

ENROLLED SENATE
BILL NO. 361

By: Easley, Shurden and
Wilkerson of the Senate

and

Rice and Leist of the House

An Act relating to environment and natural resources; Amending Sections 4, 7, 10, 13, 34, 36, 56, 152, 153, 248, 249 and 349 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 2 O.S. 1991, Sections 2-4 and 9-208, as amended by Sections 246 and 251 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 17 O.S. 1991, Sections 52, as amended by Section 252 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 352, as amended by Section 4, Chapter 406, O.S.L. 1992, and 354 (17 O.S. Supp. 1992, Section 352), 20 O.S. 1991, Section 8-68a, as amended by Section 250 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, Sections 6, 9, 12, 15, 16 and 18, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Sections 6, 9, 12, 1003, 1004 and 1006), as amended by Sections 11, 16, 9, 64, 65 and 67 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 52 O.S. 1991, Section 139, as amended by Section 255 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 59 O.S. 1991, Sections 1102, 1103, 1106 and 1108, as amended by Sections 276, 277, 280 and 282 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, Sections 8, 9, 10, 11, 13 and 15, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Sections 1-1809, 1-1810, 1-1811, 1-1812, 1-1814 and 1-1816), as amended by Sections 45, 46, 47, 48, 50 and 52 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, Section 1, Chapter 267, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-2304.2), as amended by Section 155 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, Section 3, Chapter 361, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-2308), as amended by Section 154 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 63 O.S. 1991, Sections 1-1803, 1-2005.3B, 1-2014, 1-2014.2 and 1-2417, as last amended by Sections 40, 103, 94, 101 and

142 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 63 O.S. 1991, Sections 1-907 and 1-2413, as amended by Sections 71 and 165 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, Section 7, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 7), as last amended by Section 14 of Enrolled House Bill No. 1002 of the 1st Session of the Oklahoma Legislature, 68 O.S. 1991, Section 53003, as last amended by Section 193 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, 82 O.S. 1991, Sections 926.3, 926.4 and 926.9, as amended by Sections 58, 79 and 25 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, which relate to organization and administration of state environmental agencies and their programs and functions; authorizing state environmental agencies to perform certain educational activities and participate in certain hearings; requiring the Office of Attorney General to serve as legal counsel for the Environmental Quality Board; authorizing the Secretary of Environment to act as trustee for natural resources under certain federal acts; defining terms; removing authorization from Department of Environmental Quality to act as natural resource trustee; modifying jurisdictional areas of responsibilities for certain state environmental agencies; transferring certain construction grants program to Department of Environmental Quality; providing for certain agency rules to be transferred until certain time; providing for termination of transferred rules; transferring certain permits to the Department of Environmental Quality; authorizing Executive Director to appoint peace officers; clarifying certain date; removing requirement for merit system qualifications for Director of Air Quality Program; authorizing said Director to appoint a designee to serve as secretary to certain boards; stating requirements of Department regarding Air Quality Council; transferring certain duties required by the Oklahoma Clean Air Act from the Director to the Department; modifying reference to Executive Director; modifying certain penalty; requiring Department to establish certain program; deleting reference to certain office; deleting duplicative language; requiring Board to promulgate rules certifying certain laboratories for performance of environmental analyses; requiring Department to accept reports or analyses from certified laboratories; stating exceptions; modifying powers and duties of

Department; modifying powers and duties of the Board to promulgate certain rules; modifying certain authority of the Executive Director; stating procedures for notice and hearings for applications for discharge permits; providing for certain administrative permit hearings; authorizing certain parties to participate in said hearing; stating such hearing shall be a quasi-judicial proceeding and conducted according to certain act; authorizing parties to present evidence; defining term; stating exceptions; modifying certain term; requiring certain industrial wastewater treatment permit; stating exception; stating requirements for permits relating to closure, treatment or use for containment or treatment of industrial wastewater or sludge; modifying terms; requiring approval for certain major charges to permitted facilities; authorizing permits to be issued for certain time period and allowing for renewal; authorizing Board to promulgate certain rules; stating procedures for filing industrial wastewater treatment permit application; requiring public notice; requiring time for written comments or requests for formal public meeting; requiring Department to conduct formal public meeting; stating requirements for permits for beneficial use of sludge or wastewater through land application; requiring Department approval for sludge management plans; requiring major modification of certain existing permits before adding sludge management land application plan; authorizing Department to modify certain approved sludge management plans; requiring approval by the Department for any use of sludge pursuant to certain rules; stating certain permit applications filed with the Oklahoma Water Resources Board shall be subject to certain requirements; authorizing the Department to grant exception from certain requirements for construction of water line extensions; requiring board to promulgate rules for such exceptions; stating reasons for Department to disallow certain exceptions; authorizing Department to allow for termination of exception or corrective actions; modifying siting requirements for hazardous waste facilities; requiring certain facilities to submit emergency and release response plans with permit applications; stating procedures for public notice of said plan; prohibiting Department from approving certain plans until certain cities or towns have reviewed said plan; prohibiting certain hazardous wastes and blends of hazardous waste to be burned as fuel in certain permitted hazardous waste recycling units; requiring certificate of need prior to construction of certain facility to process or dispose of biomedical waste; prohibiting all governmental entities from issuing license for such facility unless

certificate of need has been obtained; stating requirement for certificate of need; requiring the Board to investigate application; stating requirements by Board for issuance of certificate of need; requiring Board to provide written findings upon their determination to issue or deny certificate of need; authorizing final determinations by Board may be appealed; authorizing Board to vacate certificate under certain circumstances; modifying certain fee for disposal of nonhazardous liquid waste; requiring fees to be deposited in certain revolving fund; defining terms; providing for certain assessment to the Environmental Trust Revolving Fund; stating certain revenue shall be deposited in certain Indemnity Fund in amount necessary to maintain maintenance level; deleting obsolete language; providing for certain amount of revenue to be deposited in the Environmental Trust Revolving Fund and the State Transportation Fund; providing assessment be deposited into certain Indemnity Fund under certain circumstances for certain time period; creating the Environmental Trust Revolving Fund; stating monies to be deposited in fund; authorizing monies to be expended by the Department of Environmental Quality for certain purposes; authorizing Board to promulgate rules requiring submission of laboratory reports or analyses for certain purposes by certified laboratories; modifying definition; requiring a solid waste permit for the beneficial use of sludge through land application; authorizing the Department to approve sludge management plans as part of certain permits; stating requirements shall apply to certain permit applications; clarifying language; modifying certain date; authorizing certain fees to be collected by public or private utilities; modifying certain penalties and interest on waste tire fees; clarifying environmental jurisdiction over agricultural matters; clarifying environmental jurisdiction over oil and gas matters; modifying definitions; modifying name of Oklahoma Water and Pollution Control Association; modifying certain term relating to water works or wastewater works; modifying duties of Environmental Management Oversight Task Force and stating termination date; requiring Environmental Quality Board to review the Oklahoma State Statutes and make legislative recommendations; providing for codification; providing for recodification; repealing 17 O.S. 1991, Section 406, which relates to permits for aboveground storage tanks, Section 1 of Enrolled Senate Bill No. 353 of the 1st Session of the 44th Oklahoma Legislature, which is a duplicate section and which relates liquid nonhazardous waste fees, 82 O.S. 1991, Section 1501-702, which relates to transfer of funds, Sections 1

and 2 of Enrolled House Bill No. 1238 of the 1st Session of the 44th Oklahoma Legislature, which are duplicate sections and which relate to fees and exceptions for construction of water line extensions, 68 O.S. 1991, Section 53003, as last amended by Section 27 of Enrolled House Bill No. 1100 of the 1st Session of the 44th Oklahoma Legislature, which is a duplicate section and which relates to waste tires; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 4 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1-1-102. Each state environmental agency shall:

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

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

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

4. Specifically facilitate cooperation across jurisdictional lines of authority with other state environmental agencies to resolve environmental problems; ~~and~~

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

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-103 of Title 27A, unless there is created a duplication in numbering, reads as follows:

The Office of the Attorney General of this state shall serve as legal counsel for the Environmental Quality Board and shall assist the Board in the performance of its duties pursuant to the Environmental Quality Code.

SECTION 3. AMENDATORY Section 10 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1-2-101. The Secretary of Environment or successor cabinet position having authority over the Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibilities:

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

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

3. Coordinate pollution control activities of the state carried on by all state agencies to avoid duplication of effort; and

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

SECTION 4. AMENDATORY Section 13 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-1-102. As used in the Oklahoma Environmental Quality Code:

1. "Administrative hearing" means an individual proceeding, held by the Department when authorized by the provisions of this Code and conducted pursuant to the Administrative Procedures Act, this Code and rules promulgated thereunder, for a purpose specified by this Code. "Administrative hearing" includes "administrative permit hearing", "enforcement hearing" and "administrative enforcement hearing" within the context of this Code. An "administrative hearing" shall be a quasi-judicial proceeding;

2. "Administrative Procedures Act" means the Oklahoma Administrative Procedures Act;

3. "Board" means the Environmental Quality Board;

4. "Code" means Chapter 2 of this title;

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

6. "Enforcement hearing" means an individual proceeding conducted pursuant to the Administrative Procedures Act, this Code and rules promulgated thereunder, for the purpose of enforcing the provisions of this Code, rules promulgated thereunder and orders, permits or licenses issued pursuant thereto. The term "administrative hearing" shall mean the same as "enforcement hearing" when held for enforcement purposes. An "enforcement hearing" shall be a quasi-judicial proceeding;

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

8. "Executive Director" means the Executive Director of the Department of Environmental Quality;

9. "Industrial wastewater treatment permit" shall mean permits issued by the Department after July 1, 1993, under Section 2-6-501 of Title 27A of the Oklahoma Statutes, and waste disposal permits

issued on or before June 30, 1993, by the Oklahoma Water Resources Board for land application of industrial waste or surface impoundments or disposal systems for industrial waste or wastewater;

10. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined;

~~10.~~ 11. "Person" means an individual, association, partnership, firm, company, public trust, corporation, joint-stock company, trust, estate, municipality, state or federal agency, other governmental entity, any other legal entity or an agent, employee, representative, assignee or successor thereof;

~~11.~~ 12. "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

~~12.~~ 13. "Public meeting" means a formal public forum, held by the Department when authorized by the provisions of this Code, and conducted by a presiding officer pursuant to the requirements of this Code and rules promulgated thereunder, at which an opportunity is provided for the presentation of oral and written views within reasonable time limits as determined by the presiding officer. Views expressed at a "public meeting" shall be limited to the topic or topics specified by this Code for such meeting. "Public meeting" shall mean a "public hearing" when held pursuant to requirements of the Code of Federal Regulations or the Oklahoma Pollutant Discharge Elimination System Act, and shall be synonymous with "formal public meeting" and "informal public meeting" as used within the context of this Code and rules promulgated thereunder. A "public meeting" shall not be a quasi-judicial proceeding;

~~13.~~ 14. "State environmental agency" includes the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Oklahoma Conservation Commission,
- e. Department of Wildlife Conservation,
- f. Department of Mines,
- g. Department of Public Safety,
- h. Department of Labor,
- i. Department of Environmental Quality, and
- j. Department of Civil Emergency Management; and

~~14.~~ 15. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof.

SECTION 5. AMENDATORY Section 9, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 9), as amended by Section 16 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-3-101. A. 1. There is hereby created the Department of Environmental Quality.

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

1. Perform such duties as required by law; and

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

~~3. Act as natural resource trustee to implement the federal Oil Pollution Act of 1990 (P.L. No. 101-380), as it exists or may be amended, and to establish and manage a revolving fund in relation to such duties.~~

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

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

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

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

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

3. Waste management programs which shall be responsible for hazardous waste, solid waste, radiation, and municipal, industrial, commercial and other waste; and

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

F. Within the Department there are hereby created:

1. The Office of Complaints, Investigation and Mediation which shall be responsible for intake processing, investigation, mediation and conciliation of inquiries and complaints received by the Department and which shall provide for the expedient resolution of complaints within the jurisdiction of the Department;

2. The Office of Business Assistance which shall be responsible for advising and providing to licensees, permittees and those persons desiring to obtain a license or permit, the necessary forms and the information necessary to comply with the Oklahoma

Environmental Quality Code. The Office of Business Assistance shall intercede with other divisions or offices of the Department to assist businesses and other state agencies in complying with state statutes and rules governing environmental areas;

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

4. The Office of Citizen Assistance which shall be responsible for advising and providing assistance to persons desiring information concerning the Department's rules, laws, procedures, licenses or permits, and forms used to comply with the Oklahoma Environmental Quality Code; and

5. The Office of Administrative Hearings which shall have primary responsibility for conducting individual proceedings including, but not limited to, maintenance of records, giving required notices, docketing and scheduling, and for conducting, upon request, administrative rulemaking hearings. The Office of Administrative Hearings shall be maintained separate and apart from any legal division or office of General Counsel of the Department.

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

2. Beginning January 1, 1995, and on or before January 1 of every year thereafter, the Department shall prepare an Oklahoma Environmental Quality Report which outlines the Department's two-year needs for providing environmental services within its jurisdictional areas. The report shall reflect any new federal mandates, such mandates' estimated costs, and any state statutory or constitutional changes recommended by the Department within its

jurisdictional areas. The Oklahoma Environmental Quality Report shall be reviewed, amended, and approved by the Board. The Department shall transmit an approved copy of the Oklahoma Environmental Quality Report to the Governor, President Pro Tempore of the State Senate, and Speaker of the House of Representatives.

3. The Executive Director shall establish such divisions and such other programs and offices as the Executive Director may determine necessary to implement and administer programs and functions within the jurisdiction of the Department pursuant to the Oklahoma Environmental Quality Code. In establishing such divisions and offices the Executive Director shall consult with and advise the Environmental Management Oversight Task Force as created by Section 349 of this act.

H. 1. The Department may contract with the other state environmental agencies or the local conservation districts to provide environmental services to the maximum extent possible. Such contracts may include duties related to providing information to the public regarding state environmental services, resources, permitting requirements and procedures based upon the ability, education and training of state environmental agency or local conservation district employees.

2. The Department, in conjunction with the state environmental agencies, may develop a program for the purpose of training state environmental agency or local conservation district employees to provide any needed environmental services.

3. Environmental services to be provided by other state environmental agencies or by local conservation districts shall not include the investigation of complaints regarding, or inspections of, permitted sites or facilities, unless otherwise authorized by law.

4. In order to promote efficiency in state government and maximize services to rural citizens, the Department of Environmental Quality and the Oklahoma State Department of Health may contract between the agencies to provide services as may be needed. In performing any services pursuant to such a contract, the Oklahoma Department of Health shall be deemed to be a state environmental agency for purposes of fulfilling environmental program and function duties and responsibilities specified by such contracts between the Oklahoma Department of Health and the Department of Environmental Quality.

5. The Department of Environmental Quality may contract as needed with the City-County Health Department of Oklahoma County and the Tulsa City-County Health Department for performance of environmental services within the jurisdictional areas of responsibility of the Department of Environmental Quality.

