

ENROLLED SENATE
BILL NO. 891

BY: CAIN, CAPPS and MUEGGE of
the SENATE

and

BENSON, HUDSON, VAUGHN
(George), MITCHELL, SMITH
(Bill), SULLIVAN and HOWARD
of the HOUSE

AN ACT RELATING TO CONTROLLED INDUSTRIAL WASTE;
AMENDING 17 O.S. 1991, SECTIONS 303 AND 304, 62
O.S. 1991, SECTION 139.47, 63 O.S. 1991, SECTIONS
1-2001, 1-2001.1, 1-2002, AS AMENDED BY SECTION 1
OF ENROLLED HOUSE BILL NO. 2445 OF THE 2ND SESSION
OF THE 43RD OKLAHOMA LEGISLATURE, 1-2003, 1-2003.1,
1-2004, 1-2004.1, 1-2004.2, 1-2005, 1-2005.2, 1-
2005.3, 1-2005.3A, AS AMENDED BY SECTION 2 OF
ENROLLED HOUSE BILL NO. 2445 OF THE 2ND SESSION OF
THE 43RD OKLAHOMA LEGISLATURE, 1-2005.3B, 1-
2005.3C, 1-2005.4, 1-2006, 1-2006.1, 1-2007, 1-
2008, 1-2008.1, 1-2009, 1-2009.1, 1-2010, 1-2012,
1-2012.1, 1-2012.2, 1-2012.3, 1-2012.4, 1-2014, 1-
2014.1, 1-2014.2, 1-2014.3, 1-2015, 1-2016, 1-2017,
1-2018, 1-2019, 1-2414, AS AMENDED BY SECTION 2 OF
ENROLLED SENATE BILL NO. 683 OF THE 2ND SESSION OF
THE 43RD OKLAHOMA LEGISLATURE, 1-2416.1 AND 1-2417,
AS AMENDED BY SECTION 6 OF ENROLLED SENATE BILL NO.
683 OF THE 2ND SESSION OF THE 43RD OKLAHOMA
LEGISLATURE, 68 O.S. 1991, SECTIONS 1359, AS
AMENDED BY SECTION 1 OF ENROLLED HOUSE BILL NO.
2114 OF THE 2ND SESSION OF THE 43RD OKLAHOMA
LEGISLATURE, 2357.15, 2357.16 AND 2357.17, AND 82
O.S. 1991, SECTION 1266, WHICH RELATE TO CONTROLLED

INDUSTRIAL WASTE; CHANGING TERM CONTROLLED
INDUSTRIAL WASTE TO HAZARDOUS WASTE; AND PROVIDING
AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 303, is amended to read as follows:

Section 303. For the purposes of the Oklahoma Underground Storage Tank Regulation Act:

1. "Abandoned system" means an underground storage tank system which:
 - a. has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to service, or
 - b. has been out of service for one (1) year or more prior to the effective date of this act, or
 - c. has been rendered permanently unfit for use as determined by the Commission;
 2. "Board" means the Pollution Control Coordinating Board;
 3. "Commission" means the Oklahoma Corporation Commission;
 4. "Corrective action" means action taken to monitor, maintain, minimize, eliminate or clean up a release from an underground storage tank system;
 5. "Department" means the Oklahoma Department of Pollution Control;
 6. "Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, biota and all other natural resources;
 7. "Existing system" means an underground storage tank system for which installation of that system commenced prior to the effective date of this act;
 8. "Facility" means any location or part thereof containing one or more underground storage tanks or systems;
 9. "Hazardous substance" is any substance defined in Section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 but not including:
 - a. any substance regulated as a hazardous waste under Subtitle C of the federal Solid Waste Disposal Act, or
 - b. any substance regulated as a hazardous waste under the Oklahoma Hazardous Waste Disposal Act.
- The term hazardous substance shall also include a mixture of hazardous substances and petroleum, providing the amount of petroleum is of a de minimus quantity;
10. "New system" means an underground storage tank system for which the installation of the system began on or after the effective date of this act;
 11. "Operator" means any person in control of or having responsibility for the daily operation of the underground storage tank system, whether by lease, contract, or other form of agreement;
 12. "Owner" means:
 - a. In the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to, controls, or possesses an interest in an underground storage tank

system used for the storage, use, or dispensing of regulated substances, or

- b. In the case of an underground storage tank system in use before November 8, 1984, but no longer in service on that date, any person who holds title to, controls, or possesses an interest in an underground storage tank system immediately before the discontinuation of its use.

The term "owner" does not include a person who holds an interest in an underground tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the underground tank system;

13. "Permit" includes any registration, permit, license or other authorization issued by the Commission to operate an underground storage tank system;

14. "Person" means any individual, trust, firm, joint stock company or corporation, federal agency, corporation, including a government corporation, partnership, association, the state or any state agency, municipality, county or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States Government or any other legal entity;

15. "Petroleum" means ethylene glycol-based antifreeze, crude oil, crude oil fractions, and refined petroleum fractions, including motor fuel, jet fuel, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oil which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum" also means a mixture of petroleum and hazardous substances provided, the amount of the hazardous substances is of a de minimus quantity;

16. "Pipeline facilities" are new and existing pipe rights-of-way and any equipment, facilities or buildings regulated under:

- a. the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App., 1671, et seq.),
- b. the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.),
- c. the state Hazardous Liquid Transportation System Safety Act, or
- d. intrastate pipeline facilities regulated under state law;

17. "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful or detrimental or injurious to the public health, safety or welfare or the environment;

18. "Regulated substances" are hazardous substances or petroleum;

19. "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of regulated substances from an underground storage tank system into the environment of the state. The term "release" includes but is not limited to suspected releases identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner;

20. "Tank" is a stationary vessel designed to contain an accumulation of regulated substances which is constructed of primarily non-earthen materials that provide structural support;

21. "Transporter" means any person who transports, delivers or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain;

22. "Underground storage tank system" means any one or combination of underground tanks, including underground piping connected thereto, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground piping connected thereto, is ten percent (10%) or more beneath the surface of the ground; and

23. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oklahoma or any portion thereof.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 304, is amended to read as follows:

Section 304. The provisions of the Oklahoma Underground Storage Tank Regulation Act shall not apply to:

1. septic tank systems;
2. pipeline facilities;
3. surface impoundments, pits, ponds or lagoons;
4. stormwater and wastewater collection systems;
5. flow-through process tank systems;
6. liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
7. storage tank systems located in an underground area such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tanks are situated upon or above the surface of the floor;
8. hydraulic lift tank systems;
9. underground storage tank systems with a capacity of less than one hundred ten (110) gallons;
10. underground storage tank systems with a de minimus concentration of regulated substances including but not limited to swimming pools and coffins;
11. underground storage tank systems that serve as emergency backup tanks, provided that such backup tanks hold regulated substances for only a short period of time and are expeditiously emptied after each use. The provisions of this paragraph shall not prevent Commission notification requirements and such other restrictions as may be deemed necessary by the Commission to protect the environment;
12. underground storage tank systems with a capacity of one thousand one hundred (1,100) gallons or less used for noncommercial agricultural or residential purposes;
13. underground storage tank systems and residential tanks for noncommercial use for storing heating oil for consumptive use on the premises where stored; and
14. underground storage tank systems storing hazardous wastes regulated under Subtitle C of the federal Solid Waste Disposal Act or substances regulated as hazardous wastes under the Oklahoma Hazardous Waste Disposal Act, or a mixture of such wastes and regulated substances where the wastes constitute greater than fifty percent (50%) of the volume of the mixture.

SECTION 3. AMENDATORY 62 O.S. 1991, Section 139.47, is amended to read as follows:

Section 139.47 Where the written findings of fact required by Section 139.46 of this title include one of the following emergencies, and the Governor finds that such emergency exists, and was not foreseen or reasonably foreseeable by the Legislature, the Governor may allocate and authorize the expenditure of monies from the State Emergency Fund to provide for such emergency without any action by the Contingency Review Board:

(1) destruction of or damage to state-owned property caused by fire, hail, tornado, explosion, windstorm, flood, or other catastrophe;

(2) maintenance and operation of the National Guard when called to active state service in cases of emergency;

(3) allocation or expenditures necessary to provide matching funds for participation in any federal disaster relief program, emergency equipment purchase, or otherwise expedite receipt of disaster funds;

(4) allocations or expenditures deemed necessary to remove asbestos from public buildings or facilities; and

(5) emergency response action necessary to protect the public health, safety or welfare or livestock, wild animals, birds, fish or other aquatic life from the discharge of any hazardous waste, deleterious substance or any such other waste or substance as will or is likely to be detrimental or cause injury to the public or such livestock, wild animals, birds, fish or other aquatic life. Provided further, that the Governor shall allocate, without any action by the Contingency Review Board, monies from the State Emergency Fund to pay expenses for the Court on the Judiciary approved pursuant to Section 16.6 of Title 20 of the Oklahoma Statutes and not otherwise funded by other legislative appropriations.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-2001, is amended to read as follows:

Section 1-2001. This act shall be known and may be cited as the "Oklahoma Hazardous Waste Disposal Act".

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-2001.1, is amended to read as follows:

Section 1-2001.1 Hazardous waste shall be treated and regulated pursuant to the provisions of the "Oklahoma Hazardous Waste Disposal Act" and shall not be subject to the provisions of the "Oklahoma Solid Waste Management Act".

