C or D of Title I of the Federal Clean Air Act, or any other source as may be required to have a permit pursuant to the Federal Clean Air Act, the fee, beginning January 1, 1993, shall be Ten Dollars ($10.00) per ton of regulated air contaminant, due and payable upon receipt of invoice. Thereafter, following rulemaking, the annual operating fee shall be Twenty-five Dollars ($25.00) per ton or such amount, either higher or lower, as is determined to adequately reflect the demonstrated reasonable costs of the operating permit program. Fees may be based upon the amount of regulated air contaminant allowed by permit to be emitted, or upon actual emissions properly determined, or both; provided, however, that the rate per ton shall be the same whether applied to actual or to allowable emissions. The applicant shall annually have the option to elect either actual or allowable emissions as the basis for calculating the operating fee. For other sources subject to permitting requirements, fees may be assessed consistent with the criteria in subsection A of this section. No fee, however, shall be required for the emission of carbon monoxide and no assessment shall be made for emissions in excess of four thousand (4,000) tons per contaminant per year per source, or any group or stationary sources located within a contiguous area and under common control.

C. The fees authorized in this section shall be set forth by rule and shall preclude collection of any additional permitting fees by any other state or local governmental authority for emission of the same air contaminants. Provided further, in the event that a particular substance may exhibit the characteristics of more than one type of regulated air contaminant, and to prevent a double fee from being assessed, the Department may assign only one single classification to that particular substance for fee assessment purposes. For those sources subject to the fee specified in subsection B of this section, the regulation shall further provide for the annual operating fee to be adjusted automatically each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For the purposes of this subsection:

1. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the Department of Labor as of the close of the twelve-month period ending on August 31 of each calendar year; and

2. The revision of the Consumer Price Index which is the most consistent with the Consumer Price Index for calendar year 1989 shall be used.

D. Any fee not received by the Department within the prescribed time period allotted for payment, unless a lesser amount shall be provided for by rule, shall be subject to a ten percent (10%) per month penalty.

E. There is hereby created in the State Treasury a fund for the State Department of Health to be designated the "Oklahoma Air Quality Control Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all permit fees collected by the Department under this act. All monies accruing to the credit of this fund shall be budgeted and expended

by the Department for the sole purpose of implementing the permit program as set forth in this act and the Federal Clean Air Act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1815 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Department shall have the authority to establish a program for the regulation of hazardous air pollutants in accordance with, and as those terms are defined by, Section 112 of the Federal Clean Air Act, and for such other toxic air contaminants as may be determined by rule. Such program may include but shall not be limited to:

1. Requirements for the prevention and detection of accidental releases by the owners and operators of sources of such releases;

2. Regulation of sources of emissions of toxic and hazardous air pollutants by establishing:

a. emission limitations,

b. operating procedures,

c. performance standards,

d. control technology standards,

e. monitoring requirements, and

f. permit requirements and conditions, and such other requirements as may be necessary to carry out the intent and purposes of this act, including establishing a separate source category for research or laboratory facilities as set forth under Section 112(c) of the Federal Clean Air Act Amendments of 1990; and

3. Implementing and administering a program for the early reduction of emissions of hazardous air pollutants in accordance with Section 112(i) of the Federal Clean Air Act.

B. Within a reasonable time after the effective date of any federal hazardous air pollutant emission standard for a source

category under Section 112(d) of the Federal Clean Air Act, the Air Quality Council shall review the standard, and any state rule or other requirements applicable to toxic air contaminants for that particular category or subcategory, and determine whether the federal standard should be adopted or whether the state requirements should remain in effect. Application of either the federal or state requirements shall preclude application of the other.

C. 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.

D. 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.

E. Nothing in this section shall be construed to limit authority established elsewhere in this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1816 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Department shall develop, as part of the State Implementation Plan, plans for the establishment of a small business stationary source technical and environmental compliance assistance

program, the purpose of which shall be to provide information to small businesses to assist them in achieving compliance with the requirements of this act and the Federal Clean Air Act. It shall be the duty of the Department to:

1. Develop, collect and coordinate information concerning compliance methods and technologies for small business stationary sources;

2. Assist small businesses with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution;

3. Develop a compliance assistance program for small business stationary sources to assist them in determining applicable requirements and in receiving permits in a timely manner;

4. Assure that small business stationary sources receive notice of their rights under this act and the Federal Clean Air Act, in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard;

5. Develop procedures for informing small business stationary sources of their obligations under this act, including mechanisms for referring such sources to qualified auditors in order that they may determine compliance with this act or the Federal Clean Air Act; and

6. Develop procedures for considering requests from small businesses for modification of work practices or technological compliance methods when in accordance with this act or the Federal Clean Air Act.