SECTION 6. AMENDATORY Section 6, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 6), as amended by Section 11 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1-3-101. A. The provisions of this section specify the jurisdictional areas of responsibility for each state environmental agency. The jurisdictional areas of responsibility specified in this section shall be in addition to those otherwise provided by law and assigned to the specific state environmental agency; provided that any rule, interagency agreement or executive order enacted or entered into prior to the effective date of this section which conflicts with the assignment of jurisdictional responsibilities specified by this section is hereby superceded. The provisions of this subsection shall not nullify any financial obligation arising

from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

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

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

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

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

4. Waterworks and wastewater works operator certification;

5. Public and private water supplies;

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

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

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

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

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

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

12. Emergency response as specified by law;

13. ~~Public environmental information dissemination;~~

~~14.~~ Environmental laboratory services and laboratory certification;

~~15.~~ 14. Hazardous substances other than branding, package and labeling requirements;

~~16.~~ 15. Freshwater wellhead protection; and

~~17.~~ 16. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency.

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

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

2. Weather modification;

3. Dam safety;

4. Flood plain management;

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

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

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the Federal Clean Water Act as specified by law; and

9. Statewide water quality standards.

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

- a. point and nonpoint source discharges from agriculture agricultural crop production, agribusiness agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
- b. pesticide control,
- c. forestry and nurseries,
- d. fertilizer, and
- e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals.

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

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
(2) dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities,
(3) slaughterhouses, but not including feedlots at such facilities, and
(4) animal aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and
- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges, and
- ~~c. point source discharges from slaughterhouses.~~

3. Any point source and nonpoint source discharges related to agriculture ~~and requiring~~ from sources specified in paragraph 1 of this subsection which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 2 of this subsection as being subject to the jurisdiction

of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

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

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines produced from geological strata lying below three hundred (300) feet in depth from the surface,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. injection wells known as Class II wells under the federal Underground Injection Control Program. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,
- g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,
- h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,
- i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:
 - (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being

subject to the jurisdiction of the Commission,
and
(2) other oil and gas extraction facilities and
activities,

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

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

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

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

~~3. Except as otherwise provided by this subsection, for 4. For~~
purposes of the Federal Clean Water Act, any facility or activity
which is subject to the jurisdiction of the Corporation Commission
pursuant to ~~this section and~~ paragraph 1 of this subsection and any
other oil and gas extraction facility or activity which requires a
permit for the discharge of a pollutant or storm water to waters of
the United States shall be subject to the direct jurisdiction of the
~~United States federal~~ Environmental Protection Agency and shall not
be required to be permitted by the Department of Environmental
Quality or the Corporation Commission for such discharge.

~~4.~~ 5. The Corporation Commission shall have jurisdiction over:

- a. underground storage tank regulation assigned to the
Commission pursuant to other Oklahoma statutes,
including but not limited to the Leaking Underground
Storage Tank Trust Fund and Indemnity Fund programs,
provided that any point source discharge of a
pollutant to waters of the United States during site
remediation shall be regulated by the Department of
Environmental Quality, and
- b. aboveground storage tanks used in connection with the
retail sale of flammable liquids into fuel tanks,
provided that any point source discharge of a
pollutant to waters of the United States during site
remediation shall be regulated by the Department of
Environmental Quality.

~~5. Any facility engaging in activities, when such activities~~
~~are separately within the jurisdiction of the Department of~~
~~Environmental Quality or the Corporation Commission, shall have said~~
~~activities regulated separately by the Department of Environmental~~
~~Quality and the Corporation Commission based upon each agency's~~
~~jurisdictional responsibilities.~~

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

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

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

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

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

1. Soil conservation and erosion control;
2. Monitoring, evaluation and assessment of waters to determine the extent of nonpoint source pollution and the development of conservation plans. Serve as the technical lead agency for Section 319 of the Federal Clean Water Act, except for activities related to industrial and municipal stormwater;
3. Wetlands strategy;
4. Abandoned mine reclamation;
5. Cost share program for land use activities;
6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;
7. Complaint data management;
8. Coordinate environmental and natural resources education;

and

9. Federal upstream flood control program.

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

1. Mining regulation; and
2. Mining reclamation of active mines.

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

1. Investigating wildlife kills; and
2. Wildlife protection and seeking wildlife damage claims.

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

1. Vehicle inspection for air quality;
2. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and

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

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

1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;
2. Asbestos monitoring in public and private buildings; and

3. Indoor air quality as regulated by the federal under the authority of the Oklahoma Occupational Health and Safety and Health Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency. Such programs shall be a function of the Department's occupational safety and health jurisdiction.

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

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

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

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

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

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

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

SECTION 7. AMENDATORY Section 7 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 7. A. Except as otherwise provided by this section, effective July 1, 1993, jurisdiction and all unexpended funds, property, records, personnel and any outstanding financial obligations or encumbrances of the Oklahoma State Department of Health over point source and nonpoint source discharges; underground injection for other than brine recovery, saltwater disposal or secondary or tertiary oil recovery; air quality under the Federal Clean Air Act and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma Statutes; private and public sewage and waste facilities; existing construction grants program; hazardous substances except for branding, package and labeling requirements; emergency response except for present authority granted to the Department of Civil Emergency Management or other agencies; solid waste; hazardous waste; operator certification of water and waste/wastewater treatment; environmental laboratory services and certification; Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986; public and private water supplies; surface water and groundwater quality and protection; freshwater wellhead protection; radioactive waste and all regulatory activities for the use of atomic energy and sources of radiation except for the use of sources of radiation by diagnostic x-ray facilities; agricultural,

commercial and industrial waste; public environmental information dissemination; and any other environmental responsibility shall be transferred to the Department of Environmental Quality.

B. On or before January 1, 1994, responsibility for and supervision of sixty-five local environmental specialists currently within the Department of Health and an apportionment of local administrative support personnel as determined by the Oklahoma Legislature shall be transferred from the Oklahoma State Department of Health to the Department of Environmental Quality.

C. Classified employees being transferred to the Department of Environmental Quality shall not be transferred into positions which are in the unclassified service. Classified employees being transferred to the Department shall be eligible to be hired or promoted into unclassified positions for which they meet the qualifications. Any person, including, but not limited to, classified employees being transferred to the Department, accepting positions at the Department which are unclassified shall be hired or promoted into such positions and shall be in the unclassified service. All classified employees being transferred to the Department shall maintain their status as classified employees unless hired or promoted into an unclassified position.

SECTION 8. AMENDATORY Section 12, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 12), as amended by Section 9 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1-1-205. A. With regard to all programs and functions transferred and assigned among the state environmental agencies pursuant to Section ~~11~~ 1-3-101 of this ~~act~~ title, ~~the all~~ agency rules, including fee schedules for state and county, relating to such programs and functions are hereby transferred to the receiving agency for the purpose of maintaining and operating such programs and functions. Such rules shall remain in effect only until the promulgation of rules June 30, 1994, at which time such transferred rules will terminate unless earlier superseded by rules promulgated by the receiving agency. By February 1, 1994, each agency receiving programs or functions shall have adopted new permanent rules to implement the programs and functions within the jurisdiction of the agency pursuant to Section ~~11~~ 1-3-101 of this ~~act~~ title.

B. Unexpired or unrevoked licenses, permits, certifications or registrations issued prior to July 1, 1993, shall remain valid for stated terms and conditions until otherwise provided by law. Such licenses, permits or registrations shall be subject to the laws and rules of the state agency to which jurisdiction over such licenses, permits or registrations are transferred pursuant to the Oklahoma Environmental Quality Act.

C. All rights, obligations and remedies arising out of laws, rules, agreements and causes of action are also transferred to such agency.

D. Nothing in the Oklahoma Environmental Quality Act shall operate to bar or negate any existing order, claim or cause of action transferred or available to any state environmental agency or its respective predecessor, nor shall it operate to affect enforcement action undertaken by any program, division or service prior to such transfer to any state environmental agency. Violations of provisions of law now contained in this title, and violations of rules, permits or final orders which occurred prior to the transfer of jurisdiction and authority to any state environmental agency shall be subject to penalties available and existing at the time of violation.

E. Any application pending on June 30, 1993, before the Oklahoma Water Resources Board or the State Department of Health for a permit or license over which the Department has jurisdiction is hereby transferred to the Department and shall be subject to the Oklahoma Environmental Quality Code.

F. All permit applications filed with the Oklahoma Water Resources Board on or before June 30, 1993, for which no permit has been issued by the Oklahoma Water Resources Board for the land application of industrial waste, sludge or wastewater shall be subject to the requirements of this Code.

SECTION 9. AMENDATORY 82 O.S. 1991, Section 926.9, as amended by Section 25 and renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-3-501. A. Any duly authorized representative of the Department shall have the power to enter at reasonable times upon any private or public property for the purpose of sampling, inspecting and investigating conditions relating to pollution, damage to natural resources or the possible pollution of any air, land or waters of the state or the environment or relating to any other environmental responsibility authorized by law.

B. The Department may require the establishment and maintenance of records and reports relating to any activity regulated by the Department. Copies of such records shall be submitted to the Department on request. Any authorized representative of the Department shall be allowed access and may examine such reports or records.

C. The Department may apply to and obtain from a judge of the district court, an order authorizing an administrative warrant to enforce access to premises for sampling, investigation, inquiry and inspection under the provisions of this Code and the rules promulgated by the Board. Failure to obey an administrative warrant of the district court may be punished by the district court as a contempt of court.

D. The Executive Director may appoint commissioned peace officers, certified by the Council on Law Enforcement Education and Training, to investigate environmental crimes.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 1-1803, as last amended by Section 40 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-5-103. A. 1. Nothing in the Oklahoma Clean Air Act:

- a. shall prevent cities, towns and counties from enacting ordinances or codes with respect to air pollution which will not conflict with the provisions of the Oklahoma Clean Air Act and which contain provisions more stringent than those fixed by the operation of the Oklahoma Clean Air Act; provided, however, that any city or town which has a population of less than three hundred thousand (300,000) persons according to the most current census shall not enforce any ordinance or code regarding air pollution containing more stringent provisions unless and until such ordinance or code is reviewed by the Council and approved as to its reasonableness and technical feasibility.
- b. shall prevent cities and towns from summarily abating public nuisances as now provided by law.

2. This subsection shall not apply to any air pollution ordinances or codes enacted by cities, towns or counties and in effect prior to ~~the effective date of this provision~~ May 15, 1992.

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

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

SECTION 11. AMENDATORY Section 8, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1809), as amended by Section 45 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-5-108. A. A Director of the Air Quality Program ~~having those qualifications required by the state merit system~~ shall be appointed and employed by the Executive Director and shall have the following duties and powers:

1. Perform those duties and responsibilities as may be assigned by the Executive Director and as may be required for carrying out the air pollution program of the Department;

2. Attend, or designate an alternate to attend, all meetings of the Council and the Panel, but shall not be entitled to a vote;

3. Serve or appoint a designee to serve as secretary to both the Council and serve or appoint a designee to serve as secretary to the Panel;

~~4.~~ B. The Department shall:

1. Make recommendations to the Council with respect to rules and air pollution prevention and abatement;

~~5.~~ 2. Investigate citizen complaints, violations of the Oklahoma Clean Air Act and the rules promulgated thereunder, make inspections, observations and analyses of air pollution conditions; and make recommendations to the Council and to the Executive Director for the issuance of formal complaints and for the prosecution of such complaints by the Department;

~~6.~~ 3. Keep a record of all meetings of the Council and the Panel; and

~~7.~~ 4. Notify the members of the Council and the Panel of the time, place and purpose of their respective meetings.

SECTION 12. AMENDATORY Section 9, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1810), as amended by Section 46 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-5-109. A. Any person seeking a variance from any provision of the Oklahoma Clean Air Act, or from any applicable air quality rule, shall do so by filing a petition for variance with the ~~Director~~ Department, who shall promptly investigate such petition and make a recommendation to the Council as to the disposition thereof. Upon receiving the recommendation of the ~~Director~~ Department, the Council may, in its discretion, determine whether or not an administrative hearing is necessary in granting a variance. Such hearing shall be held as provided in the Administrative Procedures Act, except the burden of proof shall be on the

petitioner. The petitioner shall be notified by the ~~Director~~ Department of the time and place of the administrative hearing.

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

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

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

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

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

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

SECTION 13. AMENDATORY Section 10, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1811), as amended by Section 47 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-5-110. A. In addition to any other remedy provided for by law, the Department may issue a written order to any person whom the Department has reason to believe has violated, or is presently in violation of, the Oklahoma Clean Air Act or any rule promulgated by the Board, any order of the Department or Council, or any condition of any permit issued by the Department pursuant to the Oklahoma Clean Air Act, and to whom the Department has served, no less than fifteen (15) days previously, a written notice of violation. The Department shall by conference, conciliation and

persuasion provide the person a reasonable opportunity to eliminate such violations, but may, however, reduce the fifteen-day notice period as in the opinion of the Department may be necessary to render the order reasonably effectual.

B. Such order may require compliance immediately or within a specified time period or both. The order, notwithstanding any restriction contained in subsection A of this section, may also assess an administrative penalty for past violations occurring no more than one hundred eighty (180) days prior to the date the order is filed with the Department, and for each day or part of a day that such person fails to comply with the order.

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

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

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

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

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

SECTION 14. AMENDATORY Section 11, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1812), as amended by Section 48 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-5-111. A. The Department shall have the authority, pursuant to rules of the Board, to implement a field citation program establishing appropriate violations for which field citations assessing administrative penalties may be issued. No citation shall assess a penalty in excess of One Thousand Dollars (\$1,000.00) per day, or part of a day, per violation, nor exceed a combined limit of Five Thousand Dollars (\$5,000.00) per day. Provided further, no field citation shall be valid unless reviewed for legal sufficiency within ten (10) days of issuance.

1. Any person to whom a field citation is issued may elect to pay the penalty assessment or to request an enforcement hearing. The assessment shall become final and payable unless the request for hearing is made in writing within fifteen (15) days of the citation. Upon such request, the enforcement hearing shall be promptly set

before the Department unless the respondent requests that the enforcement hearing be set before the Council. In such case the ~~Director~~ Department shall schedule the enforcement hearing before the Council and notify the respondent ~~and the Department~~.

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

3. In determining the amount of any penalty to be assessed pursuant to this section, the person issuing a field citation shall take into account the seriousness of the violation, any good faith efforts to comply with applicable requirements and other factors determined by rule to be relevant.

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

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

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

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

4. Approval by the Executive Director.

SECTION 15. AMENDATORY Section 13, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1814), as amended by Section 50 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-5-113. A. Upon the effective date of rules promulgated pursuant to the Oklahoma Clean Air Act establishing a schedule of permit fees, the owner or operator of any source required to have a permit shall be subject to pay to the Department or, upon delegation, the appropriate city-county authority:

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

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

- a. the costs of reviewing and acting upon any permit renewal,
- b. emissions and ambient monitoring, for those costs incurred under the permitting program,
- c. preparing generally applicable rules or guidance,
- d. modeling, monitoring, analyses and demonstrations,
- e. preparing inventories and tracking emissions, and
- f. inspections and enforcement.