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-2002, as amended by Section 1 of Enrolled House Bill No. 2445 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1-2002. As used in this act, unless the context otherwise requires:

1. "Hazardous waste" is defined as waste materials and byproducts, either solid or liquid, which are to be discarded by the generator or recycled and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary land fills, waste or sewage treatment facilities. Hazardous waste may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludges, tank bottoms containing heavy metallic ions, toxic organic chemicals, and materials such as paper, metal, cloth or wood which are contaminated with controlled industrial waste, and excludes domestic sewage;

2. "Disposal" means the final disposition of controlled industrial waste;

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

4. "Disposal site" means the location where any final disposition of controlled industrial waste occurs. Disposal sites include but are not limited to injection wells and surface disposal sites;

5. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized;

6. "Treatment" means the detoxification, neutralization, incineration or biodegradation of controlled industrial waste in order to remove or reduce its harmful properties or characteristics;

7. "Treatment facility" means any location where treating or recycling of controlled industrial waste occurs;

8. "Recycling" means the reuse, processing, treating, neutralizing or rerefining of hazardous waste into a product which is being reused or which has been sold for beneficial use. Hazardous waste which is intended for fuel is not deemed to be recycled until it is actually burned;

9. "Storage facility" means any location where the temporary holding of hazardous waste occurs, including any tank, pit, lagoon, pond, or other specific place or area;

10. "Hazardous waste facility" as used herein shall mean and include storage and treatment facilities and disposal sites;

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

12. "Council" means the Hazardous Waste Management Council;

13. "Site" or "proposed site" means the surface area of a disposal site, or other hazardous waste facility, as applied for in the application for a permit for the facility;

14. "On-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a hazardous waste facility of controlled industrial waste generated by the owner of the facility;

15. "Off-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a hazardous waste facility of hazardous waste not generated by the owner of the facility;

16. "Multi-user on-site treatment facility" means a treatment facility for hazardous waste generated by the co-owners of the facility and which meets the criteria specified by Section 1-2008.1 of this title; and

17. "Regeneration" or "regenerated" means the regeneration of spent activated carbon to render it reusable, and any treatment, storage or disposal associated therewith.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-2003, is amended to read as follows:

Section 1-2003. A division responsible for the regulation and management of hazardous waste shall be maintained within the State Department of Health. The division shall consist of a director, who shall be hired by the Commissioner of Health, and additional employees to be hired by the Commissioner as he deems are necessary and duly qualified to carry out the provisions of this act. As a prerequisite for employment as a director, the director shall have expertise and at least two (2) years' experience in waste management. The director and all employees of the division shall be subject to the Merit System of Personnel Administration.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-2003.1, is amended to read as follows:

Section 1-2003.1 There is hereby created a Hazardous Waste Management Council to represent the interests of the people of Oklahoma. The Council shall consist of nine (9) members to be appointed by the Governor and confirmed by the Senate. All members shall be knowledgeable of hazardous waste and of the environment; two members shall be from Oklahoma industries, two from established environmental organizations, and one each from the fields of agriculture, engineering, geology and hazardous waste management, respectively, and one member of the general public. The initial appointments shall be for progressive terms of one (1) through nine (9) years so that only one term expires each calendar year; subsequent appointments shall be for nine-year terms. Members shall continue to serve until their successors are appointed. The Governor shall fill any vacancy for the remainder of such term in

the same manner as regular appointments. Five members shall constitute a quorum.

Said Council shall elect a chairman and a vice-chairman from among its members and establish its methods of procedure. The Council shall meet at least twice annually. Special meetings may be called by the chairman or by the concurrence of any three members. Members of the Council shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties, as provided in the State Travel Reimbursement Act. The Council shall receive appropriations only for such reimbursement. The Council is authorized to utilize the conference rooms of the State Department of Health and obtain administrative assistance from the Director.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-2004, is amended to read as follows:

Section 1-2004. The Department shall have the following powers and duties:

1. Issue permits for the construction, operation and post-closure of hazardous waste facilities;

2. Provide the owner or operator of a hazardous waste facility a list of all materials which the Department deems acceptable for treatment, recycling, storage, and disposal at the facility;

3. Make periodic inspections of hazardous waste facilities and recycling, transporting, and generating facilities to determine the extent of compliance with the Department's rules and regulations and the Oklahoma Hazardous Waste Disposal Act;

4. Develop, maintain, and monitor public records of the source and amount of hazardous waste generated in Oklahoma and the methods used to dispose of, recycle, or treat said waste or material;

5. Require and prescribe manifest forms to all persons generating and transporting hazardous waste off-site for storage, recycling, treatment, or disposal;

6. Require and approve or disapprove disposal plans from all persons generating hazardous waste or shipping hazardous waste within, from, or into Oklahoma indicating the amount of hazardous waste generated, the handling, storage, treatment, and disposal methods, and the hazardous waste facilities used. The disposal plans shall be kept current by the persons generating or shipping hazardous waste and the Department shall be advised within five (5) working days of any changes in the disposal plans;

7. Require reports from all persons generating hazardous waste, indicating the amount generated, the treatment and disposal methods, and the treatment, disposal, and recycling sites used. Such reports are to be made on at least a quarterly basis;

8. Require periodic reports or manifest certifications regarding such programs and efforts to reduce the volume or quantity and toxicity of such hazardous waste as may be required by or pursuant to authority of the Oklahoma Hazardous Waste Disposal Act;

9. Require reports from all operators of hazardous waste facilities who receive hazardous waste for treatment or storage or disposal, listing the amount, transporter, and generator of all hazardous waste received. Such reports are to be made on at least a monthly or quarterly basis, as designated by the Department;

10. Approve or disapprove methods of disposal of hazardous waste, and may prohibit certain specific disposal practices including, but not limited to, any type of land disposal of any form of such waste. Land disposal includes, but is not limited to, landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves;

11. Inform persons generating hazardous waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans;

12. Develop a system to provide information on recyclable wastes to potential users of such materials. Such information shall not include any information which the Department deems confidential or private in nature;
13. Cooperate and share information with the U.S. Environmental Protection Agency;
14. Prepare an emergency response plan for spills of hazardous waste and for spills of hazardous materials;
15. Make information obtained by the Department regarding hazardous waste facilities and sites available to the public in substantially the same manner, and to the same degree, as would be the case if the hazardous waste program in this state were being carried out by the U.S. Environmental Protection Agency;
16. With respect to any existing surface impoundment or landfill or class of surface impoundments or landfills from which the Department determines hazardous waste may migrate into groundwater, impose such requirements, including double liners and leachate detection and collection systems, as may be necessary to protect human health and the environment;
17. Prohibit or restrict the use of any specific disposal methods or practices for specific hazardous waste material, substances or classes, as may be necessary to protect human health and the environment;
18. Identify areas within the state which are unsuitable for specific hazardous waste disposal methods, and deny permits for such disposal methods in such areas;
19. Issue a one-year research development and demonstration permit for any treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated. Permits may be renewed no more than three times. No renewal may exceed one (1) year;
20. Waive or modify general permit application and issuance requirements for research and development permits, except for financial responsibility and public participation requirements;
21. Terminate experimental activity if necessary to protect human health and the environment;
22. Require oil recycling facilities using hazardous waste to have a hazardous waste facility permit;
23. Issue permits containing any conditions necessary to protect human health and the environment;
24. Issue permits for the storage of hazardous waste in underground tanks;
25. Require groundwater monitoring for any landfill, surface impoundment, land treatment site or pile;
26. Determine and enforce penalties for violations of the Oklahoma Hazardous Waste Disposal Act;
27. Evaluate the benefit of rules and regulations governing labeling practices for any containers used for the disposal, storage, or transportation of hazardous waste which accurately identify such waste, and govern the use of appropriate containers for such waste not otherwise regulated by the federal government. A report containing the evaluation of the benefit for rules and regulations governing such labeling practices shall be submitted by April 30, 1987, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate;
28. Monitor research and development regarding methods of the handling, storage, use, processing, and disposal of hazardous waste;
29. Cooperate with existing technical reference centers on hazardous waste disposal, recycling practices, and related information for public and private use;
30. Monitor research in the technical and managerial aspects of management and use of hazardous waste and recycling and recovery of resources from hazardous wastes;

31. Determine existing rates of production of hazardous waste;
32. Promote recycling and recovery of resources from hazardous wastes;

33. Encourage the reduction or exchange, or both, of hazardous waste; and

34. Cooperate with an existing information clearinghouse, to develop records of recyclable waste. Every generator of hazardous waste shall supply the Department with information for the clearinghouse. Each generator shall not be required to supply any more information than is required by the manifests. The Department shall make this information available to persons who desire to recycle the wastes. The information shall be made available in such a way that the trade secrets of the producer are protected.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 1-2004.1, is amended to read as follows:

Section 1-2004.1 The Council, with at least five members concurring, shall submit recommended rules and regulations to the Board concerning the listing and characterization of hazardous waste, the construction and operation of hazardous waste facilities, specific disposal practices for specified wastes, the transportation and storage of hazardous waste, and the recycling, storage and transportation of recyclable materials. The Council shall, upon the request of the Department or upon their own initiative, conduct rulemaking hearings. The Council shall consult with and advise the Department on matters relating to hazardous waste management.