B. There is hereby created within the Office of the Deputy Commissioner for Environmental Health Services, the State Ombudsman Office for Small Businesses. It shall be the responsibility of the office to monitor the small business stationary source technical and

environmental compliance assistance program under this section. The Office shall:

1. Evaluate and report on all aspects of the small business stationary source technical and environmental compliance assistance program including, but not limited to:

   a. comments and recommendations to the Environmental Protection Agency and the state regarding development and implementation of regulations,

   b. the impact of the Oklahoma Clean Air Act and the Federal Clean Air Act on the state's economics, local economics and small businesses,

   c. review the work and services of the small business stationary source technical and environmental compliance assistance program with trade associations and small business representatives;

2. Interact with the state and small businesses to:

   a. facilitate small business participation in new regulation development,

   b. disseminate information,

   c. sponsor meetings, and

   d. refer small businesses to the appropriate areas of the small business stationary source technical and environmental compliance assistance program where they may obtain information on assistance or find affordable alternatives in controlling emissions and precluding accidental releases; and

3. Interface with:

   a. the Small Business Administration, the Department of Commerce and other state, local, regional and federal agencies which have programs to finally assist small businesses in compliance with environmental regulations, and

b. private sector financial institutions in locating sources of funds to comply with state-local air pollution regulations.

C. There is hereby created a Compliance Advisory Panel with responsibilities consistent with the requirements in Title V of the Federal Clean Air Act. Panel members shall serve without compensation but shall be entitled to travel expenses according to the provisions of the State Travel Reimbursement Act. Funds to cover the operational expenses of the panel shall be allocated and administered by the Department through the small business stationary source technical and environmental compliance assistance program office under the supervision of the Chief of Air Quality Service, who shall serve as secretary to the panel. The panel shall consist of seven (7) members as follows:

1. Two members who are not owners, or representatives of owners, of small business stationary sources selected by the Governor to represent the general public;

2. Two members who are owners, or who represent owners, of small business stationary sources to be selected, one each, by the President Pro Tempore of the Senate and the Speaker of the House of Representatives;

3. Two members who are owners, or who represent owners, of small business stationary sources to be selected, one each, by the minority leader of the Senate and the minority leader of the House of Representatives; and

4. One member selected by the State Commissioner of Health.

D. Each member of the Compliance Advisory Panel shall be appointed for a term of seven (7) years terminating on January 15, except the term of those first appointed shall expire as follows:

1. The first appointee of the Governor shall serve for one (1) year;

2. The appointee of the House minority leadership shall be for two (2) years;

3. The appointee of the House majority leadership shall be for three (3) years;

4. The appointee of the Senate minority leadership shall be for four (4) years;

5. The appointee of the Senate majority leadership shall be for five (5) years;

6. The second appointee of the Governor shall be for six (6) years; and

7. The appointee of the Commissioner of Health shall be for seven (7) years.

E. The terms of all members shall continue until their successors shall have been duly appointed. If a vacancy occurs, the designated appointing official shall name a replacement for the remaining portion of the unexpired term created by the vacancy.

F. The Compliance Advisory Panel shall have the authority and the duty to:

1. Render advisory opinions on the effectiveness of the state small business stationary source technical and environmental compliance assistance program, difficulties encountered, and the degree and severity of enforcement;

2. Make periodic reports to the administrator of the Environmental Protection Agency concerning the compliance status of the state small business stationary source technical and environmental compliance assistance program with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act; and

3. Review information for small business stationary sources to assure such information is understandable by the layperson.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1817 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person who knowingly and wilfully:

1. Violates any applicable provision of this act or any rule, regulation or standard promulgated pursuant to this act;

2. Violates any order issued under or pursuant to this act;

3. Violates any emission limitation or any substantive provision or condition of any permit;

4. Makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan or other document, except for monitoring data, required pursuant to this act to be either filed or maintained;

5. Fails to notify or report as required under this act;

6. Fails to install any monitoring device or method required to be maintained or followed pursuant to this act,

shall, upon conviction, be guilty of a misdemeanor and be punished by a fine not to exceed Twenty-five Thousand Dollars ($25,000.00) per day of violation or for not more than one (1) year imprisonment in the county jail, or both.