B. The annual operating fee may be imposed in graduated yearly increases as necessary to cover the above costs, but for any major source, affected source, or any source, including an area source, subject to standards or regulations under Section 111 or 112 of the Federal Clean Air Act, any source required to have a permit under parts C or D of Title I of the Federal Clean Air Act, or any other

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

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

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

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

D. Any fee not received by the Department within the prescribed time period allotted for payment, unless a lesser amount shall be provided for by rule, shall be subject to a ~~ten percent (10%)~~ one and one-half percent (1 1/2%) per month penalty.

E. There is hereby created within the Department of Environmental Quality Revolving Fund, a subaccount which shall consist of all permit fees collected by the Department pursuant to Title V of the federal Clean Air Act as authorized by the Oklahoma Clean Air Act. All monies accruing to the credit of such subaccount shall be budgeted and expended by the Department for the sole purpose of implementing the permit program as set forth in Title V of the Federal Clean Air Act and the Oklahoma Clean Air Act.

SECTION 16. AMENDATORY Section 15, Chapter 215, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-1816), as amended by Section 52 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-5-115. A. The Department shall ~~develop, as part of the State Implementation Plan, plans for the establishment of~~ establish a small business stationary source technical and environmental compliance assistance program. The purpose of such program shall be to provide information to small businesses to assist them in achieving compliance with the requirements of the Oklahoma Clean Air Act and the Federal Clean Air Act. It shall be the duty of the Department to:

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

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

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

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

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

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

B. The Executive Director shall designate an employee within the Department to serve as the State Air Quality Ombudsman ~~Office~~ for Small Businesses. Such designee shall assume the responsibility for monitoring the small business stationary source technical and environmental compliance assistance program under this section. The Ombudsman shall:

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

- a. comments and recommendations to the Environmental Protection Agency and the state regarding development and implementation of regulations,
- b. the impact of the Oklahoma Clean Air Act and the Federal Clean Air Act on the state's economics, local economics and small businesses,
- c. review the work and services of the small business stationary source technical and environmental compliance assistance program with trade associations and small business representatives;

2. Interact with the state and small businesses to:

- a. facilitate small business participation in new regulation development,
- b. disseminate information,
- c. sponsor meetings, and
- d. refer small businesses to the appropriate areas of the small business stationary source technical and environmental compliance assistance program where they may obtain information on assistance or find

affordable alternatives in controlling emissions and precluding accidental releases; and

3. Interface with:

- a. the Small Business Administration, the Department of Commerce and other state, local, regional and federal agencies which have programs to finally assist small businesses in compliance with environmental regulations, and
- b. private sector financial institutions in locating sources of funds to comply with state-local air pollution regulations.

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

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

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

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

4. One member selected by the Executive Director to represent the Department.

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

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

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

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

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

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

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

7. The appointee of the Executive Director shall be for seven (7) years.

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

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

1. Render advisory opinions on the effectiveness of the state small business stationary source technical and environmental

compliance assistance program, difficulties encountered, and the degree and severity of enforcement;

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

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

SECTION 17. AMENDATORY Section 34 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-4-302. A. The Board shall promulgate rules for certification of privately and publicly owned laboratories for performance of ~~water quality~~ environmental analyses and for certification of laboratory operators for municipal wastewater works and municipal waterworks. The Board may promulgate rules which adopt standards of the United States Environmental Protection Agency by reference, but in any case laboratories meeting such standards shall be certified.

B. The Board, pursuant to Section 24 of this act and the Administrative Procedures Act, shall promulgate rules for the assessment of reasonable fees to participating laboratories for the administrative costs of the certification program.

C. Fees charged pursuant to this section shall be paid into the Department of Environmental Quality Revolving Fund and shall only be used by the Department in administering the Department's laboratory certification program pursuant to Section 24 of this act.

SECTION 18. AMENDATORY Section 36 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-4-304. A. The Department shall accept reports or laboratory analyses performed by certified laboratories unless the analyses were not performed in compliance with the Department's rules or the laboratory's certification. The Department may reject reports or analyses from any certified laboratory not in compliance with terms of its certification or the Board's rules. The Department shall not require, pursuant to rules promulgated by the Board, that reports or laboratory analyses submitted to the Department pursuant to this Code, rules promulgated thereunder, and permits and orders issued pursuant thereto be performed by laboratories certified by the Department unless the submission of reports or laboratory analyses performed by a certified laboratory is specifically required or authorized by this Code, federal law or federal regulations.

B. For purposes of operational testing of municipal wastewater treatment systems and water supply systems, the Department shall accept laboratory reports and analyses prepared and performed by such system's laboratories operated by laboratory operators certified by the Department unless the analyses were not performed in compliance with the Department's rules or the terms of the laboratory operator's certification.

~~B.~~ C. Acceptance of such reports or analyses shall not preclude the Department from declining for cause to rely on such results or from requiring additional laboratory analyses or reports from the ~~system~~ person submitting such analyses or reports.

SECTION 19. AMENDATORY Section 56 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-6-101. For purposes of this article:

1. "Clean Water Act" means the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;
2. "Disposal system" means pipelines or conduits, pumping stations and force mains and all other devices, construction, appurtenances and facilities used for collecting, conducting or disposing of wastewater, including treatment systems;
3. "Drainage basin" means all of the water collection area adjacent to the highest water line of a reservoir which may be considered by the Department to be necessary to protect adequately the waters of the reservoir. The area may extend upstream on any watercourse to any point within six hundred (600) feet of the highest water line of the reservoir;
4. "Federal Safe Drinking Water Act" means the federal law at 42 U.S.C., Section 300 et seq., as amended;
5. "NPDES" or "National Pollutant Discharge Elimination System" means the system for the issuance of permits under the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;
6. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined;
7. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste discharged into waters of the state;
8. "Public water supply" means water supplied to the public for domestic or drinking purposes;
9. "Reservoir" means any reservoir, whether completed or in the process of construction, whether or not used as a water supply, and whether or not constructed by any recipient of water therefrom;
10. "Treatment" means any ~~any~~ method, technique or process used to remove pollutants from wastewater or sludge to the extent that the wastewater or sludge may be reused, discharged into waters of the state or otherwise disposed and includes, but is not limited to, the utilization of mechanized works, surface impoundments and lagoons, aeration, evaporation, digesters or other devices or methods. "Treatment" also means any method, technique or process used in the purification of drinking water;
11. "Treatment works" means any facility used for the purpose of treating or stabilizing wastes or wastewater. "Treatment works" shall be synonymous with "wastewater works";
12. "Waste" means any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate, or tend to pollute or contaminate, any air, land or waters of the state and which is within the jurisdiction of the Department;
13. "Wastewater" includes any substance, including sewage, that contains any discharge from the bodies of human beings or animals, or contaminating chemicals or other waste or pollutants from domestic, municipal, commercial, agricultural, industrial or manufacturing activities or facilities and which is within the jurisdiction of the Department;
14. "Wastewater treatment system" means treatment works and all related pipelines or conduits, pumping stations and force mains, and all other appurtenances and devices used for collecting, treating, conducting or discharging wastewater;

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

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

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

SECTION 20. AMENDATORY 82 O.S. 1991, Section 926.3, as amended by Section 58 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-6-103. A. The Department shall have and is hereby authorized to exercise the power and duty to:

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

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

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

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

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

6. Establish, implement and enforce the Water Quality Management Plan, the continuing planning process documents, and wasteload allocations; and

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

B. 1. The Board shall have the authority to promulgate such rules as may be necessary to implement the policies and duties set forth in this article including, but not limited to, rules pertaining to services, permits, licenses and certifications, including certifications under Section 401 of the Clean Water Act, and, pursuant to Section 24 2-3-402 of this ~~act~~ title, fee schedules for such services, permits, licenses and certifications.

2. The Board may adopt by reference standards of quality of the waters of the state and classifications of such waters as are lawfully established by the Oklahoma Water Resources Board and the United States Environmental Protection Agency as Oklahoma's Water

Quality Standards and promulgate other rules to protect, maintain and improve the best uses of waters in this state in the interest of the public under such conditions as may be necessary or appropriate for the prevention, control and abatement of pollution.

C. The Executive Director may:

1. Issue, modify, or revoke orders:

- a. prohibiting or abating pollution of the waters of the state,
- b. requiring the construction of new disposal or treatment systems or any parts thereof or the modification, extension or alteration of existing disposal or treatment systems or any part thereof, or the adoption of other remedial measures to prevent, control or abate pollution, and
- c. requiring other actions such as the Executive Director may deem necessary to enforce the provisions of this article and rules promulgated thereunder;

~~2. Require the submission of and review plans, specifications and other data relative to disposal or treatment systems or any part thereof in connection with the issuance of such permits as are required by this article;~~

~~3.~~ 2. Issue, continue in effect, revoke, amend, modify or deny, renew, or refuse to renew under such conditions as the Department may prescribe, permits, licenses and certifications, including certifications under Section 401 of the Clean Water Act, to prevent, control or abate pollution of waters of the state;

~~4. Enforce the provisions of this article, rules promulgated thereunder, and permits, licenses, and certifications issued pursuant thereto and Oklahoma Water Quality Standards;~~

~~5. Establish, implement and enforce the Water Quality Management Plan, the continuing planning process documents, and wasteload allocations; and~~

~~6.~~ 3. Exercise all incidental powers which are necessary and proper to carry out the purposes of this article.

SECTION 21. AMENDATORY Section 15, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 1003), as amended by Section 64 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-6-203. A. The Board shall have the power and duty to promulgate rules implementing or effectuating the Oklahoma Pollutant Discharge Elimination System Act. Such rules may incorporate by reference any applicable rules, regulations and policies of the United States Environmental Protection Agency adopted under the Clean Water Act. Any such rules shall be in reasonable accord with the United States Environmental Protection Agency regulations and policies, including but not limited to rules which:

1. Allow the inclusion of technology-based effluent limitations and require water-quality-related effluent limitations in discharge permits to the extent necessary to protect the designated and existing beneficial uses of the waters of the state and to comply with the requirements of the Clean Water Act;

2. Establish pretreatment standards and standards for the removal of toxic materials and pollutants from effluent discharges and establish procedures and programs necessary to implement and enforce such standards and ensure compliance with applicable federal regulations;

3. Apply in terms and conditions of Executive Director issued permits applicable national standards of performance pursuant to Section 306 of the Clean Water Act;

4. Prohibit or control the discharge of pollutants into wells within the jurisdiction of the Department of Environmental Quality;

5. Develop or assist in development of any effluent limitation or other limitation, prohibition, or effluent regulation;

6. Establish procedures, including, but not limited to, notice and opportunity for public hearing, which provide that whenever the owner or operator of any point source discharge can demonstrate to the satisfaction of the Executive Director that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made, the Executive Director may impose an effluent limitation for such discharge, taking into account the interaction of such thermal component with other pollutants, that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on that body of water;

7. Ensure that the public and any other state, the waters of which may be affected, receive notice of each application for a discharge permit, ~~and prescribe circumstances under which an opportunity for a public hearing will be provided before the Department determines whether a discharge permit should be issued;~~

8. Ensure that any other state, the waters of which may be affected by the activities allowed by a proposed permit, may submit written recommendations on the application to the Department. The rules shall provide that if such recommendations or any parts thereof are not adopted, the Department will notify the affected state in writing and shall provide the reasons therefor; and

9. Establish a fee schedule to implement the provisions of the Oklahoma Pollutant Discharge Elimination System Act.

B. The Department shall have authority to:

1. Require the owner or operator of any system for the treatment, storage, discharge or transport of pollutants to establish, maintain and submit plans, specifications, records, and other data relative to disposal systems or any part thereof, in connection with the issuance of discharge permits or in connection with any permit, purposes or requirements of the Oklahoma Pollutant Discharge Elimination System Act, to make reports, to install, calibrate, use and maintain monitoring equipment or methods including biological monitoring methods, take samples of effluents in such manner as may be prescribed, and provide such other information as may be reasonably required;

2. Take all actions which may be necessary or incidental to implement and maintain a pollutant discharge permit program, including the authority to assume and obtain authorization to implement and maintain a portion of the National Pollutant Discharge Elimination System state permit program pursuant to Section 402 and other provisions of the Clean Water Act. The Executive Director shall issue permits for the discharge of pollutants and storm water from facilities and activities within its areas of environmental jurisdiction specified in Section ~~41~~ 1-3-101 of this ~~act~~ title; and

3. Exercise all necessary incidental powers which are necessary and proper to carry out the purposes of the Oklahoma Pollutant Discharge Elimination System Act and to comply with the requirements of the Clean Water Act and the requirements of the United States Environmental Protection Agency regulations promulgated thereunder.

SECTION 22. AMENDATORY Section 16, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 1004), as amended by Section 65 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of

the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-6-204. A. Pollutant discharge permits issued by the Executive Director may include schedules of compliance and such conditions as the Executive Director may prescribe to:

1. Prevent, control or abate pollution, including such water-quality-related and technology-based effluent limitations as are necessary to protect the water quality and existing and designated beneficial uses of the waters of the state;

2. Require application of best practicable control technology currently available, best conventional pollutant control technology, or best available technology economically achievable or such other limitations as the Executive Director may prescribe;

3. Require compliance with national standards of performance, toxic and pretreatment effluent standards;

4. Set limitations or prohibitions designed to prohibit the discharge of toxic pollutants in toxic amounts or to require pretreatment of pollutants;

5. Set interim compliance dates which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality; and

6. Comply with the provisions of the Oklahoma Pollutant Discharge Elimination System Act and the requirements of the Clean Water Act.

B. The Executive Director shall:

1. Have authority to issue individual permits and authorizations under general discharge permits for pollutants and stormwater as authorized by the Oklahoma Pollutant Discharge Elimination System Act;

2. Issue individual discharge permits for fixed terms not to exceed five (5) years;

3. Have the authority to require in permits issued to publicly or privately owned treatment works conditions requiring the permittee to give notice to the Department of new introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the Clean Water Act or from a source which would be a point source subject to Section 301 of the Clean Water Act if it were discharging directly to waters of the state, a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit, or such other conditions as may be required under the Clean Water Act or state law;

4. Have the authority to ensure compliance with Sections 204(b), 307, and 308 and other provisions of the Clean Water Act;

5. Have all necessary and incidental authority to comply with the requirements of the Clean Water Act and requirements of the United States Environmental Protection Agency set forth in duly promulgated federal regulations adopted under the Clean Water Act;

6. Have the authority to terminate or modify permits issued by the Executive Director for cause, including but not limited to:

a. violation of any condition of the permit, including but not limited to conditions related to monitoring requirements, entry and inspections,

b. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts, or

c. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; and

7. Have all necessary authority to implement and enforce Department programs and requirements established by the Environmental Quality Board in duly promulgated rules, including but not limited to the authority to implement and enforce a statewide pretreatment program required under federal law and regulations and to implement and enforce requirements applicable to dischargers into municipal separate storm sewer systems.