SECTION 11. AMENDATORY 63 O.S. 1991, Section 1-2004.2, is amended to read as follows:

Section 1-2004.2 In addition to other powers and duties specified by law, the Board shall adopt rules and regulations to:

1. Prohibit the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required or which is operating under interim status authorized pursuant to Section 1-2009.1 of Title 63 of the Oklahoma Statutes;

2. Prohibit or restrict the storage of hazardous waste for which land disposal is prohibited, except to the extent that such storage is solely for the purpose of accumulation of such quantities of hazardous wastes as are necessary to facilitate proper recovery, treatment, or disposal;

3. Prohibit or restrict the use of waste or used oil or other material used for dust suppression or road treatment, which is contaminated or mixed with dioxin or any other waste identified or listed by rules and regulations of the Board as a hazardous waste except a waste identified solely on the basis of ignitability;

4. Require such monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment;

5. Regulate the production, burning, distribution, and marketing of fuel containing hazardous waste or used oil as may be necessary to protect human health and the environment including, but not limited to, labeling and recordkeeping requirements;

6. Control the listed or identified hazardous wastes which discharge through a sewer system to a publicly owned treatment works for the protection of human health and the environment;

7. Provide in accordance with Sections 3005(c) and 3005(e) of the Resource Conservation and Recovery Act for the automatic termination of interim status for hazardous waste units failing to comply with applicable requirements for the submission of part B permit applications and certification of groundwater monitoring and financial responsibility compliance;

8. Require from applicants for and owners and operators of hazardous waste facilities evidence of financial responsibility for

corrective action as may be required or ordered under the authority of the Oklahoma Hazardous Waste Disposal Act;

9. Require that generators of hazardous waste establish and implement programs to reduce the volume or quantity and toxicity of such waste to the extent economically practicable; and

10. Specify levels or methods of treatment which substantially diminish the toxicity of the waste or likelihood of its migration so as to minimize threats to human health and the environment.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 1-2005, is amended to read as follows:

Section 1-2005. A. The Department shall prepare rules, regulations and minimum standards for the listing and characterization of hazardous waste, for the treatment, disposal, transportation, storage and recycling of hazardous waste and recyclable materials in Oklahoma with the exception of the following:

1. The hazardous waste component of mixed hazardous waste and radioactive waste shall be regulated as hazardous waste. The radioactive waste component shall be regulated as radioactive waste. Both the hazardous waste requirements and the radioactive waste requirements shall apply if physical separation of the two components is not accomplished;

2. The Corporation Commission of Oklahoma is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to make and enforce such rules, regulations and orders governing and regulating the handling, hauling, storage and disposition of salt water, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and processing of oil and gas, including reclaiming of oil from tank bottoms located on leases and tank farms located outside the boundaries of a refinery.

The Corporation Commission shall promulgate such rules and regulations as are reasonable and necessary for the purpose of preventing the pollution of the surface and subsurface waters in the state. The Oklahoma Corporation Commission shall, in no instance, issue a grant of operating authority to transport salt water or deleterious substances to any applicant for such authority who cannot furnish written proof of access to a disposal well or wells within reasonable hauling distance of the territory proposed to be served. Said written proof of access shall be provided by the owner of the disposal well and said disposal well must first be approved by the Corporation Commission as adequate to meet the need for proper disposal of all salt water and deleterious substances which the applicant may reasonably be expected to transport as a common carrier. Provided that nothing herein shall be construed as prohibiting the disposition of salt water in a disposal well that is owned by a person other than the licensee.

Provided further, on or before December 31, 1982, existing carriers holding such operating authority shall furnish written proof of access to an approved disposal well within reasonable hauling distance. Failure to comply may, at the discretion of the Commission, result in suspension of carrier's operating authority.

The proven violation of Oklahoma Corporation Commission salt water and deleterious substance disposal rules and regulations by a carrier in any calendar year shall, in the first instance, result in a carrier being warned by the Commission and fined up to Two Thousand Five Hundred Dollars (\$2,500.00). A second proven violation in any calendar year shall result in a carrier being placed on probation and fined up to Five Thousand Dollars (\$5,000.00) by the Commission. A third proven violation in any calendar year shall result in a fine of up to Ten Thousand Dollars (\$10,000.00), and at the discretion of the Commission, suspension of

the carrier's operating authority for a period of up to thirty (30) days. The driver of a truck, who is not the owner of the vehicle used in violation of this section or any of the rules and regulations of the Corporation Commission, shall be adjudicated a codefendant and subject to a fine equal to ten percent (10%) of the fine assessed to the owner of such vehicle, up to Five Hundred Dollars (\$500.00);

3. The State Department of Agriculture is hereby vested with the exclusive jurisdiction, power and authority to make and enforce such rules, regulations and orders concerning those materials excluded by the U.S. Environmental Protection Agency pursuant to the small farmer exclusion, as it exists or may be amended; and

4. Rules and regulations pertaining to standards for the transportation of hazardous waste and recyclable materials shall not be more stringent than those of the U.S. Department of Transportation.

B. Before recommending such rules, regulations and standards, as set out in subsection A of this section, the Department shall consult with interested state and local governmental bodies and with federal regulatory agencies. At least one public hearing shall be held on the proposed rules, regulations and standards.

C. The present rules and regulations of the State Department of Health and the Oklahoma Water Resources Board shall remain effective until the adoption of new rules and regulations by the State Board of Health. Insofar as permitted by law, the rules and regulations promulgated by the Board shall be in reasonable accord with the hazardous waste regulations of the U.S. Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act. Such rules and regulations may incorporate by reference the hazardous waste regulations of the U.S. Environmental Protection Agency.

D. The provisions of this act shall be cumulative to the minimum requirements established by the Administrative Procedures Act.

SECTION 13. AMENDATORY 63 O.S. 1991, Section 1-2005.2, is amended to read as follows:

Section 1-2005.2 A. The State Board of Health may establish a system of fees to be charged for applications to issue and renew permits for hazardous waste facilities and for such environmental health services as are involved in the regulation of hazardous waste. Such fees shall be subject to the following limitations.

1. Except as provided in subsection C of this section, no schedule of fees shall be established or amended by the Board except during such times as the Legislature is in session. The Board shall 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:

For generator disposal plan: \$100.00 to \$10,000.00 per year

For transporter trailer registration: \$20.00 per trailer per year

For permit application: \$5,000.00 to \$50,000.00

For application resubmittal: \$100.00 to \$1,000.00

For monitoring: \$100.00 to \$10,000.00 per year

B. The Board shall base its schedule of permit fees upon the reasonable costs of review and inspection services for each permit, and its schedule of monitoring fees upon the reasonable costs of travel and inspection, based upon the various categories of facilities as the Board shall determine. The Board shall, by rule and regulation, establish a system whereby an applicant for a permit for a facility in place on January 1, 1986, may pay a prorated application fee over the life of the permit, if the Department

determines such fees would create financial hardship on the applicant so that continued operation by the applicant would be jeopardized.

C. The Board shall develop a separate schedule of reduced fees of not less than Twenty-five Dollars (\$25.00) for small quantity generators. The State Board of Health shall prior to January 1, 1987, promulgate a separate schedule of reduced fees for such small quantity generators. Thereafter, such schedule shall be amended pursuant to subsection A of this section.

D. Fees charged pursuant to this section shall be paid into the Public Health Special Fund, created in Section 1-107 of Title 63 of the Oklahoma Statutes, and shall be used by the Department in administering the Hazardous Waste Disposal Act.

SECTION 14. AMENDATORY 63 O.S. 1991, Section 1-2005.3, is amended to read as follows:

Section 1-2005.3 A. Regarding a construction permit application for a hazardous waste facility, the board of county commissioners of the county in which the waste facility is located and the board of county commissioners of any county contiguous to the waste facility whose roads and bridges are to be used to provide access to the proposed waste facility shall review the county road classification plans as described in Section 654 of Title 69 of the Oklahoma Statutes and substantiate whether the county roads and bridges to be used to and from such hazardous waste facility in their respective counties may be used without any substantial detriment to said roads and bridges as provided in Section 14-113 of Title 47 of the Oklahoma Statutes. If any of said board of county commissioners finds that substantial detriment to the roads and bridges in their respective counties would occur, said board shall determine reasonable measures necessary to upgrade the roads and bridges and allow the applicant for a hazardous waste facility to upgrade or pay for the upgrading of said roads and bridges if the applicant receives a construction permit.

B. The Department shall not issue a construction permit for any new hazardous waste facility unless:

1. Each board of county commissioners, as appropriate pursuant to subsection A of this section, has substantiated by resolution that the county roads and bridges as they exist can be used without any substantial detriment to said roads and bridges as provided by the restrictions imposed by Section 14-113 of Title 47 of the Oklahoma Statutes; or

2. The applicant has agreed to upgrade or pay for the upgrading of the roads and bridges to the reasonable measures determined by the appropriate board of county commissioners or to the design standards established by the Oklahoma Department of Transportation for industrial access roads.

An operation permit shall not be granted by the Department to the applicant until the necessary upgrades to the roads and bridges have been made.

C. The Department shall notify the applicable boards of county commissioners by certified mail, return receipt requested, of the proposed waste disposal site. Said boards of county commissioners shall have forty-five (45) days from receipt of such notice to review the county road classification plan and respond to the Department. The finding of each of said board of county commissioners shall be sent to the Department by certified mail, return receipt requested. Failure to respond within the required time limitation established pursuant to this subsection shall constitute a finding that the roads and bridges can be used without substantial detriment and preclude the board of county commissioners failing to respond from raising the suitability of use of roads and bridges of the county as set out in subsections A and B of this section at a later date.

D. Any applicant for a construction permit or operation permit aggrieved by the action of the board of county commissioners pursuant to this section shall have the right of review by trial de novo to the district court of the county wherein the board of county commissioners took such action.

E. In addition to any construction permit application submitted to the Department subsequent to the effective date of this act, the provisions of this section shall also apply to any construction permit application submitted to the Department prior to the effective date of this act for which a permit has not been issued.

SECTION 15. AMENDATORY 63 O.S. 1991, Section 1-2005.3A, as amended by Section 2 of Enrolled House Bill No. 2445 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1-2005.3A A. Every hazardous waste treatment facility, storage facility, underground injection facility, disposal facility, or off-site facility that recycles hazardous waste subject to the provisions of the Oklahoma Hazardous Waste Disposal Act shall pay an annual fee on the amount of hazardous waste managed by such facility to the State Department of Health for deposit in the Public Health Special Fund.