B. Any person who knowingly and wilfully:

1. Violates any applicable provision of this act or any rule, regulation or standard promulgated pursuant to this act, or any order of the Department or any emission limitation or substantive provision or condition of any permit, and who knows at the time that he thereby places another in danger of death or serious bodily injury;

2. Tampers with or renders inaccurate any monitoring device; or

3. Falsifies any monitoring information required to be maintained or submitted to the Department pursuant to this act,

shall upon conviction be guilty of a felony and subject to a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00) or for not more than ten (10) years imprisonment, or both.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1818 of Title 63, unless there is created a duplication in numbering, reads as follows:

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 this act, or any rule, regulation or standard established under this act;

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 this 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 this act.

B. The district attorney or attorneys having jurisdiction shall have primary authority and responsibility for prosecution of any civil or criminal violations under this act and for the collection of any delinquent fees or fines assessed pursuant to this 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 or fines.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1819 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. All rules and regulations of the Board and administrative determinations of the Department or the Council existing prior to the effective date of the amendments to the Oklahoma Clean Air Act set forth in this act shall remain in full force and effect after that date until repealed or amended unless in conflict with, prohibited by or inconsistent with the provisions of the Oklahoma Clean Air Act, as amended.

B. All enforcement actions taken before or after the effective date of the amendments to the Oklahoma Clean Air Act as set forth in this act shall be valid if based upon an act or failure to act that violated a provision of law or regulation in effect at the time of the act or the failure to act.

SECTION 19. AMENDATORY 63 O.S. 1991, Section 1-1701.1A, is amended to read as follows:

Section 1-1701.1A A. In addition to any other remedies provided for by law, the Department, pursuant to rules and regulations, may issue a written order to any person whom the Department has reason to believe is presently in violation of any standards or rules promulgated by the State Board of Health pursuant to environmental health laws, and to whom the Department has served, no less than fifteen (15) days previously, a written notice of violation of such standards or rules. The fifteen-day notice period may be reduced as, in the opinion of the Department, may be necessary to render the order reasonably effectual.

B. The written order may require compliance with such standards or rules immediately or within a specified time period or both. The order may also assess an administrative fine 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. Any penalty assessed in the order shall not exceed Ten Thousand Dollars ($10,000.00) per day of noncompliance with the order. In assessing such a penalty, the Department shall consider the seriousness of the violation and any efforts to comply with applicable requirements.

D. Any order issued pursuant to the provisions of this section shall become a final order unless, no later than fifteen (15) days after the order is served, the person or persons named therein request an administrative hearing. Upon such request the Department shall promptly conduct the hearing. The Department shall dismiss such proceedings where compliance with the order is demonstrated. A final order following a hearing may assess an administrative fine of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.

E. Such orders and hearings are subject to the Administrative Procedures Act.

F. The environmental ~~health~~ laws to which the provisions of this section shall be applicable include those laws codified in Articles 9 through 16, inclusive, and Articles 17-A, ~~18,~~ 20 and 21 of Title 63, and further include the Oklahoma Solid Waste Management Act and those professions and occupations codified in Title 59 of the Oklahoma Statutes for which the Department issues a license.

SECTION 20. AMENDATORY 63 O.S. 1991, Section 1-106.1, is amended to read as follows:

Section 1-106.1 A. The State Board of Health may establish a system of fees to be charged for environmental and other health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. This provision is subject to the following limitations:

1. The Board must follow the procedures required by Sections 301 through 325 of Title 75 of the Oklahoma Statutes for adoption of rules and regulations in establishing or amending any such schedule of fees; and

2. The Board shall charge fees only within the following ranges, except as may be otherwise specified in this section.

For license or permit issuance: $50.00 to $2,000.00

For license or permit renewal: $10.00 to $500.00

For environmental health services: $25.00 to $250.00

provided further, that any facility exempt from the requirement to obtain a permit based on date of construction or start-up may be assessed an annual permit renewal fee equivalent.

B. The Board's authority to establish such a fee schedule shall extend to all programs administered by the State Commissioner of Health and the State Department of Health, regardless of whether the statutes creating such programs are codified in the Oklahoma Public Health Code.