8. Have all necessary or incidental authority to investigate and abate violations of permits issued by the Executive Director, violations of administrative orders, violations of duly promulgated rules, and violations of the Oklahoma Pollutant Discharge Elimination System Act, and shall have all necessary and incidental authority to apply sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection and sampling.

C. Authorized employees or representatives of the Department shall, upon presentation of credentials, have:

1. A right of entry to, upon, or through any private or public premises upon which an effluent source is or may be located or in which any records are required to be maintained;

2. Access to at any reasonable time for the purposes of reviewing and copying any records required to be maintained;

3. Authority to inspect any monitoring equipment, methods, disposal systems or other facilities or equipment which may be required; and

4. Access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or to treatment systems discharging into waters of the state.

D. The Executive Director shall not issue a discharge permit if the permit:

1. Would authorize the discharge of a radiological, chemical or biological warfare agent, or high-level radioactive waste;

2. Would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any waters of the United States as those waters are defined in the Clean Water Act;

3. Is objected to in writing by the Administrator of the United States Environmental Protection Agency or his designee, pursuant to any right to object which is granted to the Administrator under Section 402(d) of the Clean Water Act; or

4. Would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the Clean Water Act.

E. Copies of records, plans, reports or other information required by the Department shall be submitted upon request and shall be subject to and made available for inspection at reasonable times to any authorized representative of the Department of Environmental Quality upon showing of proper credentials. Any authorized representative of the Department may examine any records or memoranda pertaining to discharges, treatment, or other limitations set by permit, order or duly promulgated rules of the Board.

F. Any records, reports, or information obtained pursuant to this section shall be available to the public, except that upon submission of sufficient evidence showing that records, reports, or information, or particular parts thereof, other than effluent data, if made public would divulge methods or processes entitled to protection as trade secrets of such person, such record, report, or

information, or particular portion thereof shall be considered confidential in accordance with the purposes of the Uniform Trade Secrets Act. Nothing in this subsection shall prohibit the Department or an authorized representative of the Department, including, but not limited to, any authorized contractor, from disclosing records, reports, or information to other officers, employees, or authorized representatives of the State of Oklahoma or the United States concerned with carrying out provisions of state or federal law under their respective jurisdictions or within their respective authorities.

G. The Executive Director and any person designated by him to approve all or portions of permits, or to modify, revoke or reissue permits or to make any final decisions in the first instance or on appeal relating to permits or enforcement actions related thereto, shall be required to meet all requirements of Section 304 of the Clean Water Act and federal regulations promulgated thereunder.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-205.1 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Upon filing a permit application with the Department for a discharge permit for the major modification of an existing discharge permit, the applicant shall publish notice of the filing in at least one daily or weekly newspaper local to the area affected by the proposed discharge.

B. If the Department makes a tentative decision to deny such an application, it shall publish notice of its intent to deny. Such notice shall provide for a public comment period and a thirty-day opportunity to request a formal public meeting on the tentative decision. The notice shall be published in at least one daily or weekly newspaper local to the area affected by the proposed discharge. Additionally, notice by mail shall be concurrently given, as required by applicable federal regulations, to the applicant and:

1. Persons on a mailing list developed by the Department, including persons who have requested such notice;
2. Local, state and federal governmental entities; and
3. When applicable, all users identified in an application filed by a privately owned treatment works.

C. If the Department prepares a draft permit based on such an application, the Department shall give notice to the applicant of such preparation and shall require the applicant to give public notice of the draft permit and its availability for public review and comment. Such notice shall provide for a public comment period and a thirty-day opportunity to request a formal public meeting on the draft permit. The notice shall be published in at least one daily or weekly newspaper local to the area affected by the proposed discharge. Additionally, notice by mail shall be concurrently given, as required by applicable federal regulations, to:

1. Persons on a mailing list developed by the Department, including persons who have requested such notice;
2. Local, state and federal governmental entities; and
3. When applicable, all users identified in an application filed by a privately owned treatment works.

D. The Department shall conduct a public meeting if, within thirty (30) days after the date of publication specified in subsections B and C of this subsection, the Department receives a written request for such meeting and determines that there is a significant degree of public interest in the draft permit or intent to deny. Such meeting shall be held not more than one hundred twenty (120) days after the expiration of the thirty-day notice

period and shall not be a quasi-judicial proceeding. Public notice of the meeting shall be given at least thirty (30) days prior to the meeting date in accordance with applicable federal regulations.

E. As part of the notice required in subsection C of this section, the applicant shall give notice of an opportunity to request an administrative permit hearing on the draft permit.

1. Any person having any interest connected with the geographic area or waters or water system which would be affected by the proposed discharge, including but not limited to any aesthetic, recreational, health, environmental, pecuniary or property interest which may be adversely affected, may request such a hearing to participate in as a party.

2. The written request shall be submitted to the Department no later than thirty (30) days after the date a public meeting is held or, if no public meeting is held, within sixty (60) days after the publication date of the draft permit notice. The request shall state each legal or factual question alleged to be at issue and its relevance to the permit decision.

3. All requests that are granted by the Department for a hearing on such draft permit shall be combined in a single hearing. The hearing shall be a quasi-judicial proceeding and shall be conducted in accordance with the Administrative Procedures Act and rules promulgated by the Board. The applicant shall be a party to the hearing. Parties shall have the right to present evidence before the Department at the hearing on whether the draft permit and the technical data, models and analyses, and information in the application upon which the draft permit is based are in substantial compliance with the Oklahoma Pollution Discharge Elimination System Act and rules promulgated thereunder, the Water Quality Management Plan, other applicable rules of the Department, the Oklahoma Water Quality Standards and implementation rules for the Standards, and whether such draft permit should be issued as is, amended and issued, or denied.

F. For purposes of this section, the term public meeting shall mean a public hearing as used in Part 124 of Title 40 of the Code of Federal Regulations.

G. The provisions of this section shall not apply to applications filed with the Department for authorization to discharge pursuant to a general discharge permit.

H. The administrative permit hearing provisions of subsection E of this section shall only apply to applications for discharge permits and for major modifications of existing discharge permits which are filed with the Department or occur on or after the effective date the State of Oklahoma is granted state authorization under the Clean Water Act for a state National Pollutant Discharge Elimination System Program.

SECTION 24. AMENDATORY Section 18, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 1006), as amended by Section 67 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-6-206. A. Whenever there are reasonable grounds to believe that there has been a violation of any of the provisions of the Oklahoma Pollutant Discharge Elimination System Act, any permit, any rule, or any order of the Executive Director, the Executive Director shall have the authority and powers to proceed as specified in the Administrative Procedures Act unless otherwise provided herein. Provided, however, that provisions of this section for written notice, enforcement hearing, and administrative orders shall not be conditions precedent for the Department to seek action in the

district court as provided by the Oklahoma Pollutant Discharge Elimination System Act or other applicable provisions of law.

B. The Oklahoma Pollutant Discharge Elimination System Act shall not in any way impair or in any way affect a ~~citizen's~~ person's right to recover damages for pollution in a court of competent jurisdiction. Any ~~citizen~~ person having any interest connected with the geographic area or waters or water system affected, including but not limited to any aesthetic, recreational, health, environmental, pecuniary or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the Oklahoma Pollutant Discharge Elimination System Act or rules, permits or orders issued hereunder.

C. Whenever on the basis of any information available, the Department finds that any person or entity regulated by the Department is in violation of any act, rule, order, permit, condition or limitation implementing the Oklahoma Pollutant Discharge Elimination System Act, or any previously issued discharge permit, the Executive Director shall issue an order requiring such person or entity to comply with such provision or requirement, commence appropriate administrative enforcement proceedings, or bring a civil action. Provided, however, the issuance of a compliance order or suspension or revocation of a permit shall not be considered a condition precedent to the accrual or imposition of penalties or fines in any administrative, civil or criminal proceeding.

D. A copy of any order issued pursuant to this section shall be sent immediately to the violator. In any case in which an order or notice to a violator is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

Any order issued pursuant to this section shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a reasonable time in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order or notice issued by the Executive Director may be served in any manner allowed by Oklahoma Rules of Civil Procedures applicable to a civil summons.

E. Whenever on the basis of any information available the Executive Director finds that any person regulated by the Department has violated any of the provisions of the Oklahoma Pollutant Discharge Elimination System Act, or any permit, rule, order or condition or limitation implementing any of such sections, or previously issued discharge permit or related order, the Executive Director may, after providing notice and opportunity for ~~a~~ an enforcement hearing to the alleged violator, assess an administrative fine of not more than Ten Thousand Dollars (\$10,000.00) per day of violation, for each day during which the violation continues. The total amount of such fine shall not exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00) per violation. In determining the amount of any penalty assessed under this subsection, the Executive Director shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit savings, if any, resulting from the violation, and such other matters as justice may require. For purposes of this

subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. Enforcement hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act.

F. 1. The Executive Director is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection C of this section.

2. Any person who violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any permit condition or limitation implementing any of such provisions in a permit issued under the Oklahoma Pollutant Discharge Elimination System Act, or any requirement imposed in a pretreatment program approved under the Oklahoma Pollutant Discharge Elimination System Act, and any person who violates any order issued by the Executive Director under subsection C of this section, shall be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation. In determining the amount of the civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. Any action pursuant to this subsection may be brought in the district court for the district in which the property or defendant is located or defendant resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

4. The prior revocation of a permit shall not be a condition precedent to the filing of a civil action under the Oklahoma Pollutant Discharge Elimination System Act.

G. 1. Any person who:

- a. negligently violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any order issued by the Executive Director hereunder, or any permit condition or limitation in a permit issued or any requirement imposed in a pretreatment program authorized pursuant to the Oklahoma Pollutant Discharge Elimination System Act, or
- b. negligently introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state or local requirements or permits, which causes such treatment work to violate any effluent limitation or condition in a permit issued to the treatment works pursuant to the Oklahoma Pollutant Discharge Elimination System Act,

shall be punished by a fine of not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Twenty-five Thousand Dollars (\$25,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. If a conviction of a person is for a violation committed after a first conviction of such person under this

paragraph, punishment shall be a fine of not more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the State Penitentiary for not more than two (2) years, or by both.

2. Any person who:

- a. knowingly violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any order issued by the Executive Director hereunder, or any permit condition or limitation in a permit issued or any requirement imposed in a pretreatment program authorized pursuant to the Oklahoma Pollutant Discharge Elimination System Act, or
- b. knowingly introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state or local requirements or permits, which causes such treatment work to violate any effluent limitation or condition in a permit issued to the treatment works under the Oklahoma Pollutant Discharge Elimination System Act,

shall be punished by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the county jail for not more than three (3) years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be a fine of not more than One Hundred Thousand Dollars (\$100,000.00) per day of violation, or by imprisonment in the State Penitentiary for not more than six (6) years, or by both.

3. a. Any person who knowingly violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any permit condition or limitation in a permit issued hereunder by the Executive Director, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00) or imprisonment in the State Penitentiary for not more than fifteen (15) years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than One Million Dollars (\$1,000,000.00). If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.
- b. For the purpose of subparagraph a of this paragraph:
 - (1) in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury, a person shall be responsible only for actual awareness or actual belief that he possessed, and knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant; provided however that in proving the defendant's

possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information,

- (2) it is an affirmative defense to prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, business, profession or of a medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent, and such defense may be established under this subparagraph by a preponderance of the evidence.

4. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Oklahoma Pollutant Discharge Elimination System Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Oklahoma Pollutant Discharge Elimination System Act, shall upon conviction be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for not more than two (2) years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than Twenty Thousand Dollars (\$20,000.00) per day of violation, or by imprisonment for not more than four (4) years, or by both.

5. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

H. Whenever, on the basis of information available to him, the Department finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of the Oklahoma Pollutant Discharge Elimination System Act or any requirement, rule, permit or order issued under the Oklahoma Pollutant Discharge Elimination System Act, the Department shall notify the owner or operator of such treatment works of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within thirty (30) days of the date of such notification, the Department may commence a civil action for appropriate relief, including but not limited to a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Department shall join the owner or operator of such source as a party to the action. Such action shall be brought in the district court in the county in which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with the Oklahoma Pollutant Discharge Elimination System Act. Nothing in this subsection shall be construed to limit or prohibit any other authority the Department may have under this section.

I. 1. Any person against whom an administrative compliance or penalty order is issued under this section may obtain review of such order by filing a petition for review in district court pursuant to the Administrative Procedures Act. Such court shall not set aside

or remand such order unless there is not substantial evidence in the administrative record, taken as a whole, to support the finding of a violation or unless the assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the assessment of the penalty constitutes an abuse of discretion. No stay of an administrative penalty order shall be granted until the amount of penalty assessed has been deposited with the reviewing district court pending resolution of the petition for review.

2. If any person fails to pay an assessment of an administrative penalty:

- a. after the order making the assessment has become final, or
- b. after a court in an action brought under paragraph 1 of this subsection has entered a final judgment in favor of the Department, as the case may be,

the Department may commence or may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

3. Any person who fails to pay on a timely basis the amount of an assessment of an administrative or civil penalty shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceeding and quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

SECTION 25. AMENDATORY 82 O.S. 1991, Section 926.4, as amended by Section 79 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-6-501. A. It shall be unlawful for any person to carry on any of the following activities with regard to industrial wastewater or sludge without first securing a an industrial wastewater treatment permit from the Department unless such activity is approved in a discharge permit issued by the Executive Director:

1. The construction, installation, ~~major modification or~~ operation and closure of any industrial surface impoundment or ~~disposal~~ treatment system, or the use of any existing unpermitted surface impoundment or treatment system that is within the jurisdiction of the Department or any part thereof or any extension or addition thereto and which is proposed to be used for the containment or treatment of industrial wastewater or sludge;

2. ~~The increase in volume or strength of any industrial wastes or pollutants in excess of the permissive limits specified under any existing permit;~~

~~3.~~ The construction, installation or operation of any industrial or commercial establishment facility subject to the permitting authority of the Department ~~or any extension or modification thereof or addition thereto~~, the operation of which would cause an increase in the discharge of ~~wastes~~ waste into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; or

~~4.~~ 3. The construction or use of any new outfall for the discharge of any industrial ~~wastes~~ waste or pollutants into the

waters of the state ~~or any impoundment for the containment of such wastes or pollutants; or~~

~~5. The land application of industrial wastes.~~

B. Any major addition, extension, operational change or other change proposed for a facility permitted pursuant to subsection A of this section shall require the approval of the Department through the major modification of the facility's permit prior to construction or implementation of such addition, extension or change.

C. An industrial wastewater treatment permit shall be issued by the Executive Director for no more than five (5) years and may be renewed pursuant to rules of the Board.