1. Such fees shall be, subject to the qualifications provided in paragraph 2 of this subsection:

- a. For hazardous waste generated within the State of Oklahoma, Nine Dollars (\$9.00) per ton for on-site or off-site storage, treatment or land disposal.
- b. For hazardous waste generated within the State of Oklahoma, or elsewhere in the case of regeneration, Four Dollars (\$4.00) per ton for off-site recycling.
- c. For hazardous waste generated within the State of Oklahoma, three cents (\$0.03) per gallon for on-site or off-site underground injection.
- d. (1) Effective May 1, 1993, the fee applicable to waste generated outside the State of Oklahoma except as provided in subparagraph b of this paragraph shall be based on the primary purpose for which the waste is imported into the State of Oklahoma, and shall be a reciprocal fee at the rate of and in accordance with the method of imposition of the tax or fee imposed on the storage, treatment, disposal or recycling of such waste in the state, country or territory where the waste was generated, as determined by the State Department of Health. In no case, however, shall the fee levied on hazardous waste generated outside the State of Oklahoma be less than the rate charged at the time of its storage, treatment, disposal or recycling for hazardous waste generated and stored, treated, disposed or recycled in the State of Oklahoma.
- (2) Any person storing, treating, disposing, or recycling such hazardous waste in the State of Oklahoma shall file with the State Department of Health an affidavit showing the applicable tax or fee for any hazardous waste received from another state, country or territory had it been stored, treated, or disposed of in a like manner in that state, country or territory. In preparing the required affidavit, the recipient of the waste is legally entitled to rely upon all information contained in the manifest document accompanying the shipment of waste.

2. There shall be a minimum fee per facility as follows:

- a. Except as provided in subparagraph d of this paragraph, any person owning or operating an off-site hazardous waste treatment facility, storage facility, or disposal facility shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year.
- b. Any person owning or operating an on-site hazardous waste treatment facility, storage facility, or disposal facility shall pay a total fee of not less than Twenty Thousand Dollars (\$20,000.00) each state fiscal year; provided, the annual fee for the on-site disposal of hazardous waste by underground injection shall not exceed Fifty Thousand Dollars (\$50,000.00).
- c. Any person owning or operating an off-site facility for the recycling of hazardous waste shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year.
- d. Any person owning or operating an off-site facility which accepts hazardous waste exclusively for the purpose of conducting research and design tests shall pay a total fee of not less than Ten Thousand Dollars (\$10,000.00) each state fiscal year.

3. Off-site facilities may charge persons contracting for the services of the facility their proportional share of the fees required by the provisions of this section.

4. The facility shall become liable for payment of the fee on each ton or gallon of hazardous waste at the time it is received. The fee shall be payable by the facility to the Department of Health only as provided for in subsection C of this section.

5. The fee imposed by the provisions of this section shall be payable only once without regard to any subsequent handling of the hazardous waste. The fee shall be based on the purpose for which the waste was generated by or brought to the facility. In no event shall a facility be required to pay a fee on each step or process involved in the storage, treatment, or disposal of the waste at the facility or a related facility under common control.

6. In computing the amount of the fee specified in subparagraph b of paragraph 1 of subsection A of this section for the off-site recycling or regeneration of hazardous waste, the assessment for regeneration shall be made on a dry weight basis.

B. The following facilities shall not be required to pay the fee required by the provisions of this section:

1. Facilities engaged only in the on-site recycling of hazardous waste; and

2. Facilities which have not generated or received new hazardous waste within the preceding state fiscal year.

C. Payment of the fees required by this section shall be due quarterly for hazardous waste received by the facility during the prior quarter. Such quarterly payments shall be due on the first day of the month of the following quarter during the state fiscal year in which the hazardous waste is received. All payments shall be made within thirty (30) days from the date it becomes due.

D. The fees required by this section shall be paid in lieu of the monitoring fees imposed in paragraph 2 of subsection A of Section 1-2005.2 of this title. All facilities subject to the provisions of this section shall not be required to pay or collect any additional fees for waste disposal unless specifically required by the Oklahoma Hazardous Waste Disposal Act.

E. All fees and other monies received by the Department pursuant to the provisions of this section shall be expended solely for the purposes specified in this section.

1. Ten percent (10%) of the fees collected from an off-site hazardous waste facility pursuant to the provisions of this section

shall be deposited to the credit of the Special Economic Development Trust Funds established pursuant to Section 1-2005.3C of this title. The funds for the Trusts accruing pursuant to the provisions of this section shall be distributed to each Trust established in proportion to the fees generated by the off-site hazardous waste facilities within the Trust area.

2. The State Commissioner of Health shall expend monies received pursuant to the provisions of this section for one or more of the following purposes:

- a. The administration of the provisions of the Oklahoma Hazardous Waste Disposal Act,
- b. The development of an inventory of hazardous wastes currently produced in Oklahoma and management needs for the identified wastes,
- c. The implementation of information exchange, technical assistance, public information, and educational programs,
- d. The development and encouragement of waste reduction plans for Oklahoma waste generators, or
- e. Increased inspection of hazardous waste facilities which may include full time inspectors at off-site hazardous waste facilities.

F. To the extent that fees received pursuant to this section shall exceed the purposes specified in subsection E of this section, the Commissioner shall only expend such funds for one or more of the following purposes:

1. Contributions required from the state pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act for remediation or related action upon a site within the state;

2. Response, including but not limited to containment and removal, to emergency situations involving spillage, leakage, emissions or other discharge of hazardous waste or hazardous waste constituents to the environment where a responsible party cannot be timely identified or found or compelled to take appropriate emergency action to adequately protect human health and the environment;

3. State-funded remediation of sites contaminated by hazardous waste or hazardous waste constituents so as to present a threat to human health or the environment, to the extent that a responsible party cannot be timely identified or found or compelled to take such action, or is unable to take such action;

4. Costs incurred in pursuing an enforcement action to compel a responsible party to undertake appropriate response or remedial actions, or to recover from a responsible party monies expended by the state, as described in paragraphs 1 through 3 of this subsection; or

5. Financial assistance to municipalities or counties for the purposes and under the conditions specified in Section 1-2019 of this title.

SECTION 16. AMENDATORY 63 O.S. 1991, Section 1-2005.3B, is amended to read as follows:

Section 1-2005.3B Any person subject to regulation under this title disposing of liquid waste other than hazardous waste in an underground injection well shall pay a fee of one-tenth of one cent (\$0.001) per gallon for such disposal, not to exceed Fifty Thousand Dollars (\$50,000.00) per year. Said fee shall be paid to the Department on a quarterly basis within one month following the close of each quarter for the waste disposed in that preceding quarter. Said fees shall be deposited into the Public Health Special Fund.

SECTION 17. AMENDATORY 63 O.S. 1991, Section 1-2005.3C, is amended to read as follows:

Section 1-2005.3C A. The county commissioners of the counties which are within a ten-mile radius of a hazardous waste facility which is subject to the provisions of Section 1-2005.3A of Title 63 of the Oklahoma Statutes may establish a Special Economic Development Trust Fund for that area.

B. The trust fund shall be used to market advantages of industrial development and to promote industrial development within the trust area. Such uses shall allow the authority to acquire assets, develop property, and to contract with local municipalities or economic development trusts or authorities to promote economic development in the area.

C. The trust fund shall consist of:

1. All monies received pursuant to Section 1-2005.3A of Title 63 of the Oklahoma Statutes;

2. All income from the investment of monies held in the trust fund;

3. Interest resulting from the deposit of such monies; and

4. Any other sums designated for deposit to the fund from any source, public or private.

D. Any trust established pursuant to the provisions of this section shall be governed by the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes.

E. 1. Such Trust shall be governed by a Board of Trustees of not less than six (6) nor more than ten (10) members. Each county within the Trust area shall be represented equally on the Board of Trustees.

2. Each Trustee shall be appointed by a majority vote of the county commissioners of the county that the Trustee represents. A Trustee may be removed prior to the expiration of the term of office by a majority vote of the county commissioners of the county that the Trustee represents. In the event there are two or more Trustees from each county, the initial appointments shall be made so that the terms are staggered. After the initial appointment, each Trustee shall serve a term of two (2) years and may be reappointed.

3. The Trustees shall receive no compensation for service on the Board of Trustees, but may be reimbursed for actual and necessary expenses incurred in the performance of their duties as a Trustee in accordance with the State Travel Reimbursement Act.

4. Any action of the Board of Trustees must be approved by a two-thirds (2/3) vote of the total authorized membership of the Board.

5. The Trustees shall have authority to exercise such powers as are necessary to perform the duties and functions imposed by the provisions of this section.

F. The Board of Trustees shall meet not less than twice each calendar year. At the first meeting in a new calendar year the members shall elect a chairman, a vice chairman, a secretary, and a treasurer.

SECTION 18. AMENDATORY 63 O.S. 1991, Section 1-2005.4, is amended to read as follows:

Section 1-2005.4 Fees paid into the Public Health Special Fund pursuant to Section 1-2005.2 of Title 63 of the Oklahoma Statutes may be transferred to the Hazardous Waste Fund, created in Section 1-2018 of Title 63 of the Oklahoma Statutes. Such transferred funds may be used in implementing the Hazardous Waste Fund Act.

SECTION 19. AMENDATORY 63 O.S. 1991, Section 1-2006, is amended to read as follows:

Section 1-2006. A. For the purposes of this section:

1. "Affected property owners" means all real property owners within one (1) mile of the outer perimeter of the proposed site; and

2. "Qualified interest group" means any organization with twenty-five or more members who must be legal residents of the State

of Oklahoma, that expresses an interest in the outcome of the construction permit application.