C. The Board shall base its schedule of licensing or permitting fees upon the reasonable costs of review and inspection services rendered in connection with each license and permit program, but shall be within the ranges specified in subsection A of this section, except as may be otherwise specified in this section. The Department shall establish a system of training for all personnel who render review and inspection services in order to assure uniform statewide application of rules and regulations and the Board shall also base the fee on reasonable costs associated with the training of those personnel. Such fees shall not be used in the operation of local health departments whose personnel do not participate fully in applicable State Department of Health training and standardization programs.

D. The Board may exempt by rule and regulation any class of licensee or permittee or any class of facility or activity to be

licensed or permitted from the requirements of the fee schedule if the Board determines that the creation of such a schedule for any such class would work an unreasonable economic hardship.

E. All statutory fees now in effect for issuance and renewal of any license or permit administered by the State Commissioner of Health and the State Department of Health shall remain in effect until such time as the Board acts to implement new fee schedules pursuant to the provisions of this act.

F. Unless a longer duration is specified for certain permits by the rules and regulations of the Board, licenses and permits issued by the Commissioner of Health shall be for a one-year period.

G. 1. Notwithstanding the above limits, the State Board of Health may establish an annual fee for public water supply system regulatory services based on the size and type of the system and the resultant regulatory cost of the services to the state. Such annual fee shall not result in an increase of more than thirty cents ($0.30) per month per residential user of the public water supply systems per year. A public water supply system operated by or on behalf of a municipality or a rural water district may submit tests of such system performed by a laboratory certified pursuant to this section in lieu of tests performed by the State Department of Health pursuant to any regulatory requirement of state or federal law. The portion of the annual fee applicable to laboratory tests performed by a certified laboratory shall be deducted from the annual fee in the annual bill.

2. The State Board of Health may assess an annual minimum fee charged for:

a. purchase water systems, Fifty Dollars ($50.00),

b. ground water systems, Seventy-five Dollars ($75.00), and

c. surface water systems, One Hundred Fifty Dollars ($150.00).

3. Any state funds appropriated for public water supply system regulatory services shall be used to offset the increased costs of regulatory services to the smaller public water supply systems with a population of up to two thousand (2,000) people.

H. The Oklahoma State Board of Health shall adopt standards for certification of privately and publicly owned laboratories for performance of analyses of water and wastewater for public water supply systems. The Board may adopt standards of the United States Environmental Protection Agency by reference but in any case laboratories meeting such standards shall be certified.

I. The State Health Department shall use the standards adopted by the Board for purposes of certifying laboratories for performance of water and wastewater analyses for public water supply systems. The Department shall adopt procedures for examining and certifying laboratories for compliance with the standards. The Department shall certify those laboratories that meet the standards set by the Board.

J. The Department shall accept, for purposes of compliance monitoring and analysis, the water and wastewater analyses of those laboratories which it certifies pursuant to the standards set by the Board.

K. The Department may suspend or revoke the certification of any laboratory which does not continue to comply with the standards after receiving certification from the Department. The owner and all employees of any laboratory which seeks certification pursuant to this section shall be subject to the enforcement provisions of Sections 1-1701 and 1-1701.1A through 1-1701.1B of this code, including but not limited to the sanctions and punishments provided for giving false information in an application for certification. Any owner or employee of a certified laboratory who knowingly makes any false statement, representation or certification to a client or to the Department or who knowingly renders inaccurate any monitoring

device or method shall, upon conviction, be guilty of a misdemeanor, and shall be subject to a fine of not more than Five Thousand Dollars ($5,000.00) for each violation.

L. The limitations of paragraph 2 of subsection A of this section shall not apply to the issuance or renewal of permits by the Commissioner or Department pursuant to the National Pollutant Discharge Elimination System of the Federal Water Pollution Control Act, provided that fees assessed pursuant to the National Pollutant Discharge Elimination System of the Federal Water Pollution Control Act shall not exceed the cost incurred by the state for performing the regulatory services or Three Hundred Thousand Dollars ($300,000.00) per year averaged over a five-year period.

M. The limitations of paragraph 2 of subsection A of this section shall not apply to the issuance or renewal of any permit by the Commissioner of the Department pursuant to the Oklahoma Clean Air Act.

SECTION 21. REPEALER 63 O.S. 1991, Sections 1-1804, 1-1805, 1-1806, 1-1807 and 1-1808, are hereby repealed.

SECTION 22. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-2125 MJM