D. The Board may promulgate rules requiring for the implementation of the industrial wastewater and sludge provisions of this part, including but not limited to the submission of applications, plans, specifications and other necessary information.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-501.1 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Upon filing an industrial wastewater treatment permit application with the Department for a new permit or the major modification or renewal of an existing permit, the applicant shall publish notice of the filing in at least one daily or weekly newspaper local to the area of the proposed site.

B. If the Department prepares a draft permit based on the application, the applicant shall give public notice of the draft permit and its availability for public review and comment. Such notice shall include a thirty-day opportunity to submit written comments or to request a formal public meeting, or both, on the draft permit. The notice shall be published in at least one daily or weekly newspaper local to the area of the proposed site. Additionally, notice by mail shall be given to persons who have requested notice of such draft permits.

C. The Department shall conduct a formal public meeting if, within thirty (30) days after the date of publication specified in subsections B and C of this subsection, the Department receives a written request for such meeting and determines that there is a significant degree of public interest in the draft permit or intent to deny. Such meeting shall be held not more than one hundred twenty (120) days after the expiration of the thirty-day notice period and shall not be a quasi-judicial proceeding.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-6-501.2 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Any permit application received by the Department on or after July 1, 1993, for a discharge permit, a municipal or industrial wastewater construction or treatment permit or a public water supply permit shall include or provide for a sludge management plan if the applicant proposes the beneficial use of such sludge or wastewater through land application.

B. Any permittee proposing the land application of wastewater or sludge under the terms of an existing Department issued municipal or industrial construction or wastewater treatment permit, a discharge permit or a water supply permit, must receive the Department's approval on a sludge management plan. Adding a sludge management land application plan to an existing individual industrial discharge permit or an industrial wastewater treatment permit issued by the Department shall require the major modification of the existing permit. For purposes of this section, permits issued by the Oklahoma Water Resources Board and the State

Department of Health prior to June 30, 1993 shall be deemed issued by the Department upon the transfer of such permits to the Department effective July 1, 1993.

C. Sludge management plans for the land application of sludge or wastewater which have been approved by the Department may be modified or amended by the Department pursuant to rules promulgated by the Board.

D. Any use or final disposition of sludge other than land application shall require the approval of the Department pursuant to rules promulgated by the Board.

SECTION 28. AMENDATORY 63 O.S. 1991, Section 1-907, as amended by Section 71 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-6-304. A. 1. No person shall supply water, ~~or let a contract for,~~ or do any construction work of any nature for supplying water, to the public from or by a public water supply system by means of any waterworks without a written permit issued by the Executive Director. The Department may grant an exception to a public water supply system from the review and permit requirement for construction of a water line extension.

2. The Board shall promulgate rules setting forth conditions for such exceptions including but not limited to a certification by the system, upon application for such exception, that the proposed design and construction of the extension meets or exceeds Board standards and, after the completion of construction but prior to the commencement of service by such extension, a sufficiency certification by a professional engineer licensed to practice in the State of Oklahoma, that the extension as constructed meets or exceeds Board standards. Such certifications shall provide assurances, respectively, that the integrity and capacity of the existing system will not or have not been compromised. Such rules shall allow a rural water district or nonprofit rural water corporation to submit in lieu of a sufficiency certification by a professional engineer, such certification by a certified waterworks operator employed by the district, provided that the line extension is not larger than the existing line, that no part of the existing water line was previously extended pursuant to this paragraph, that the extension does not add more than one (1) service connection to the existing line, and that the line has not been extended through, over or under any stream, lake, pond or marsh or any existing sewage or wastewater collection lines.

3. The Department may disallow any exception application which does not comply with this section or rules promulgated by the Board, or which does not assure protection of the existing system or public health and the environment.

4. Failure of a system to meet the terms of a granted exception may result in the termination of the exception, the denial of future exceptions or the imposition of permit or corrective action requirements by the Department, or a combination thereof. No exception shall be terminated until the Department has advised the owner or operator of the excepted system and such person or persons are given an opportunity to show compliance with all exception requirements.

B. An application for such permit shall be accompanied by maps, plans and specifications, prepared by a professional engineer registered in the State of Oklahoma. Such application shall include but not be limited to:

1. A description of the design of the system;
2. Identification of the system's source;

3. A description of the manner of storage and distribution and purification of the water proposed for the supply previous to its delivery to consumers; and

4. Any other data and information required by the Department.

SECTION 29. AMENDATORY 63 O.S. 1991, Section 1-2014, as last amended by Section 94 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-7-111. 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 administrative permit hearing provisions of Section ~~96~~ 2-7-113 of this ~~act~~ 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~~

a. Except as provided in subparagraph b of this paragraph, a facility for off-site treatment, storage, recycling or disposal of hazardous waste shall not be sited in any other area of the state without the prior written approval of a an emergency and release response plan by the affected property owners as such term is defined in Section 2-7-103 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~~ 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 Department that such reasonable effort ~~had~~ has been made and that a minority of the affected property owners would not consent. The Department may then issue ~~a~~ the 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.

- b. Existing industrial facilities not currently receiving hazardous waste which propose to begin receiving hazardous waste from off-site, including facilities at which the hazardous waste is to be utilized as fuel in a recycling unit and all other existing industrial facilities, shall submit an emergency and release response plan as part of the permit application. The plan shall be subject to public review and comment pursuant to Section 2-7-113 of this title prior to final approval or disapproval by the Department. Upon submittal of the proposed plan to the Department, the applicant shall be required to mail a copy of said plan to the affected property owners and shall promptly thereafter certify to the Department that such mailing has been made. If a permit is issued, the permittee shall send the final plan by first-class mail to the last-known address of all affected property owners.
- c. An emergency and release response plan for a new or existing facility, located or to be located within the city limits or within the emergency response area of any incorporated city or town, which proposes to begin receiving hazardous waste from off-site shall not be approved by the Department until at least sixty (60) days after the city or town has been served with a copy of the plan by the applicant. During said sixty-day period the city or town shall have the opportunity to review the plan and comment to the Department upon the ability of the city to comply with any item in the plan requiring the participation of or assistance by the city or town or any departments or agencies thereof.

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 formal public meeting or administrative permit hearing conducted pursuant to the provisions of Section ~~96~~ 2-7-113 of this ~~act~~ 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 30. AMENDATORY 63 O.S. 1991, Section 1-2014.2, as last amended by Section 101 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-7-118. A. Facilities that recycle hazardous waste shall be exempt from construction permit requirements specified by the Oklahoma Hazardous Waste Management Act with regard to 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 Management Act for an operations permit, and shall also meet design standards as promulgated by the Board. Such recycling facilities which were in existence on July 1, 1990, may but shall not be required to file an operations permit application pursuant to the provisions of the Oklahoma Hazardous Waste Management 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.

B. No hazardous waste having a heating value less than five thousand (5,000) British Thermal Units per pound shall be burned as fuel in any unit in this state permitted as a hazardous waste recycling unit.

C. No hazardous waste which has a heating value of less than five thousand (5,000) British Thermal Units per pound when blended with other materials or wastes to produce a hazardous waste fuel with a heating value equal to or exceeding five thousand (5,000) British Thermal Units per pound shall be burned as fuel in any unit in this state permitted as a hazardous waste recycling unit.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-102 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. No person, firm, association, corporation or cooperative shall construct, build or equip any waste processing or disposal facility which primarily disposes of or processes biomedical waste unless a certificate of need therefor has been issued pursuant to this section. No governmental entity shall issue a license for the operation of such a facility unless the certificate of need required by this section has been obtained.

B. Every entity desiring to construct, build or equip any waste processing or disposal facility which primarily disposes of or processes biomedical waste shall make application to the Environmental Quality Board for a certificate of need in such form and accompanied by such information as the Board shall prescribe, including but not limited to:

1. The name and location of the entity;
2. The name and address of each person having an ownership interest in the entity;
3. The nature of the construction, building or equipment;
4. The size of the construction, building or equipment;
5. The approximate cost of the construction, building or equipment;
6. The projected date of completion;
7. That the action proposed in the application for such certificate of need is necessary and desirable in order to provide the services required in the locality to be served;
8. That the proposed action can be economically accomplished and maintained;
9. That the proposed action will contribute to the orderly development of services in the locality;
10. Any documentation supporting the applicant's request for a determination of need. Such documentation shall include:
 - a. the availability of disposal processing or disposal facilities in the designated area including but not limited to the location, area of service, and number of clients served,
 - b. the adequacy of financial resources for the new facility and for the continued operation thereof, and
 - c. any other matter which the Board deems appropriate; and
11. Any other information as the Board shall prescribe.

C. Promptly upon receipt of any such application, the Board shall examine the application and cause a thorough investigation to be made of the proposed action based upon the application to determine whether a certificate of need should be issued.

D. No certificate of need shall be issued by the Board unless, after investigation, the Board determines that:

1. The action proposed in the application for such certificate of need is necessary and desirable in order to provide the services required in the locality to be served;
2. The proposed action can be economically accomplished and maintained; and
3. The proposed action will contribute to the orderly development of services in the locality.

E. When the Board completes its investigation and makes a determination to issue or deny a certificate of need, it shall provide written findings to the applicant, other reviewers and to other persons upon their request. The Board shall promulgate rules concerning the time in which a decision must be made by the Board on an application.

F. Any final determination by the Board under this section may be appealed by the applicant or any other aggrieved party under the Administrative Procedures Act. The decision of the Board shall be upheld by the court unless it is arbitrary or capricious or is not in accordance with applicable law.

G. Any person obtaining a certificate hereunder for any facility shall exercise said authority within a reasonable time. If such person fails or refuses to provide adequate service after notice and a reasonable opportunity to do so, the Board, in addition to other powers provided by law, shall have the power to vacate the certificate.

SECTION 32. AMENDATORY 63 O.S. 1991, Section 1-2005.3B, as last amended by Section 103 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-7-120. Any person subject to regulation ~~under this chapter~~ by the Department of Environmental Quality disposing of liquid waste other than hazardous waste in an underground injection well shall pay a fee of ~~five-hundredths of one cent (\$0.0005)~~ two-hundredths of one cent (0.002) per gallon for such disposal, provided that the total fee shall be not less than ~~Fifteen Thousand Dollars (\$15,000.00)~~ Ten Thousand Dollars (\$10,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) per year. Said fee shall be paid to the Department on a quarterly basis within one (1) month following the close of each quarter for the waste disposed in that preceding quarter. Said fees shall be deposited into the Department of Environmental Quality Revolving Fund.

SECTION 33. AMENDATORY 17 O.S. 1991, Section 352, as amended by Section 4, Chapter 406, O.S.L. 1992 (17 O.S. Supp. 1992, Section 352), is amended to read as follows:

Section 352. ~~In addition to the terms defined by the Oklahoma Underground Storage Tank Regulation Act and the Oklahoma Aboveground Tank Act, for the purposes of~~ As used in the Oklahoma Petroleum Storage Tank Release Indemnity Program:

1. "Administrator" means the person hired by the General Administrator of the Corporation Commission to administer the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund and the Oklahoma Petroleum Storage Tank Release Indemnity Program;

2. "Distributor" means:

- a. every person importing or causing to be imported into this state any motor fuel, diesel fuel or blending material for use, distribution, or sale and distribution, or sale and delivery after the same reaches this state. "Distributor" does not mean persons importing motor fuel only in the supply tank of a vehicle originally provided by the manufacturer of the motor vehicle as a container for motor fuel or diesel fuel to propel such motor vehicle, nor does "distributor" mean persons only importing motor fuel, diesel fuel or blending material into the state under circumstances requiring that they be licensed as "Motor Fuel/Diesel Fuel Importers for Use" as defined in subsection g of Section 601 of Title 68 of the Oklahoma Statutes and who are actually so licensed,
- b. any person producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel or blending material in this state for use, distribution or sale and delivery in this state,
- c. any person within this state producing or collecting what is commonly known as drip, casinghead or natural gasoline,
- d. any person who has in his possession or buys for sale or use motor fuel, diesel fuel or blending material from any person other than a licensed distributor, retailer or dealer,
- e. any person other than a retailer or dealer who sells motor fuel, diesel fuel or blending material to anyone except a licensed distributor,
- f. any person who makes bulk sales of motor fuel, diesel fuel or blending material, and
- g. any other person, including a retailer or dealer, who has filed an application for and has procured a distributor's license in the manner provided by the Oklahoma Motor Fuel/Diesel Fuel Importers for Use Tax

Code, Section 601 et seq. of Title 68 of the Oklahoma Statutes;

~~2.~~ 3. "Eligible person" means any:

- a. owner or operator of a storage tank system who has incurred liability as a result of an eligible release, and who meets the requirements specified in Section 356 of this title, or
- b. person who on or after November 8, 1984, purchases property on which an underground storage tank system is located if:
 - (1) the underground storage tank system was located on the property on November 8, 1984,
 - (2) such person could not have known that such underground storage tank system existed. The burden shall be upon such purchaser to show that such purchaser did not know or should not have known of the existence of such underground storage tank system,
 - (3) the owner or operator of the underground storage tank system responsible for the system cannot be determined by the Corporation Commission or the Administrator, or the owner or operator of the underground storage tank system responsible for the system is incapable, in the judgment of the Corporation Commission, of properly carrying out any necessary corrective action, and
 - (4) either, funds are unavailable from the Oklahoma Leaking Underground Storage Tank Trust Fund or the underground storage tank system is not eligible for corrective action taken pursuant to Section 934.1 of Title 82 of the Oklahoma Statutes;

~~3.~~ 4. "Eligible release" means a release for which allowable costs, as determined by the Commission Administrator, are reimbursable to or on behalf of an eligible person;

~~4.~~ 5. "Indemnity Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund ~~(Indemnity Fund)~~;

6. "Indemnity Fund Program" means the Oklahoma Petroleum Storage Tank Release Indemnity Program established to administer the Indemnity Fund;

~~5.~~ 7. "Maintenance level" means the minimum balance of the Indemnity Fund to be maintained and below which the Indemnity Fund balance will fall when the balance of the Indemnity Fund is below the dollar amount of disbursements from the Indemnity Fund for the payment of claims during the preceding six (6) months plus Five Million Dollars (\$5,000,000.00);

8. "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;

~~6.~~ 9. "Motor fuel, diesel fuel and blending materials" have the same meaning as those terms are defined by Section 501 of Title 68 of the Oklahoma Statutes;

~~7.~~ 10. "Person" means any individual, trust, firm, joint stock company or corporation, corporation, limited liability company, partnership, association, any representative appointed by order of the court, municipality, county, school district, or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, or any other legal entity;

~~8.~~ 11. "Reimbursement" means either:

- a. repayment of an approved claim to an eligible person for allowable costs resulting from an eligible release, or
- b. payment of an approved claim submitted on behalf of an eligible person for allowable costs resulting from an eligible release;

~~9.~~ 12. "Release" means any spilling, overfilling, leaching, emitting, discharging, escaping, or unintentional disposing of the petroleum from a storage tank system into the environment of the state. The term release includes but is not limited to suspected releases of petroleum from a storage tank system, identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner;

~~10.~~ 13. "Sale" means every gallon of motor fuel, diesel fuel, or blending materials sold, or stored and distributed, or withdrawn from storage, within the state, for sale or use. No gallon of motor fuel, diesel fuel, or blending materials shall be the basis more than once of the assessment imposed by Section 354 of this title;

~~11.~~ 14. "Storage tank" or "storage tank system" means an underground storage system as such term is defined by the Oklahoma Underground Storage Tank Regulation Act or an aboveground tank as such term is defined by the Oklahoma Aboveground Tank Regulation Act; and

~~12.~~ 15. "Tax Commission" means the Oklahoma Tax Commission.