B. The Department shall issue permits for the construction and for the operation of hazardous waste facilities. A construction permit shall be issued only upon proper application, hearing, if requested, and determination by the Department that the proposed site and facility are physically and technically suitable. Upon submission of an application for a construction permit, which shall be a public record, the applicant shall notify affected property owners.

C. In addition to the notice required by subsection B of this section, and prior to issuing any construction or operation permit, the Department shall require the applicant to give notice, by newspapers and radio stations local to the hazardous waste facility proposed for a permit, of opportunity to oppose the granting of such permit by requesting an informal public meeting. If within forty-five (45) days of such notice, the Department receives from any person residing or doing business in Oklahoma, written notice of opposition and request for informal public meeting, it shall hold the same and allow opportunity for presentation of written and oral views. Whenever possible, the Department shall hold such informal public meetings at a location convenient to the population center nearest the proposed site, and prior to any related hearing pursuant to subsection B of this section.

D. If any of the affected property owners or qualified interest groups request a public hearing, such hearing shall be held before a construction permit is issued. All affected property owners and qualified interest groups who request a hearing shall be joined at the hearing. At any requested hearing, the Department shall hear testimony and accept evidence pertaining only to the physical and technical suitability of the proposed hazardous waste facility.

E. Upon a finding that a proposed hazardous waste facility is not physically or technically suitable, the Department shall deny the construction permit.

F. The Department may, upon determining that public health or safety requires emergency action, issue a temporary permit for treatment or storage of hazardous waste or recyclable material for a period not to exceed ninety (90) days without the prior notices and opportunity for public meeting and without the hearing required by this section. Any person aggrieved by such permit may seek judicial review pursuant to the Administrative Procedures Act.

SECTION 20. AMENDATORY 63 O.S. 1991, Section 1-2006.1, is amended to read as follows:

Section 1-2006.1 A. The Department shall not issue a construction permit for the treatment, disposal or temporary storage of any liquid hazardous waste in a surface impoundment which is not generated by the owners of the surface impoundment.

B. Except as otherwise specifically provided by law, the disposal of any liquid hazardous waste in a landfill or in a surface impoundment is prohibited.

C. The provisions of this section shall not prohibit:

1. The practice of soil farming of hazardous waste authorized by the provisions of Section 1-2014 of Title 63 of the Oklahoma Statutes;

2. The construction and operation of surface impoundments solely for the collection of rainfall runoff; or

3. The construction of impoundments solely for the emergency retention of spills of substances which are or may become hazardous waste;

provided all liquids and associated solids are removed for proper treatment or disposal in accordance with the rules and regulations promulgated by the Board pursuant to the Oklahoma Hazardous Waste Disposal Act.

SECTION 21. AMENDATORY 63 O.S. 1991, Section 1-2007, is amended to read as follows:

Section 1-2007. The Department shall prepare for adoption by the Board definite criteria, including testing methods and minimum or maximum standards, before construction of a hazardous waste facility shall proceed. The design, testing and construction of a hazardous waste facility shall be conducted under the supervision of a professional engineer, registered in Oklahoma, with training and experience in suitable disciplines.

SECTION 22. AMENDATORY 63 O.S. 1991, Section 1-2008, is amended to read as follows:

Section 1-2008. A. The Department shall issue permits for the operation of hazardous waste facilities. No operation permit shall be issued except upon proper application, proof of sufficient liability insurance and financial responsibility, informal public meeting, if requested, and such other requirements as hereinafter provided.

B. Liability insurance shall be provided by the applicant and shall apply to sudden and nonsudden bodily injury or property damage on, below or above the surface, as required by the rules and regulations of the Board. Additional insurance shall be required as deemed necessary by the Department to protect the property rights of owners or leaseholders of underground resources such as oil, gas, water or other mineral substances. Such insurance shall be maintained for the period of operation of the facility and shall provide coverage for damages resulting from operation of the facility during operation and after closing. In lieu of liability insurance required by this or any other section of this act, an equivalent amount of cash, securities or alternate financial assurance of a type and in an amount acceptable to the Department, may be substituted; provided, that such deposit shall be maintained for a period of five (5) years after the date of last operation of the facility.

C. Prior to the issuance of any permit, the applicant shall post a bond or acceptable alternate financial assurance guaranteeing proper closure and guaranteeing the performance of the maintenance and monitoring functions set out in Section 1-2009 of this title.

D. The Department shall require additional insurance and security by the permittee upon an application for expansion of the facility. Such increase in insurance and security shall be in a sufficient amount to provide adequate coverage for damages resulting from such expansion during operation of the facility and after closing.

E. Prior to the issuance of any permit, the applicant shall, upon request of the Department, produce evidence of the applicant's financial status indicating that the applicant is financially able to operate and maintain a hazardous waste facility as required by this act. If the applicant is not financially able to operate and maintain a hazardous waste facility, as required by this act, a permit shall be denied.

F. The operation of a hazardous waste facility shall be under the supervision of a person meeting qualifications set by the Board appropriate to the type of facility.

G. The Department is authorized and shall require the construction of monitoring wells, pond liners, fencing, signs or other equipment deemed necessary by the Department to ensure the suitable operation of the facility.

H. 1. In any case where the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or if jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct of which evidence of financial responsibility

is required pursuant to the Oklahoma Hazardous Waste Disposal Act may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action taken pursuant to this section, such guarantor shall be entitled to claim all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

2. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator pursuant to the Oklahoma Hazardous Waste Disposal Act. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

3. As used in this section, the term "guarantor" means any person other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to the Oklahoma Hazardous Waste Disposal Act.

SECTION 23. AMENDATORY 63 O.S. 1991, Section 1-2008.1, is amended to read as follows:

Section 1-2008.1 A. Two or more persons generating hazardous waste may enter into a compact to construct and operate a multi-user on-site treatment facility for the exclusive use of the members of such compact. Such facility shall not be used as a hazardous waste facility for off-site treatment storage or disposal of hazardous waste.

B. To be eligible for a permit issued pursuant to the provisions of this section and the Oklahoma Hazardous Waste Disposal Act, a multi-user on-site treatment facility shall meet the following criteria:

1. The facility may be co-owned by the generators of hazardous waste who are members of the compact;

2. Each member of the compact shall be identified in the application and permit. In addition, the individual hazardous waste generated by each member shall be separately and distinctly characterized in the application and in the permit and shall meet the compatibility requirements established by the Department;

3. The facilities generating hazardous waste which is to be treated at the multi-user on-site treatment facility shall be located within the same county as the multi-user on-site treatment facility;

4. The multi-user on-site treatment facility shall be located upon the property of one of the compact members;

5. Financial responsibility requirements shall be the responsibility of the compact members and shall be prorated according to the relative amount of hazardous waste of a generator to be treated at the facility; and

6. The Department may require such other criteria and information in order to determine if the multi-user on-site treatment facility is physically and technically suitable for the hazardous waste to be treated at the facility.

C. A multi-user on-site treatment facility located within an industrial park which treats, stores or disposes of wastes that are produced only by the industries located within that industrial park may be owned or operated by persons other than the generators of the waste.

D. Upon compliance with the provisions of the Oklahoma Hazardous Waste Disposal Act, this section and any rules promulgated pursuant thereto, the Department shall issue permits for the construction and operation of a multi-user on-site treatment facility.

E. The board of county commissioners of the county in which such multi-user on-site treatment facility is located shall review all transportation routes from the facilities generating hazardous waste which are operated by members of the compact to the multi-user on-site treatment facility pursuant to the provisions of Section 1-2005.3 of this title.

SECTION 24. AMENDATORY 63 O.S. 1991, Section 1-2009, is amended to read as follows:

Section 1-2009. After a hazardous waste facility has been closed, its owner or operator shall properly maintain and monitor the hazardous waste facility for a period of time required by rules and regulations of the State Board of Health and shall make such repairs or improvements as deemed necessary by the Department to ensure that no migration of hazardous waste material will occur from the hazardous waste facility. The rules and regulations of the Board which specify the period of time for maintenance and monitoring of closed facilities shall be in compliance with the hazardous waste rules and regulations of the U.S. Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act.

SECTION 25. AMENDATORY 63 O.S. 1991, Section 1-2009.1, is amended to read as follows:

Section 1-2009.1 A. Except as otherwise provided by subsection B of this section or any rules of the State Board of Health with respect to short-term storage, no person shall store, treat or dispose of hazardous waste materials or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of hazardous waste or storing recyclable materials, who does not possess a valid and appropriate hazardous waste facility permit.

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

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

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

C. Facilities engaged in recycling which are not required to be permitted pursuant to the provisions of Section 1-2014.2 of this title shall operate in an environmentally acceptable manner and in accordance with the rules and regulations regarding the manifest, transportation and treatment, storage and disposal standards, and generators in the event a hazardous waste is generated therefrom.

SECTION 26. AMENDATORY 63 O.S. 1991, Section 1-2010, is amended to read as follows:

Section 1-2010. Persons generating hazardous waste shall provide the operator of any mode of any offsite transportation carrying hazardous waste a manifest in a form which has been prescribed by the Department, indicating a disposal plan number

assigned by the Department which shows that the Department has approved the plans of the person generating said waste. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste. The operator shall have the manifest in his possession while carrying or handling the hazardous waste and shall release the manifest to such person as is duly authorized to receive said waste at the time of delivery. Provided that no person shall accept the manifest unless such manifest has a properly assigned disposal plan number indicating that the Department has approved the plans of the person generating hazardous waste. Provided, further, that no person shall transport, receive, treat or dispose of hazardous waste without having the manifest in his possession.

SECTION 27. AMENDATORY 63 O.S. 1991, Section 1-2012, is amended to read as follows:

Section 1-2012. In addition to any other remedies provided in this act, the Department shall, pursuant to rules and regulations adopted under Section 1-2005 of this title:

1. Temporarily suspend the permit of any operator of a hazardous waste facility until such facility conforms to the provisions of this act and the rules, regulations and standards promulgated by the Department;

2. Revoke the operating permit or license of any person who flagrantly and/or consistently violates the provisions of this act or the rules and regulations promulgated thereto, or which operates in such a manner as to cause or to continue in existence an environmentally unsafe condition. Such revocation may only take place following proper hearing, and will conform to provisions of the Administrative Procedures Act. Such person shall not be eligible for reissuance of a license when finally adjudicated as guilty of flagrant and consistent violations of this act;

3. Cause proceedings to be instituted in the district court having jurisdiction in the area where the alleged violation occurs seeking an injunction to restrain a violation of this act or the rules, regulations or standards adopted hereunder and to restrain the maintenance of a public nuisance; and

4. Cause proceedings to be instituted in the district court having jurisdiction in the area where the alleged violation of this act or the rules and regulations of the State Board of Health occurs seeking a civil penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) per day or part of a day such violation occurs.

SECTION 28. AMENDATORY 63 O.S. 1991, Section 1-2012.1, is amended to read as follows:

Section 1-2012.1 In addition to any other remedies provided in the Oklahoma Hazardous Waste Disposal Act, the Department may issue a written order to any person whom the Department has reason to believe has violated or is presently in violation of the Oklahoma Hazardous Waste Disposal Act, Section 1-2001 et seq. of this title, or any rule or rules promulgated by the Board pursuant to this act.

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

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

b. Any penalty assessed in the order shall not exceed Twenty-five Thousand Dollars (\$25,000.00) per day of noncompliance for each violation of the act, the rules or the order. In assessing such penalties, the Department shall consider the seriousness of the

violation or violations and any good faith efforts to comply with applicable requirements.

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

- a. Orders and hearings are subject to the Administrative Procedures Act.
- b. 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.
- c. The Department may adopt procedural rules as necessary and appropriate to implement the provisions of this section.

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

SECTION 29. AMENDATORY 63 O.S. 1991, Section 1-2012.2, is amended to read as follows:

Section 1-2012.2 Administrative fines collected by the Department pursuant to this act shall be paid into the Hazardous Waste Fund, created in Section 1-2018 of this title, and shall be used as specified in the Hazardous Waste Fund Act.

SECTION 30. AMENDATORY 63 O.S. 1991, Section 1-2012.3, is amended to read as follows:

Section 1-2012.3 A. In accordance with standards now or hereafter established by the Administrator of the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act, the Department may require corrective action beyond a hazardous waste facility boundary as a condition of the issuance of a permit pursuant to the Oklahoma Hazardous Waste Disposal Act, where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that despite the owner's or operator's best efforts he is unable to obtain the necessary permission to undertake such action. The Department may also require as a condition of a permit pursuant to the Oklahoma Hazardous Waste Disposal Act corrective action for all releases of hazardous waste from any solid waste management unit at a facility seeking a permit, regardless of the time the waste was placed in such unit. If such corrective action cannot be completed prior to issuance of the permit, such permits shall contain schedules of compliance for the corrective action required and assurances of financial responsibility for completing such corrective action.

B. The Department shall review each permit for a hazardous waste land disposal facility five (5) years after the date of such issuance or reissuance and shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable standards and permit requirements for hazardous waste facilities. Nothing in this subsection shall preclude the Department from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued or reissued shall contain such terms and conditions as

the Department determines necessary to protect human health and the environment.

C. The Department is authorized to require each owner or operator applying for a permit for a hazardous waste landfill or surface impoundment to submit with the permit application information reasonably ascertainable by the owner or operator concerning the potential exposure to the public of hazardous wastes as a result of releases from a hazardous waste unit. The Department shall be authorized to make exposure and health assessment information available to the public and to other state and federal agencies.

SECTION 31. AMENDATORY 63 O.S. 1991, Section 1-2012.4, is amended to read as follows:

Section 1-2012.4 The filing of a proceeding appealing the issuance of a permit issued prior to or after the effective date of this act authorizing the construction or operation of a hazardous waste facility shall stay any time restraints specified in the permit relating to the term or expiration of the permit.

SECTION 32. AMENDATORY 63 O.S. 1991, Section 1-2014, is amended to read as follows:

Section 1-2014. A. The practice of plowing hazardous waste into the soil surface for the purpose of disposal is hereby prohibited except pursuant to a plan approved by the Department for biodegradable or inert material. In addition, the site used for such disposal shall not be subject to flooding or extensive erosion. The hearing provisions of Section 1-2006 of this title shall not apply to soil farming operations conducted on the generator's plant site or nearby property under the control of the generator.

B. A hazardous waste facility for on-site treatment or storage shall not be sited in or over a principal groundwater resource or recharge area as determined in writing by the Oklahoma Geological Survey, except pursuant to a plan approved by the Department. The plan shall contain such design criteria and groundwater monitoring provisions as deemed necessary by the Department to protect the quality of said principal groundwater resource or recharge area. The plan shall also provide for the establishment and maintenance of a bond or other financial assurance in a form and amount acceptable to the Department, specifically for the purpose of assuring both immediate response and containment and comprehensive remediation as directed by the Department in the event of a release to soil or water of any hazardous waste or hazardous waste constituent.

C. 1. Except as provided in paragraph 3 of this subsection, a hazardous waste facility for off-site treatment or storage or for on-site or off-site disposal shall not be sited in or over a principal groundwater resource or recharge area as determined in writing by the Oklahoma Geological Survey.

2. A hazardous waste facility for off-site treatment, storage or disposal shall not be sited in any other area of the state without the prior written approval of a plan by the affected property owners as such term is defined in Section 1-2006 of this title. Such plan shall provide for the minimization of hazards to the health and property of such affected property owners from emergency situations or from sudden or nonsudden releases of hazardous waste or constituents thereof.

If, after the applicant has made a reasonable effort to negotiate said plan with the affected property owners and has acquired the written approval of a majority of the affected property owners, the applicant may certify to the State Department of Health that such reasonable effort had been made and that a minority of the affected property owners would not consent. The State Department of Health may then issue said permit if it meets all other requirements.

The Department is expressly authorized to review the reasons of the affected property owners for nonapproval of the plan. If nonapproval is not based solely upon minimization of environmental hazards to the health and property of the affected property owners, the Department shall exclude those affected property owners from a calculation of a majority of affected property owners. The Department shall have the final authority to issue or not to issue any permit to any treatment, storage, or disposal facility.

3. The Department may grant a variance to an off-site hazardous waste treatment or storage facility to allow the siting of such facility over a principal groundwater resource or recharge area as determined in paragraph 1 of this subsection, upon the following conditions:

- a. the request for variance, and a detailed rationale, shall be included in the permit application,
- b. the Department shall receive and consider comments on the appropriateness of the proposed variance at any meeting or hearing conducted pursuant to the provisions of Section 1-2006 of this title,
- c. the applicant shall bear the burden of establishing clearly and convincingly to the Department that the design, construction and operation of the proposed facility will be such that the risk of a release of hazardous waste or hazardous waste constituents directly or indirectly to groundwater is minimal, and
- d. the permit application shall provide for the establishment and maintenance of a bond or other financial assurance as described and for the purposes specified in subsection B of this section.

D. The provisions of this section shall apply to:

1. Applications for future proposed sites;
2. Pending applications for construction permits; and
3. Applications for construction permits to modify existing storage or treatment facilities which have either a permit or interim status.

E. The provisions of paragraphs 1 and 2 of subsection C of this section shall not apply to applications to increase existing storage, treatment or disposal capacity or to modify existing disposal sites for treatment or disposal. Such modification of existing disposal sites shall include upgrading said facilities to use the best available waste destruction technology such as incineration, detoxification, recycling or neutralization technology.

SECTION 33. AMENDATORY 63 O.S. 1991, Section 1-2014.1, is amended to read as follows:

Section 1-2014.1 The State Department of Health is exclusively authorized to issue waste water discharge permits to hazardous waste facilities for discharge into surface waters of this state. The Department shall coordinate as necessary with appropriate federal agencies in issuing such permits.

SECTION 34. AMENDATORY 63 O.S. 1991, Section 1-2014.2, is amended to read as follows:

Section 1-2014.2 Facilities that recycle hazardous wastes are exempt from construction permit requirements specified by the provisions of the Oklahoma Hazardous Waste Disposal Act for those units exclusively used in the recycling process. Off-site hazardous waste recycling facilities are subject to the requirements specified by the Oklahoma Hazardous Waste Disposal Act for an operations permit, and shall also meet design standards as promulgated by the State Board of Health. Such recycling facilities which are in existence on the effective date of this act may but shall not be required to file an operations permit application pursuant to the provisions of the Oklahoma Hazardous Waste Disposal Act. A permit

modification is not required for a permitted recycling facility to use new, improved, or better methods of recycling if the Department has approved the plans as being environmentally acceptable.

SECTION 35. AMENDATORY 63 O.S. 1991, Section 1-2014.3, is amended to read as follows:

Section 1-2014.3 A. Except as provided in subsections B and C of this section, no construction or operation permit shall be issued for a new hazardous waste facility for the off-site disposal of hazardous waste or the off-site treatment of hazardous waste by incinerator to be located within eight (8) miles of the corporate limits of any incorporated city or town. For the purposes of this section the corporate limits of an incorporated city or town shall be the corporate limits in effect on January 1 of the year the application is filed, and a new hazardous waste facility means a hazardous waste facility that was not in operation and actively treating hazardous waste by incineration or disposing of hazardous waste during the year preceding the effective date of this act. Addition of new treatment, storage or disposal units to an existing hazardous waste facility does not constitute a new facility.