SECTION 34. AMENDATORY 17 O.S. 1991, Section 354, is amended to read as follows:

Section 354. A. Except as otherwise provided by this section, there shall be an assessment of one cent (\$0.01) per gallon upon the sale of each gallon of motor fuel, diesel fuel and blending materials sold to a person in this state by a distributor. The assessment imposed pursuant to the provisions of this section shall be for the purposes of providing revenue to:

1. The Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund pursuant to paragraph 1 of subsection C of this section; ~~and~~

2. The Environmental Trust Revolving Fund pursuant to paragraph 2 of subsection C of this section; and

~~3. The State Transportation Fund and the State Highway Construction and Maintenance Fund pursuant to paragraph 2 of subsection C of this section.~~

The assessment shall be imposed at the time of the sale of the motor fuel, diesel fuel and blending materials and shall be collected and remitted to the Oklahoma Tax Commission by such distributor as provided by Section 355 of this title.

B. 1. Exempt from the assessment imposed pursuant to subsection A of this section are:

- a. the state government,
- b. the federal government,
- c. class I railroads, and
- d. sales between distributors, except for distributors required to operate on a tax-paid basis, and sales for exportation outside of this state specified by Section 507 of Title 68 of the Oklahoma Statutes~~†~~.

2. Exempt from the assessment imposed for purposes specified in ~~paragraph~~ paragraphs 2 and 3 of subsection A of this section are sales of:

- a. motor fuel, diesel fuel and blending materials used solely and exclusively in district-owned or leased public school buses, FFA and 4-H club trucks for the purposes of legally transporting public school children, or in the operation of vehicles used in driver training,
- b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the public roads and highways of this state when leased or owned and being operated for the sole benefit of a county, city, town or volunteer fire department specified by Section 527 of Title 68 of the Oklahoma Statutes,
- c. motor fuel, diesel fuel and blending materials to counties and cities and towns,
- d. diesel fuel for off-road purposes specified by Section 509 of Title 68 of the Oklahoma Statutes,
- e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 509 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel, diesel fuel and blending materials used in aircraft or in aircraft engines pursuant to Section 508 of Title 68 of the Oklahoma Statutes.

C. The assessment imposed by subsection A of this section shall be distributed in the following manner:

1. Revenue from the assessment ~~for the first year from July 1, 1989, until December 31, 1989,~~ shall be deposited in the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund created in Section 353 of this title. ~~At least Five Million Dollars (\$5,000,000.00) shall be maintained in~~ amounts necessary to maintain the maintenance level of the Indemnity Fund pursuant to subsection D of this section;

2. ~~a. Revenue from the assessment from January 23, 1990, until June 30, 1990, shall be deposited in the Highway Construction and Maintenance Fund except as otherwise provided in subsection D of this section;~~

~~b. Revenue from the assessment from July 1, 1990, shall be deposited in the State Transportation Fund, except as otherwise provided in subsection D of this section~~†~~ and, as follows:~~

- a. the first One Million Dollars (\$1,000,000.00) collected during each fiscal year shall be deposited in the Environmental Trust Revolving Fund created in Section 6 of this act,
- b. the balance of the monies collected during each fiscal year shall be deposited in the State Transportation Fund.

- e. ~~Revenue from the assessment imposed by subsection A of this section~~ which is deposited in the ~~State Highway Construction and Maintenance Fund or the State~~ Transportation Fund shall be used solely for the purpose of matching Federal-Aid funds for the construction of highways and roads in this state.

D. 1. If at any time the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund falls below the ~~Five Million Dollars (\$5,000,000.00)~~ required maintenance level on or before December 31, 1999, the ~~Corporation Commission Administrator~~ shall notify the Tax Commission that the Indemnity Fund has fallen below the required maintenance level and that the assessment is to be deposited into the Indemnity Fund for ~~ninety (90) days~~ at least three (3) calendar months pursuant to the provisions of paragraph 2 of this subsection.

2. At least fifteen (15) days prior to the calendar month in which the assessment is to be collected for credit to the Indemnity Fund, the Tax Commission, upon notification by the ~~Corporation Commission Administrator~~ that the Indemnity Fund has fallen below the required maintenance level, shall notify the distributors that the assessment is being imposed for purposes of maintaining the Indemnity Fund. The notice shall include a date certain upon which to begin collecting the assessment for credit to the Indemnity Fund and a date certain for ending the assessment for credit to the Indemnity Fund. Upon notice by the Tax Commission that the assessment imposed is for credit to the Indemnity Fund, the distributor shall also assess, for the specified period required by the Tax Commission, the sales of:

- a. motor fuel, diesel fuel and blending materials used solely and exclusively in district-owned or leased public school buses, FFA and 4-H Club trucks for the purposes of legally transporting public school children or in the operation of vehicles used in driver's training,
- b. motor fuels, diesel fuels and blending materials used solely and exclusively to propel motor vehicles on the public roads and highways of the state when leased or owned and being operated for the sole benefit of a county, city or town or volunteer fire department specified by Section 527 of Title 68 of the Oklahoma Statutes,
- c. motor fuel, diesel fuel and blending materials to counties and cities and towns,
- d. diesel fuel for off-road purposes specified by Section 509 of Title 68 of the Oklahoma Statutes,
- e. motor fuel, diesel fuel and blending materials used for agricultural purposes specified by Section 509 of Title 68 of the Oklahoma Statutes, and
- f. motor fuel, diesel fuel and blending materials used in aircraft and aircraft engines pursuant to Section 508 of Title 68 of the Oklahoma Statutes.

3. After the collection period required by this subsection has expired, the revenue collected from the assessment shall be again deposited in the Environmental Trust Revolving Fund and the State Transportation Fund as provided in subsection C of this section.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-3-403 of Title 27A, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Department of Environmental Quality to be designated the

"Environmental Trust Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies collected pursuant to the provisions of Section 354 of Title 17 of the Oklahoma Statutes for deposit in the Environmental Trust Revolving Fund and monies received in the form of gifts, grants, reimbursements, and from any other source specified for the purposes specified by this section. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Environmental Quality for matching federal funds available for environmental remediation and cleanup. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 36. AMENDATORY 63 O.S. 1991, Section 1-2417, as last amended by Section 142 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-10-201. A. The Board is directed and empowered to promulgate rules for solid waste management including but not limited to:

1. The permitting, posting of security, construction, operation, closure, maintenance and remediation of solid waste disposal sites; 2. Disposal of solid waste in ways that are environmentally safe and sanitary, as well as economically feasible;

3. Authorizing variances 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;

4. Requiring the submission of laboratory reports or analyses performed by certified laboratories for the purposes of compliance monitoring and testing and for other purposes required for the regulation of sludge pursuant to Part 4 of this Article;

5. The transportation of solid waste. Such rules shall not be more stringent than those of the United States Department of Transportation or the United States Interstate Commerce Commission; and

~~5.~~ 6. Applicant disclosure.

B. Rules shall be promulgated in compliance with the Administrative Procedures Act. Notice of any proposed changes to such rules 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.

C. Absent specific legislative authority, the Board shall not amend any existing rule in such a manner as to encourage importation of biomedical waste generated outside the territorial limits of this state.

D. The Board, pursuant to Section ~~24~~ 2-3-402 of this ~~act~~ title and the Administrative Procedures Act, shall establish a schedule of fees to be charged for applications to issue and renew permits, licenses and other authorizations required by the provisions of this article and for such environmental services as are involved in the

regulation of solid waste. Fees charged pursuant to this section shall be paid into the Department of Environmental Quality Revolving Fund and shall be used by the Department in administering the Solid Waste Management Act. The Board, in setting fees, shall consider factors which include but are not limited to:

1. Facility size and capability;
2. Size of population served by such facility;
3. Type or class of facility; and
4. Type and amount of waste accepted, stored, treated, transferred or disposed.

SECTION 37. AMENDATORY Section 152 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-10-401. For purposes of land application of nonhazardous sludge, "sludge" means solid waste that is a nonhazardous solid, semi-solid, or liquid residue generated by the treatment of domestic sewage or wastewater by a treatment works or water by a water supply system, or such residue, treated or untreated, which results from commercial, agricultural or agribusiness activities or industrial or manufacturing processes and which is within the jurisdiction of the Department.

SECTION 38. AMENDATORY Section 153 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-10-402. A ~~land application~~ solid waste permit shall be required for the beneficial use of sludge through land application of sludge unless such the Department has approved, through a sludge management plan, such sludge to be land applied and:

1. Such sludge is from a facility in substantial compliance with a municipal or industrial construction or wastewater treatment ~~system~~ permit, discharge permit or water supply system permit issued by the Department pursuant to Article VI, Chapter 2 of the Code; and

2. The sludge management plan is approved by the Department as part of a municipal or industrial construction or wastewater treatment permit, discharge permit or water supply permit issued by the Department pursuant to Article VI, Chapter 2 of the Code.

~~Sludge from such permitted facility may be land applied without a land application permit upon the Department's approval of a sludge management plan for such application.~~

B. All sludge application projects shall be operated in conformance with rules promulgated by the Board.

C. A sludge management plan approved or permit issued pursuant to this part shall be subject to the enforcement provisions of Article III of this Code.

D. The provisions of this section shall apply to permit applications filed with the Oklahoma Water Resources Board on or before June 30, 1993, for which no permit has been issued by the Oklahoma Water Resources Board for the land application of industrial waste, wastewater or sludge.

SECTION 39. AMENDATORY Section 3, Chapter 361, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-2308), as amended by Section 154 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-10-403. The Board shall promulgate rules which shall include, but not be limited to, the following:

1. Prohibiting the practice of plowing sludge that contains heavy metal concentrations significantly above concentrations normal to sludges with demonstrated effectiveness on Oklahoma soils prior

to completion of a comprehensive study of all potential adverse effects by a qualified research institute familiar with the crops and soils of the State of Oklahoma, into or onto the soil surface;

2. Requiring that each load of sludge generated outside the State of Oklahoma be sampled, at the location at which it is generated and have appropriate analysis, performed by an independent laboratory certified by the Department with random quality assurance samples taken by the Department, to assure that the sludge falls within the requirements established by the Board; and

3. Requiring the generators to submit the following information: Dates of shipment and application of sludge; weather conditions upon delivery and application; location of sludge application site; area to be used for land application; amount of sludge delivered or applied; a copy of the test results showing the quality of the sludge; and a copy of the sludge use agreement. Such records shall be retained by the Department for a period of five (5) years after any land application of sludge and shall be made available to the public for inspection.

SECTION 40. AMENDATORY Section 1, Chapter 267, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-2304.2), as amended by Section 155 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-10-404. A. 1. The Department shall not approve any sludge management plan or issue any permit for the land application of sludge which contains heavy metal concentrations significantly above concentration ranges normal to sludges with demonstrated effectiveness on Oklahoma soils as determined by the Department. Rules promulgated by the Board for applications for sludge management plans and permits shall require a study of the effects of the sludge on the various types of soils and crops found at the location of the proposed sludge application site. Such study shall encompass the effects of the sludge on the soils and crops during four (4) growing seasons.

2. Any municipality having a sludge management plan approved prior to ~~July 1~~ May 25, 1992, for the land application of sludge containing heavy metal concentrations significantly above acceptable concentration ranges may discontinue such land application of the sludge or shall develop a corrective action plan containing a schedule of compliance for reducing the heavy metal concentration to an acceptable range. The municipality shall submit the corrective action plan to the Department for approval. If the Department disapproves of the plan or the municipality fails to comply with the plan so approved, the Department may require that any such land applications of sludge by the municipality be discontinued pursuant to Article II of the Administrative Procedures Act.

B. For developing statewide criteria for application of sludge which contains heavy metal concentrations significantly above concentration ranges normal to sludge, the Department shall utilize a comprehensive study of the potential adverse effects of such sludge on the soils of this state completed by a qualified research institute familiar with the crops and soils of this state. Such study shall be completed by September 1, 1996, and a report of the findings shall be delivered to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Executive Director no later than September 1, 1996.

SECTION 41. AMENDATORY 63 O.S. 1991, Section 1-2413, as last amended by Section 165 and as renumbered by Section 359 of Enrolled House Bill No. 1002, is amended to read as follows:

Section 1-2413. A. The board of county commissioners in each county of the state may develop a plan, subject to the approval of the Department, to provide a solid waste management system to handle adequately solid wastes generated or existing within the boundaries of such county. By agreement or contractual arrangement the board of county commissioners may assume responsibility for solid wastes generated within incorporated cities or towns whether within their counties or other counties. The board of county commissioners of a county may enter into agreements with other counties, one or more towns or cities, governmental agencies, with private persons, trusts or with any combination thereof to provide a solid waste management system for the county or any portion thereof.

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

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

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

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

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

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

commissioners, provided that any such order of the commissioners assessing the fees shall be binding until reversed by the court.

SECTION 42. AMENDATORY 68 O.S. 1991, Section 53003, as last amended by Section 193 and as renumbered by Section 359 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-10-1001. A. At the time any new tire for use on automobiles or on light trucks with a laden weight of ten thousand (10,000) pounds or less is sold by a wholesale or retail dealer not for resale, there shall be assessed a waste tire recycling fee of One Dollar (\$1.00) per tire unless the purchaser in such sale is a political subdivision or any agency, public trust, or instrumentality thereof.

B. The wholesaler or retailer shall remit such fee to the Oklahoma Tax Commission in the same manner as provided by Section 1365 of this title. At the time of filing any report as required by the Oklahoma Tax Commission, the wholesaler or retail dealer shall remit therewith to the Tax Commission, except as otherwise provided by this section, ninety-seven and three-quarters percent (97.75%) of the fee due pursuant to this section. Failure to remit such fee at the time of filing the returns shall cause said fee to become delinquent. If said fee becomes delinquent the wholesaler or retail dealer forfeits his claim to the discount authorized by this section and shall remit to the Tax Commission one hundred percent (100%) of the amount of the fee due plus any penalty due.

C. If any amount of fee imposed or levied by subsection A of this section, or any part of such amount, is not paid before such fee becomes delinquent, there shall be collected on the total delinquent fee interest at the rate of one and one-quarter percent (1 1/4%) per month from the date of the delinquency until paid.

D. If any fee due under subsection A of this section, or any part thereof, is not paid within fifteen (15) days after such tax becomes delinquent, a penalty of ten percent (10%) on the total amount of fee due and delinquent shall be added thereto, collected and paid.

E. All penalties or interest imposed by this act shall be recoverable by the Tax Commission as a part of the fee imposed and all penalties and interest will be apportioned as provided for the apportionment of the fee on which such penalties or interest are collected.