B. This section shall not apply to any facility accepting hazardous waste exclusively for the purpose of conducting treatment research and design tests.

C. This section shall not apply to a proposed site on property owned or operated by a person who also owns or operates a hazardous waste facility on contiguous property on which a hazardous waste facility was operating pursuant to a valid permit on the effective date of this act.

SECTION 36. AMENDATORY 63 O.S. 1991, Section 1-2015, is amended to read as follows:

Section 1-2015. This act shall be known and may be cited as the "Hazardous Waste Fund Act".

SECTION 37. AMENDATORY 63 O.S. 1991, Section 1-2016, is amended to read as follows:

Section 1-2016. The purposes of this act are to:

1. Protect public health and safety, and the natural resources of the State of Oklahoma;

2. Provide for response to environmental emergencies and incidents; and

3. Establish a fund administered by the State Department of Health which will be available to monitor hazardous waste management facilities and to respond and assist municipalities and counties in responding to any emergency situation involving hazardous waste.

SECTION 38. AMENDATORY 63 O.S. 1991, Section 1-2017, is amended to read as follows:

Section 1-2017. As used in this act:

1. "Hazardous waste" is defined as waste materials and by-products, either solid or liquid, which are to be discarded by the generator, and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary landfills, waste or sewage treatment facilities. Hazardous waste may include, but is not limited to, explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludge, tank bottoms containing heavy metallic ions, toxic organic chemicals, infectious materials, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste, and excludes domestic sewage;

2. "Hazardous waste management facility" means, as defined in the Hazardous Waste Disposal Act, storage, treatment and disposal facilities and sites for hazardous waste;

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

4. "Discharge" means any releasing, spilling, leaking, leaching, seeping, pouring, draining, emptying, dumping, expelling

or any other emitting of hazardous waste into the environment beyond the confines of a licensed disposal site; and

5. "Incident" means any occurrence or series of occurrences which result in the discharge of hazardous waste which create an injury to any person or property.

SECTION 39. AMENDATORY 63 O.S. 1991, Section 1-2018, is amended to read as follows:

Section 1-2018. There is hereby created in the State Treasury a special fund for the State Department of Health to be designated as the "Hazardous Waste Fund". This fund shall consist of monies transferred to it from funds appropriated to the Department for this purpose. The fund shall be a continuing fund not subject to fiscal year limitations. Expenditures from the Hazardous Waste Fund shall be made upon warrants issued by the State Treasurer against claims submitted to the Director of State Finance for approval and payment. The fund shall be for the purpose of protecting public health and safety as prescribed in the Hazardous Waste Disposal Act and for providing basic emergency response training and protective equipment. The Department is authorized, upon the request of a municipality or county, to assist such municipality or county in the development of emergency response plans. The fund shall be under the control and management of the administrative authority of the Department. Pursuant to this act, the Department is authorized to determine the manner in which such fund is to be used. The Department of Public Safety and the Department of Civil Defense are authorized and directed to assist and cooperate with the Department in the performance of its duties under this act.

SECTION 40. AMENDATORY 63 O.S. 1991, Section 1-2019, is amended to read as follows:

Section 1-2019. To further benefit the citizens of the State of Oklahoma, the Department may, if funds are available from the fund, render financial assistance, by form of a matching grant not to exceed Fifty Thousand Dollars (\$50,000.00), to any municipality or county of the state, which has prepared an emergency response plan which has been approved by the State Department of Health, for the purpose of providing basic emergency response training and protective equipment to be used by such municipality or county in responding to incidents involving hazardous waste. Such financial assistance shall be available only to those applicants which have a significant potential for initiating emergency response to an incident involving hazardous waste. The Department shall give priority to municipalities or counties of the state in which off-site facilities are located.

SECTION 41. AMENDATORY 63 O.S. 1991, Section 1-2414, as amended by Section 2 of Enrolled Senate Bill No. 683 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1-2414. A. Except as specified in subsection C of this section:

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

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

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

B. No provision of this act shall be construed so as to prevent a person from disposing of solid waste from his own household upon his own land provided such disposal does not create a nuisance or a hazard to the public health or does not violate a city ordinance.

C. Except as otherwise provided in subsection H of this section, the Department shall not issue an original permit for a new landfill disposal site having a permitted boundary located within one-half (1/2) mile of an outside wall of any dwelling occupied at the time a permit application is made unless the owner of the dwelling consents to the location of the landfill disposal site, except under the procedures specified in subsection D of this section. Said consent shall not be required for any landfill disposal site designed for the disposal of fly ash or bottom ash generated by coal-fired facilities. Said consent shall not be required as a condition for the issuance of:

1. Any renewal permit for an existing landfill site; or
2. A permit for any modification or expansion of an existing landfill site; or

3. A permit for the construction of a new landfill site on property if any point of said property is within three (3) miles of any point of an existing permitted landfill site owned by the permittee.

D. If, after the applicant has made a reasonable effort to negotiate a consent agreement with the owners of such dwellings and has failed to obtain such consent, the applicant may certify to the Department that such reasonable effort had been made and that the owners of said dwellings will not consent. The Department may then issue said permit if the permit application meets all other requirements of the solid waste regulations of the Board.

If a permit is issued without the consent of said owners, they shall have a cause of action against the applicant for any loss of value to their land and residence which will be caused by the operation of the landfill disposal site. Further, in an action brought to determine said damage, the court shall have the authority to weigh the public benefit of the proposed disposal site against the negative impact to the dwellings in the affected area and enjoin the operation of said landfill disposal site where the negative impact outweighs the public benefit. Any nonconsenting owner or owners who wish to file with the court must do so no later than sixty (60) days after issuance of the permit. Upon issuance of any such permit the Department shall file a recordable notice of the permit in the land records of the county in which the site is located. The notice shall contain the legal description of the site as well as the terms under which the permit is issued.

E. No permit shall be required for beneficial use by land application of municipal wastewater sludge from facilities in substantial compliance with a water or sewage permit issued by the Commissioner of Health, but all sludge application projects shall be operated in conformance with site standards and operational regulations adopted by the Board.

F. The Department shall issue a permit to be effective for the life of a given site.

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

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

SECTION 42. AMENDATORY 63 O.S. 1991, Section 1-2416.1, is amended to read as follows:

Section 1-2416.1 The Department may issue a permit for a landfill disposal site, not a hazardous waste facility, which accepts unspecified industrial solid waste, only under the following circumstances:

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

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

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

For purposes of this provision, the term "monofill" means a landfill which is used to dispose of a single type of specified solid waste, except for other solid wastes which are not readily separable from the specified waste. The provisions of this section shall apply to all pending applications for which final agency action has not been taken and future permit applications.

SECTION 43. AMENDATORY 63 O.S. 1991, Section 1-2417, as amended by Section 6 of Enrolled Senate Bill No. 683 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1-2417. A. The Board of Health is directed and empowered to adopt and promulgate rules for solid waste transportation and for the permitting, posting of security, construction, operation, closure, maintenance and remediation of solid waste disposal sites. Rules and regulations authorized under the provisions herein shall be promulgated and adopted in compliance with the Administrative Procedures Act. Notice of any proposed changes to such rules and regulations shall be given to the Oklahoma Municipal League, the County Commissioners Association, and such citizens as have requested to be notified and shall advise them of an opportunity to comment thereon before the adoption of such rules and regulations.

B. Rules for disposal sites shall be promulgated to allow for disposal of solid waste in ways that are environmentally safe and sanitary, as well as economically feasible. The Board may by regulation provide that the Department may authorize a variance from the specific requirements of a particular rule provided that the applicant for a variance has demonstrated that compliance with the rule will be met by substituted technology which equals or exceeds the protection accorded by the particular rule and that the variance will not result in a hazard to the health, environment and safety of the people of this state or their property. The grant of any variance shall be upon express condition that, in the event of the failure of the substituted technology to conform to the requirements of law and rules, the applicant shall be required to incorporate the technology, process or procedure established under the rules.

C. Where existing soil and groundwater conditions are such that a constructed liner may be required, the Department shall, as an aid in such consideration, calculate the potential percolation of precipitation into deposited solid waste and the potential for leachate generation using a water-balance method based on rainfall, evapotranspiration, and soils data. The applicant shall provide such site-specific data as is necessary for the Department to

evaluate the validity of the water-balance calculation for the specific site.

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

E. The Board shall not adopt rules pertaining to standards for the transportation of solid waste which are more stringent than those of the United States Department of Transportation or the United States Interstate Commerce Commission.

SECTION 44. AMENDATORY 68 O.S. 1991, Section 1359, as amended by Section 1 of Enrolled House Bill No. 2114 of the 2nd Session of the 43rd Oklahoma Legislature, is amended to read as follows:

Section 1359. There are hereby specifically exempted from the tax levied by this article:

(A) Goods, wares, merchandise, and property purchased for the purpose of being used or consumed in the process of manufacturing, compounding, processing, assembling, or preparing for sale a finished article and such goods, wares, merchandise, or property become integral parts of the manufactured, compounded, processed, assembled, or prepared products or are consumed in the process of manufacturing, compounding, processing, assembling, or preparing products for resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

(B) Ethyl alcohol when sold and used for the purpose of blending same with motor fuel on which motor fuel tax is levied by Section 529 of this title;

(C) Sale of machinery and equipment purchased and used by persons establishing new manufacturing plants in Oklahoma, and machinery and equipment purchased or equipment built on site and used by persons in the operation of manufacturing plants already established in Oklahoma. This exemption shall not apply unless such machinery and equipment is incorporated into, and is directly used in, the process of manufacturing property for sale or resale. The term manufacturing plants shall mean those establishments primarily engaged in manufacturing or processing operations, and generally recognized as such;

(D) Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply to the sale of any containers used more than once and which are ordinarily known as returnable containers, except returnable soft drink bottles and the cartons, crates, pallets, and containers used to transport returnable soft drink bottles. Each and every transfer of title or possession of such returnable containers in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled containers shall be taxable under this Code. And, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not necessary or absolutely essential to the sale of the sold merchandise;

(E) Sales of or transfers of title to or possession of any containers, after June 30, 1987, used or to be used more than once and which are ordinarily known as returnable containers and which do or will contain beverages defined by paragraphs 4 and 14 of Section 506 of Title 37 of the Oklahoma Statutes, or water for human consumption and the cartons, crates, pallets, and containers used to transport such returnable containers;

(F) Sale of tangible personal property manufactured in Oklahoma when sold by the manufacturer to a person who transports it to another state for immediate and exclusive use in some other state;

(G) Machinery, equipment, fuels and chemicals incorporated into and directly used or consumed in the process of treatment to substantially reduce the volume or harmful properties of hazardous waste at treatment facilities specifically permitted pursuant to the Hazardous Waste Disposal Act, Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes, and operated at the place of waste generation, or facilities approved by the State Department of Health for the cleanup of a site of contamination. The term hazardous waste may include low-level radioactive waste for the purpose of this subsection;

(H) Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection, "qualified manufacturer" means any enterprise whose total cost of construction material for a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, are added as a direct result of the new or expanded facility. Provided however, where the total cost of construction material for a new or expanded facility exceeds Ten Million Dollars (\$10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this subsection exceeds the sum of Fifty Million Dollars (\$50,000,000.00) the required number of new full-time-equivalent employees under this subsection shall be reduced to seventy-five (75) new employees. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-equivalent employees at a manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code, except that up to ten percent (10%) of the square feet of such building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this subsection;

(I) Sales of tangible personal property purchased and used by a licensed radio or television station in broadcasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a broadcast signal or is such that the failure of the machinery or equipment to operate would cause broadcasting to cease. This exemption begins with the equipment used in producing live programming or the electronic equipment directly behind the satellite receiving dish or antenna, and ends with the transmission of the broadcast signal from the broadcast antenna system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations;

(J) Sales of tangible personal property purchased or used by a licensed cable television operator in cablecasting. This exemption shall not apply unless such machinery and equipment is used directly in the manufacturing process, is necessary for the proper production of a cablecast signal or is such that the failure of the machinery or equipment to operate would cause cablecasting to cease. This exemption begins with the equipment used in producing local programming or the electronic equipment behind the satellite receiving dish, microwave tower or antenna, and ends with the transmission of the signal from the cablecast head-end system. For purposes of this subsection, "proper production" shall include, but not be limited to, machinery or equipment required by Federal Communications Commission rules and regulations; and

(K) Sales of packaging materials for use in packing, shipping or delivering tangible personal property for sale when sold to a manufacturer of tangible personal property or producer of agricultural products. This exemption shall not apply to the sale of any packaging material which can be used more than once or which is ordinarily known as a returnable container.

SECTION 45. AMENDATORY 68 O.S. 1991, Section 2357.15, is amended to read as follows:

Section 2357.15 The Legislature hereby declares that it is necessary in the public interest to encourage and promote the recycling, reuse or ultimate destruction of hazardous waste and deleterious substances by those manufacturing, service, and processing industries within the state whose operations produce hazardous waste or deleterious substances and those companies engaged in the disposal of hazardous waste or deleterious substances. It is equally necessary that Oklahoma be made and kept an attractive location for continued industrial development, including the expansion of existing plants, thereby increasing employment and payrolls and upgrading the state's natural resources, both of which public purposes and objectives will simultaneously be aided and encouraged by the Recycling, Reuse and Ultimate Destruction Incentive Act.

SECTION 46. AMENDATORY 68 O.S. 1991, Section 2357.16, is amended to read as follows:

Section 2357.16 A. Any person, firm, corporation or other legal entity engaged, or proposing to engage, in the recycling, reuse or ultimate destruction of any hazardous waste or deleterious substance, the processing of which is certified as provided in Section 2357.18 of this title, shall be entitled to a one-time credit against its income tax liability, as provided in Section 2357.17 of this title, of not to exceed twenty percent (20%) of the net investment cost of equipment and installation of such facilities for the recycling, reuse, or ultimate destruction of hazardous waste or deleterious substances. Provided, that:

1. the credit allowed to be taken shall not exceed the income tax liability for such year for such person, firm, corporation or legal entity;

2. the tax credit to be allowed shall not extend to or include plant operating expenses;

3. the person, firm, corporation or other legal entity applying for such tax credit actually uses the recycling, reuse, or ultimate destruction process or facility; and

4. the tax credit is taken within three (3) years of the installation and actual use of such process or facility.

B. The investment cost of such process or facilities may be treated as a depreciable asset for income tax purposes.

SECTION 47. AMENDATORY 68 O.S. 1991, Section 2357.17, is amended to read as follows:

Section 2357.17 A. In order to qualify for the income tax credit specified in Section 2357.16 of this title, said person,

firm, corporation or other legal entity engaged, or proposing to engage, in such recycling, reuse, or ultimate destruction enterprise shall first make application to the Oklahoma State Department of Health for hazardous waste or the Corporation Commission for deleterious substances on forms to be provided by the applicable agency and shall submit all available information relative to the applicant's operations bearing upon the nature and amount of hazardous waste or deleterious substance resulting, or expected to result therefrom, the effectiveness of the proposed recycling, reuse, or ultimate destruction facilities or processes and such other relevant information bearing upon the process or facilities as may be required by either of said state agencies. Upon receipt of such application for tax credit and supporting information, it shall be the duty of the State Department of Health or the Corporation Commission, as the case may be, to make as accurately as possible:

1. a verification of the accuracy of supporting information submitted by the applicant, or otherwise officially to determine the character and chemical content of the hazardous waste or deleterious substance;

2. a determination of the most effective type of recycling, reuse, or ultimate destruction facility taking into consideration alternative types of recycling, reuse, or ultimate destruction facilities or methods if any, and the relative cost of each such type;

3. a determination of the actual or approximate capital investment required to effectuate such installation so as to arrive at an actual or estimated agreed, net, nonprofitable or profitable investment expense of installing said recycling, reuse, or ultimate destruction facility or process; and

4. a determination as to whether or not such recommended installation of recycling, reuse, or ultimate destruction facilities will of itself be productive of additional income or savings and will result in a reduction of hazardous waste or deleterious substance for said applicant.

B. The actual or estimated agreed net investment cost of such process or facilities shall be certified to the Oklahoma Tax Commission by said state agency pursuant to Section 2357.18 of this title. In no event shall the Oklahoma Tax Commission allow a tax credit to be taken in excess of the actual net investment cost of such approved recycling, reuse, or ultimate destruction processing operations.

SECTION 48. AMENDATORY 82 O.S. 1991, Section 1266, is amended to read as follows:

Section 1266. In this act unless the context otherwise requires:

1. "District" means a regional water district organized pursuant to the provisions of this act. A district is a body corporate and an instrumentality of each of the public agencies which establish it by interlocal agreement;

2. "Board" means a board of directors of a regional water district organized under this act;

3. "Persons" includes any natural person, firm, association, corporation, business or public trust, partnership, federal agency, state agency, state or political subdivision thereof, municipality or any body politic;

4. "Acquire" means and includes construct, acquire by purchase, lease, devise, gift or other mode of acquisition of any interest in a project or facilities;

5. "Obligation" includes bonds, notes, debentures, interim certificates or receipts, contracts and all other evidences of indebtedness issued by a regional water district formed under this act, including bond anticipation notes and refunding bonds;

6. "Reservoir" means any impoundment of water through the construction of a dam by or under the direction and supervision of a constructing agency;

7. "Constructing agency" means any state, local or federal agency directing and supervising the construction of a reservoir and shall include the U.S. Corps of Engineers, Department of the Army, the U.S. Bureau of Reclamation, Department of the Interior, the U.S. Department of Agriculture and any other state, local or federal agency;

8. "State Board" means the Oklahoma Water Resources Board;

9. "Public agency" shall be as defined in the Interlocal Cooperation Act, Section 1003 of Title 74 of the Oklahoma Statutes, except public agencies of other states shall not be entitled to membership in the district;

10. "Water facilities" means and includes all facilities from the initial source to the place for utilization of water by a public agency or person as provided in this act, including, but not limited to, all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply, treatment, distribution, transportation, or storage of water, and any integral part thereof, including but not limited to water supply systems, water distribution systems, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof;

11. "Sewage" means the water-carried wastes created in and carried or to be carried away from residences, residential establishments, industrial or commercial establishments or any other private or public building or institution together with such surface or ground water or household and industrial wastes as may be present. Sewage does not include hazardous waste as defined by Section 1-2002 of Title 63 of the Oklahoma Statutes; and

12. "Sewage facilities" means and includes any plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the collection, transportation, treatment, purification, storage, processing, release, or disposal of sewage, including wastes resulting from any processes of industry, manufacture, trade or business or from the development of any natural resources, or any integral part thereof, including but not limited to treatment plants, pumping stations, intercepting sewers, trunk sewers, pressure lines, mains and all necessary appurtenances and equipment, and all property, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof.

SECTION 49. This act shall become effective September 1, 1992.