F. The provisions of this section shall expire on December 31, 1999.

SECTION 43. AMENDATORY 2 O.S. 1991, Section 2-4, as amended by Section 246 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 2-4. The State Board of Agriculture shall have the following powers, which shall be in addition to those given in other parts of this Code:

1. Adopt and prescribe the use of a seal, which shall be in the custody of the Secretary of the Board;

2. Promulgate such rules as by the Board shall be deemed necessary, expedient or appropriate to the performance, enforcement or carrying out of any of the purposes, objectives, or provisions of this Code;

3. Initiate and prosecute civil or criminal actions and proceedings when deemed necessary to enforce or carry out any of the provisions of this Code;

4. Appoint authorized agents to make inspections or investigations and to perform other services for the Board or any division of the State Department of Agriculture;

5. Consolidate any of the divisions established by this Code or transfer any of the functions or activities thereof to another division, place additional functions or activities in a division, establish new divisions, and create new or additional positions in the Department, when deemed conducive to a more efficient administration and enforcement of laws pertaining to agriculture;

6. Sell, exchange or otherwise dispose of property that has been acquired by the State Department of Agriculture, when such property becomes obsolete or is no longer needed by the Department;

7. Have jurisdiction over all matters affecting animal industry and animal quarantine regulation;

8. Issue stop-sale orders and quarantine regulations;

9. Employ, appoint or contract with and fix the duties and compensation of the director of each division of the Department and such technicians, inspectors, stenographers, clerks, aides, supervisors, investigators, attorneys and other personnel and help, either on a full-time, part-time or contractual basis, as in the judgment and discretion of the Board shall be deemed necessary, expedient or appropriate to the performance or carrying out of any of the purposes, objectives or provisions of this Code;

10. Fix the qualifications of the personnel in the State Department of Agriculture, and require any official or employee of the State Department of Agriculture to furnish a bond for the faithful performance of duty, or for the faithful accounting of public funds coming into his hands, or for any other purpose, and the premium on any such bond shall be paid from funds that are available for the operation of the State Department of Agriculture;

11. Accept and use, for any purpose designated, and on the terms and conditions thereof, grants of money and other property from the federal government or any department or agency thereof and from any state or state agency and from any other source;

12. Enter into cooperative agreements with the federal government or any state, or any department or agency of either;

13. Coordinate the various activities of the Department with those of the federal government and other states on matters pertaining to agriculture, and enter into agreements for such purpose;

14. Revoke, or suspend for any period up to one (1) year, any license issued by the Board or any division of the Department, when the Board finds that the holder of such license has violated any of the provisions of this Code or any rule or regulation of the Board;

15. Adopt a master plan and promulgate rules and regulations for the protection of both state-owned and private forestry, grazing and other lands from damage by fire and for suppressing fires on such lands. In carrying out said master plan the Board is hereby authorized to enter into contractual agreements with the federal government, local political subdivisions of the state and with individuals, private organizations, companies and corporations for protection from and for the suppression of such fires and for such purposes to expend funds as may be available for such services. To effectuate the purposes of this act, the Board is hereby authorized to enter into contractual agreements with private landowners for such protection and suppression of fires; provided, however, that such private landowners shall reimburse the Board for actual expenses incurred in the protection and suppression of fires on privately owned lands, pursuant to this act; and

16. Have jurisdiction over all matters affecting agriculture as contained and set out in this title, which have not been expressly delegated to another state or federal agency. The Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
(2) dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities,
(3) slaughterhouses, but not including feedlots at such facilities, and
(4) animal aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and
- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges, ~~and~~
- ~~c. point source discharges from slaughterhouses.~~

Any point source and nonpoint source discharges related to agriculture ~~and requiring,~~ as specified in paragraph 1 of subsection D of Section 6 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under subparagraphs a, b and c of this paragraph as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

SECTION 44. AMENDATORY Section 248 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 3-71. The Department of Environmental Quality shall have environmental jurisdiction over:

1.
 - a. commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
 - b. dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities,
 - c. slaughterhouses, but not including feedlots at such facilities, and
 - d. animal aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land

application of wastes and sludge, and other pollution originating at such facilities; and

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

~~3. Point source discharges from slaughterhouses.~~

Any point source and nonpoint source discharges related to agriculture ~~and requiring~~, as specified in paragraph 1 of subsection D of Section 6 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraphs 1, 2 and 3 of this section as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit.

SECTION 45. AMENDATORY Section 249 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 8-41.16 The Department of Environmental Quality shall have environmental jurisdiction over:

1. a. commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
- b. dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities,
- c. slaughterhouses, but not including feedlots at such facilities, and
- d. animal aquaculture and fish hatcheries,

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

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

~~3. Point source discharges from slaughterhouses.~~

Any point source and nonpoint source discharges related to agriculture ~~and requiring~~, as specified in paragraph 1 of subsection D of Section 6 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraphs 1, 2 and 3 of this section as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

SECTION 46. AMENDATORY 20 O.S. 1991, Section 8-68a, as amended by Section 250 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 8-68a. A. No person owning or operating a fertilizer storage facility or a commercial fertilizer facility shall discharge

or otherwise release or place or cause to be placed any fertilizer material in a location where it is likely to cause contamination of any surface water or groundwater of this state. The provisions of this subsection shall not prohibit or otherwise restrict the land application of fertilizer for agriculture purposes or plant growth.

B. Preventative measures designed to minimize the possibility of fertilizer substances being introduced into waters of the state shall be subject to Board jurisdiction including regulatory response.

C. 1. The Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
- (2) dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities,
- (3) slaughterhouses, but not including feedlots at such facilities, and
- (4) animal aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and
- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges, ~~and~~
- ~~c. point source discharges from slaughterhouses.~~

2. Any point source and nonpoint source discharges related to agriculture ~~and requiring,~~ as specified in paragraph 1 of subsection D of Section 6 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 1 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

SECTION 47. AMENDATORY 2 O.S. 1991, Section 9-208, as amended by Section 251 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Legislature, is amended to read as follows:

Section 9-208. A. It shall be unlawful for any person to operate a feed yard or a concentrated animal feeding operation which meets the criteria set forth in subparagraphs a, b or c of paragraph 2 of subsection B of Section 9-202 of this title, without having first obtained a permit or license from the Board. The owner or operator of livestock feed yards not meeting these criteria may apply for a license if such owner or operator elects to come under the provision of the Oklahoma Feed Yards Act and the rules of the Board.

B. 1. The Department of Environmental Quality shall have environmental jurisdiction over:

- a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
(2) dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities,
(3) slaughterhouses, but not including feedlots at such facilities, and
(4) animal aquaculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and
- b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges, and
- ~~c. point source discharges from slaughterhouses.~~

2. Any point source and nonpoint source discharges related to agriculture ~~and requiring,~~ as specified in paragraph 1 of subsection D of Section 6 of Title 27A of the Oklahoma Statutes, which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 1 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

SECTION 48. AMENDATORY 17 O.S. 1991, Section 52, as amended by Section 252 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Legislature, is amended to read as follows:

Section 52. A. 1. Except as otherwise provided by this section, the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority with reference to:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines produced from geological strata lying below three hundred (300) feet in depth from the surface,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks,

- pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. injection wells known as Class II wells under the federal Underground Injection Control Program. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,
 - g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,
 - h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,
 - (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
 - (4) mineral brine processing plant, and
 - (5) petrochemical manufacturing plant,
 - i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:
 - (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
 - j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities, and
 - k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata.

~~2. The Department of Environmental Quality shall have sole environmental jurisdiction of refineries, petrochemical manufacturing facilities and natural gas extraction plants.~~

~~3.~~ The exclusive jurisdiction, power and authority of the Corporation Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

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

insofar as Department-regulated facilities and activities are concerned.

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

5. The Corporation Commission shall have jurisdiction over:

- a. underground storage tank regulation assigned to the Commission pursuant to other Oklahoma statutes, including but not limited to the Leaking Underground Storage Tank Trust Fund and Indemnity Fund programs, provided that any point source discharge of a pollutant to waters of the United States during site remediation shall be regulated by the Department of Environmental Quality, and
- b. aboveground storage tanks used in connection with the retail sale of flammable liquids into fuel tanks, provided that any point source discharge of a pollutant to waters of the United States during site remediation shall be regulated by the Department of Environmental Quality.

~~5. Any facility engaging in activities, when such activities are separately within the jurisdiction of the Department of Environmental Quality or the Corporation Commission, shall have said activities separately regulated by the Department of Environmental Quality and the Corporation Commission based upon each agency's jurisdictional responsibilities.~~

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

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

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

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

B. The Corporation Commission and incorporated cities and towns shall have exclusive jurisdiction over permit fees for the drilling and operation of oil and gas wells.

C. The Corporation Commission shall comply with and enforce the Oklahoma Water Quality Standards.

SECTION 49. AMENDATORY 52 O.S. 1991, Section 139, as amended by Section 255 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 139. A. The Corporation Commission is vested with exclusive jurisdiction, power and authority, and it shall be its duty, to make and enforce such rules and orders governing and regulating the handling, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing, and operating of oil and gas wells and brine wells within this state as are reasonable and necessary for the purpose of preventing the pollution of the surface and subsurface waters in the state, and to otherwise carry out the purpose of this act.

B. 1. Except as otherwise provided by this subsection, the Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

- a. the conservation of oil and gas,
- b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,
- c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,
- d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines produced from geological strata lying below three hundred (300) feet in depth from the surface,
- e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,
- f. injection wells known as Class II wells under the federal Underground Injection Control Program. Any substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,
- g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of the refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,
- h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes associated with processing at or in any:
 - (1) natural gas liquids extraction plant,
 - (2) refinery,

- (3) reclaiming facility other than for those specified within subparagraph e of this subsection,
- (4) mineral brine processing plant, and
- (5) petrochemical manufacturing plant,
- i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:
 - (1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being subject to the jurisdiction of the Commission, and
 - (2) other oil and gas extraction facilities and activities,
- j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities, and
- k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata.

~~2. The Department of Environmental Quality shall have sole environmental jurisdiction of refineries, petrochemical manufacturing facilities and natural gas liquid extraction facilities.~~

~~3.~~ The exclusive jurisdiction, power and authority of the Corporation Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

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

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

5. The Corporation Commission shall have jurisdiction over:

- a. underground storage tank regulation assigned to the Commission pursuant to other Oklahoma statutes, including but not limited to the Leaking Underground Storage Tank Trust Fund and Indemnity Fund programs, provided that any point source discharge of a pollutant to waters of the United States during site remediation shall be regulated by the Department of Environmental Quality, and
- b. aboveground storage tanks used in connection with the retail sale of flammable liquids into fuel tanks,

provided that any point source discharge of a pollutant to waters of the United States during site remediation shall be regulated by the Department of Environmental Quality.

~~5. Any facility engaging in activities, when such activities are separately within the jurisdiction of the Department of Environmental Quality or the Corporation Commission, shall have said activities separately regulated by the Department of Environmental Quality and the Corporation Commission based upon each agency's jurisdictional responsibilities.~~

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

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

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

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

C. The Corporation Commission shall comply with and enforce the Oklahoma Water Quality Standards.

D. 1. For the purpose of immediately responding to emergency situations having potentially critical environmental or public safety impact and resulting from activities within its jurisdiction, the Commission may take whatever necessary action, without notice and hearing, including the expenditure of monies from the Corporation Commission Revolving Fund, to promptly respond to the emergency. Such emergency expenditure shall be made pursuant to the provisions of the Oklahoma Central Purchasing Act, upon such terms and conditions established by the Department of Central Services to accomplish the purposes of this section. Thereafter, the Commission shall seek reimbursement from the responsible person, firm or corporation for all expenditures made from the Corporation Commission Revolving Fund. Any monies received as reimbursement shall be deposited to the credit of the Corporation Commission Revolving Fund.

2. The Commission shall not expend from any fund in the State Treasury, in any fiscal year, for the purposes herein provided, an amount of money in excess of the total sum specifically authorized annually by the Legislature for such purposes. Any monies received by the Commission through execution on any required surety shall not be subject to such limitation on expenditure for remedial action.

3. Neither the Commission nor any independent contractor of the Commission authorized to conduct remedial action under this section shall be held liable or responsible for any damages resulting from non-negligent actions reasonably necessary for conducting remedial work. Nothing in this section shall limit the authority of the

Commission or relieve any person or persons otherwise legally responsible from any obligation to prevent or remediate pollution.

SECTION 50. AMENDATORY 59 O.S. 1991, Section 1102, as amended by Section 276 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1102. A. As used in the Waterworks and Wastewater Works Operator Certification Act:

~~1. "Operator" means any person who is at any time responsible for the operation of a wastewater works or waterworks, in part or in whole. Operator shall not ordinarily apply to an official exercising official general administrative supervision but shall include any person who can, through a direct act or command, affect the quality of the water or wastewater.~~

~~2. "Plant" means any waterworks or wastewater works, except as provided in subsection B of this section.~~

~~3. "Waterworks" means facilities used in the procurement, treatment, storage, pumping or distribution of water for human consumption, except as provided in subsection B of this section.~~

~~4. "Wastewater works" means wastewater treatment systems and facilities used in the collection, transmission, storage, pumping, treatment or disposal of liquid or waterborne wastes, except as provided in subsection B of this section.~~

~~5. "Board" means the Environmental Quality Board of the State of Oklahoma.~~

~~6. "Executive Director" means the Executive Director of the Oklahoma Department of Environmental Quality.~~

~~7. "Person" means and includes individuals, firms, partnerships, associations, and corporations; and also means and includes the State of Oklahoma, counties, districts, municipalities, and all subdivisions, districts, officers, agencies, departments, institutions, or instrumentalities of any thereof, whether governmental or proprietary.~~

~~8. "Certificate" means a certificate of competency issued as provided for herein.~~

~~9. "Helper" means any person who performs or assists in the performance of work which may affect the quality of either water or wastewater.~~

~~10. "Department" means the Oklahoma Department of Environmental Quality.~~

1. "Board" means the Environmental Quality Board of the State of Oklahoma;

2. "Certificate" means a certificate of competency issued as provided for herein;

3. "Department" means the Oklahoma Department of Environmental Quality;

4. "Executive Director" means the Executive Director of the Oklahoma Department of Environmental Quality;

5. "Helper" means any person who performs or assists in the performance of work which may affect the quality of either water or wastewater;

6. "Operator" means any person who is at any time responsible for the operation of a wastewater works or waterworks or associated laboratories, in part or in whole. Operator shall not ordinarily apply to an official exercising official general administrative supervision but shall include any person who can, through a direct act or command, affect the quality of the water or wastewater;

7. "Person" means and includes individuals, firms, partnerships, associations, and corporations; and also means and includes the State of Oklahoma, counties, districts, municipalities,

and all subdivisions, districts, officers, agencies, departments, institutions, or instrumentalities of any thereof, whether governmental or proprietary;

8. "Wastewater works" means wastewater treatment systems and facilities used in the collection, transmission, storage, pumping, treatment or disposal of liquid or waterborne wastes, except as provided in subsection B of this section; and

9. "Waterworks" means facilities used in the procurement, treatment, storage, pumping or distribution of water for human consumption, except as provided in subsection B of this section.

B. The words "~~plant~~", "waterworks", or "wastewater works" shall not include:

1. Any facilities used exclusively by a private residence or a private business or industry, except when a water or wastewater system has fifteen or more permanent or temporary service connections available for residential use.

2. Such classes of systems, which because of their size, type of treatment, or the nature of wastes involved, the Board shall find do not require general supervision by a certified operator in order to safeguard life, health, property, or the water supplies or streams of this state. Such classes shall be fixed by rules promulgated by the Board.

SECTION 51. AMENDATORY 59 O.S. 1991, Section 1103, as amended by Section 277 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1103. A. An advisory council is hereby re-created, to continue until July 1, 1996, in accordance with the provisions of the Oklahoma Sunset Law, which shall consist of nine (9) members. The Advisory Council shall be composed as follows:

1. The Governor shall appoint three members as follows:
 - a. one member who holds a certificate under the terms and conditions of which he could lawfully be the operator of a municipal waterworks for an initial term of three (3) years,
 - b. one member representing higher education and the Environmental Training Center for the State of Oklahoma for an initial term of two (2) years, and
 - c. one member appointed from a list of six or more nominees submitted by the Oklahoma Municipal League;
2. The President Pro Tempore of the Senate shall appoint three members as follows:
 - a. two members appointed from a list of twelve or more nominees submitted by the Oklahoma Water and Pollution Control Association, and
 - b. one member appointed from a list of twelve or more nominees submitted by the Oklahoma Rural Water Association;
3. The Speaker of the House of Representatives shall appoint three members as follows:
 - a. one member who holds a certificate under the terms and conditions of which he could lawfully be the operator of a municipal waterworks for an initial term of three (3) years,
 - b. one member who holds a certificate under the terms and conditions of which he could lawfully be the operator of a municipal wastewater works for an initial term of two (2) years, and

- c. one member appointed from a list of twelve or more nominees submitted by the Oklahoma Rural Water Association.

B. Persons serving on the Waterworks and Wastewater Works Advisory Council as of June 30, 1993, shall continue to serve on such Council for terms stated below unless a vacancy is created by resignation, death or any other cause resulting in an unexpired term. Such vacancy shall be filled by appointment as provided in subsection A of this section for a term of three (3) years. Members continuing to serve are:

1. One member appointed from a list of six or more nominees submitted by the Oklahoma Municipal League, whose term shall expire June 30, 1994, and whose successor shall be appointed by the Governor;

2. One member appointed from a list of twelve or more nominees submitted by the Oklahoma ~~Waste~~ Water and Pollution Control Association, whose term shall expire June 30, 1994, and whose successor shall be appointed by the President Pro Tempore of the Senate;

3. One member appointed from a list of twelve or more nominees submitted by the Oklahoma ~~Waste~~ Water and Pollution Control Association, whose term shall expire June 30, 1995, and whose successor shall be appointed by the President Pro Tempore of the Senate;

4. One member appointed from a list of twelve or more nominees submitted by the Oklahoma Rural Water Association, whose term shall expire June 30, 1996, and whose successor shall be appointed by the President Pro Tempore of the Senate; and

5. One member appointed from a list of twelve or more nominees submitted by the Oklahoma Rural Water Association, whose term shall expire June 30, 1994, and whose successor shall be appointed by the Speaker of the House of Representatives.

C. Each member shall be appointed to serve a term of office of three (3) years, except that the term of those first appointed shall expire as specified in subsection A above. Any vacancy shall be filled pursuant to subsection A of this section.

D. The Council shall elect a chair and vice-chair from among its members. Five members shall constitute a quorum. Each Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any three members.

E. Of the nominees on each list referenced in subsection A of this section, one-third shall be individuals certified as competent to operate a municipal waterworks and one-third shall be individuals certified as competent to operate municipal wastewater works.

F. Members of the Council shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties as provided by the State Travel Reimbursement Act. The Council is authorized to utilize the conference rooms of the Department and obtain administrative assistance from the Department as required.

G. The Council shall not recommend rules for promulgation of the Environmental Quality Board unless all applicable requirements of the Administrative Procedures Act have been followed including, but not limited to, notice, rule impact statement and rulemaking hearings. The Council shall consult with, advise and make recommendations to the Department relating to the effective administration of the Waterworks and Wastewater Works Operator

Certification Act, and shall perform other duties as may be assigned to it by the Department.

SECTION 52. AMENDATORY 59 O.S. 1991, Section 1106, as amended by Section 280 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1106. Except as otherwise provided in the Waterworks and Wastewater Works Operator Certification Act, it shall be unlawful:

1. For any person to employ or appoint or vote for or approve the employment or appointment of any person as an operator who does not possess a valid current certificate issued under the Waterworks and Wastewater Works Operator Certification Act, which certifies him to be competent to operate ~~the kind of plant~~ a waterworks or wastewater works for which he is so employed or appointed as operator; or to employ or appoint a person as an operator or vote for or approve the employment or appointment of any person as an operator contrary to the terms and conditions of the certificate held by such person;

2. For any person to be the operator of a ~~plant of a kind~~ waterworks or wastewater works for the operation of which he does not hold a certificate or to be the operator of any ~~plant~~ waterworks or wastewater works contrary to any of the terms and conditions of the certificate held by him; or

3. For any person to violate any rule or order made under the authority of the Waterworks and Wastewater Works Operator Certification Act or any certificate issued pursuant thereto.

SECTION 53. AMENDATORY 59 O.S. 1991, Section 1108, as amended by Section 282 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 1108. Any individual who, after the effective date of this act, is employed or appointed as operator of a ~~plant of a kind~~ waterworks or wastewater works for the operation of which he does not hold a certificate, or the operation of which would be contrary to the terms and conditions of any certificate held by such individual, shall be issued a temporary certificate for the operation of such ~~plant~~ works by the Department upon satisfactory application made therefor within ten (10) days after initial employment or appointment of such individual as the operator of such ~~plant~~ works, accompanied by a fee as set by the Board. Such application shall be made under oath, and shall provide in addition any information required by the Department. Said temporary certificate shall expire one (1) calendar year after the date of the applicant's initial employment as the operator of such ~~plant~~ works, and shall not be renewable. If such application is not made within said ten (10) days, then the continuation of such individual as the operator of such ~~plant~~ works after said ten (10) days shall be unlawful and shall constitute a violation of this act by both said individual and the person owning or maintaining such ~~plant~~ works. If the issuance of such temporary certificate is refused for any lawful reason, then the continuation of such individual as the operator of such ~~plant~~ works after thirty (30) days after the Department has mailed notice of such refusal to the person owning or maintaining such ~~plant~~ works, and to such applicant, shall be unlawful and shall constitute a violation of this act by both said individual and the person owning or maintaining such ~~plant~~ works. Not more than one temporary certificate shall be issued to the same individual during any five-year period. This section shall not be applicable to or authorize the issuance of a temporary certificate

to any individual who has had a certificate revoked or whose certificate is under suspension, or to whom the issuance or renewal or reactivation of a certificate has been refused, under Section ~~287~~ 1113 of this ~~act~~ title, except where such individual has thereafter been reinstated or issued a certificate as provided in the Waterworks and Wastewater Works Operator Certification Act.

SECTION 54. AMENDATORY Section 349 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 349. A. 1. To ensure the Department of Environmental Quality fulfills the high expectations of the State of Oklahoma, there is hereby created a legislative task force to be known as the Environmental Management Oversight Task Force. The Task Force shall be composed of the following:

- a. one member of the State Senate appointed by the President Pro Tempore of the State Senate,
- b. the Chairman of the Senate Natural Resources Committee,
- c. the Chairman of the Senate appropriation subcommittee with jurisdiction over the Department,
- d. one member of the Oklahoma House of Representatives appointed by the Speaker of the House of Representatives,
- e. the Chairman of the House of Representatives Energy, Environmental and Natural Resources Committee,
- f. the Chairman of the House of Representatives appropriation subcommittee with jurisdiction over the Department,
- g. the Secretary of Environment,
- h. the chair of the Environmental Quality Board, and
- i. the Executive Director of the Department of Environmental Quality.

The chairman of the Oversight Task Force shall be one of the ~~appointed~~ legislative members of the State Senate to be designated by the President Pro Tempore and the vice-chairman shall be one of the ~~appointed~~ legislative members of the Oklahoma House of Representatives designated by the Speaker. Such Task Force shall terminate all activities and cease to exist by June 30, 1995.

2. The Environmental Management Oversight Task Force shall provide oversight for the implementation of this act and study the issues of the decentralization of the Department and the provision of local and field services by state environmental agencies, and all other issues pertaining to environmental management and regulation in this state. The Task Force may direct the Department to contract for the services of appropriate consultants or consulting firms expert in the field of management and administration of large organizations or environmental and natural resource regulatory agencies, or both, to conduct or assist in a study of issues relating to field services and decentralization of the Department within the purview of the Task Force. The cost of any contracts for consulting services shall be entered into and paid for by the Department only upon the Department's agreement to bear such costs.

SECTION 55. AMENDATORY Section 7, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 7), as last amended by Section 14 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature, is amended to read as follows:

Section 7. A. There is hereby created the Environmental Quality Board to represent the interests of the State of Oklahoma which shall consist of thirteen (13) members appointed by the Governor with the advice and consent of the Senate.

B. To be eligible for appointment to the Board a person shall:

1. Be a citizen of the United States;
2. Be a resident of this state;
3. Be a qualified elector of this state; and
4. Not have been convicted of a felony pursuant to the laws of this state, the laws of any other state or the laws of the United States.

C. The Board shall be composed of:

1. One member who shall be a certified or registered environmental professional. Such member shall be an environmental professional experienced in matters of pollution control, who shall not be an employee of any unit of government;

2. One member who shall be selected from industry in general. Such member shall be employed as a manufacturing executive carrying on a manufacturing business within the state;

3. One member who shall be selected from the hazardous waste industry within the state;

4. One member who shall be selected from the solid waste industry within this state;

5. One member who shall be well versed in recreational, irrigational, municipal or residential water usage;

6. One member who shall be selected from the petroleum industries being regulated by the Department of Environmental Quality;

7. One member who shall be selected from the agriculture industries regulated by the Department of Environmental Quality;

8. One member who shall be selected from the conservation districts of the state;

9. Three members who shall be citizen members of any statewide nonprofit environmental organization;

10. One member who shall be a member of the local governing body of a city or town; and

11. One member who shall be from a rural water district organized pursuant to the laws of this state.

D. The length of initial appointments shall be as follows:

1. Two members' terms shall expire on January 31, 1995;

2. Two members' terms shall expire on January 31, 1996;

3. Three members' terms shall expire on January 31, 1997;

4. Three members' terms shall expire on January 31, 1998; and

5. Three members' terms shall expire on January 31, 1999.

Thereafter, the term of office of a member of the Board shall be for five (5) years and until a successor is appointed and qualified.

E. 1. An appointment shall be made by the Governor within ninety (90) days after a vacancy has occurred due to resignation, death, or any cause resulting in an unexpired term. In the event of a vacancy on the Board due to resignation, death, or for any cause resulting in an unexpired term, if not filled within ninety (90) days following such vacancy, the Board may appoint a provisional member to serve in the interim until the Governor acts.

2. A member may be reappointed to succeed himself for one additional term.

3. In all future appointments to the Environmental Quality Board, the Governor shall recognize the geographic diversity of the state and endeavor to appoint members representing each quadrant of the state.

F. 1. The Board shall hold meetings as necessary at a place and time to be fixed by the Board. The Board shall select, at its first meeting, one of its members to serve as chair and another of its members to serve as vice-chair. At the first meeting in each calendar year thereafter, the chair and vice-chair for the ensuing

year shall be elected. Special meetings may be called by the chair or by five members of the Board by delivery of written notice to each member of the Board. A majority of the Board present at the meeting shall constitute a quorum of the Board.

2. Members of the Board shall receive necessary travel expenses according to the provisions of the State Travel Reimbursement Act.

G. The Board shall:

1. Appoint and fix the compensation of the Executive Director of the Department of Environmental Quality;

2. Be the rulemaking body for the Department of Environmental Quality;

3. Review and approve the budget request of the Department to the Governor;

4. Assist the Department in conducting periodic reviews and planning activities related to the goals, objectives, priorities and policies of the Department; ~~and~~

5. Provide a public forum for receiving comments and disseminating information to the public and the regulated community regarding goals, objectives, priorities, and policies of the Department at least quarterly. The Board shall have the authority to adopt nonbinding resolutions requesting action by the Department in response to comments received or upon the Board's own initiative; and

6. Review and evaluate the need for amendments or additions to the Oklahoma Statutes regarding the programs and functions of the Department and make legislative recommendations to the Legislature.

H. As the rulemaking body for the Department of Environmental Quality, the Board is specifically charged with the duty of promulgating rules which will implement the duties and responsibilities of the Department pursuant to this Code. Except as provided in this subsection, rules within the jurisdiction of a Council provided for by this act shall be promulgated with the advice of such Council. Proposed permanent rules within the jurisdiction of a Council shall not be considered by the Board for promulgation until receipt of the appropriate Council's recommendation on such promulgation; however, the Board may promulgate emergency rules without the advice of the appropriate Council when the time constraints of the emergency, as determined by the Board, do not permit the timely development of recommendations by the Council. All actions of the Councils with regard to rulemaking shall be deemed actions of the Board for the purposes of complying with the Administrative Procedures Act.

SECTION 56. RECODIFICATION 82 O.S. 1991, Sections 1501-701, 1501-703, 1501-704, 1501-705, and 1501-706 shall be recodified as Sections 3-3-405 through 3-3-409 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 57. RECODIFICATION Section 1 of Enrolled Senate Bill No. 211 of the 1st Session of the 44th Oklahoma Legislature shall be recodified as Section 2-10-503 of Title 27A of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 58. REPEALER 17 O.S. 1991, Section 406, Section 1 of Enrolled Senate Bill No. 353 of the 1st Session of the 44th Oklahoma Legislature, 82 O.S. 1991, Section 1501-702, Sections 1 and 2 of Enrolled House Bill No. 1238 of the 1st Session of the 44th Oklahoma Legislature, and Section 27 of Enrolled House Bill No. 1100 of the 1st Session of the 44th Oklahoma Legislature, are hereby repealed.

SECTION 59. Sections 15, 277 and 349 of Enrolled House Bill No. 1002 of the 1st Session of the 44th Oklahoma Legislature shall be effective upon the passage of this act.

SECTION 60. Sections 1, 4 through 50, 52, 53 and 55 through 58 shall be effective July 1, 1993.

SECTION 61. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 28th day of May, 1993.

President of the Senate

Passed the House of Representatives the 28th day of May, 1993.

Speaker of the House of Representatives