

SHORT TITLE: Environment and natural resources; standardizing permitting process; codification; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 997

By: Easley

AS INTRODUCED

An Act relating to environment and natural resources; amending Section 12, Chapter 215, O.S.L. 1992, as amended by Section 49, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, 63 O.S. 1991, Section 1-2002, as last amended by Section 86, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, 63 O.S. 1991, Section 1-2014, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 29, Chapter 324, O.S.L. 1993, 63 O.S. 1991, Section 1-2006, as last amended by Section 96, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, 63 O.S. 1991, Section 1-2008, as last amended by Section 99, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, and 63 O.S. 1991, Section 1-2414.1, as last amended by Section 150, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Sections 2-5-112, 2-7-103, 2-7-111, 2-7-113, 2-7-116 and 2-10-305), which relate to the Department of Environmental Quality and the Environmental Quality Code; requiring certain applicants to publish certain notice; stating Department shall prepare certain draft upon conclusion of review of

certain applications; providing for notice to be given and published; requiring notice to be given to certain interested persons; providing for public comment period; requiring Department to conduct public meeting under certain circumstances; stating requirements for public meeting; authorizing public review of applications in certain county; authorizing administrative hearing; authorizing certain affected persons to participate as a party in such hearing; requiring request to be submitted within certain time period; allowing Department to combine requests for hearings; stating such hearings shall be quasi-judicial; stating procedure for hearing; stating applicability of act to certain permits; authorizing Environmental Quality Board to identify types of permit by rule; requiring Board to promulgate rules for a uniform permitting process; defining term; deleting obsolete language governing certain public meetings; removing certain definition; modifying certain statutory reference; stating procedures applying for variances; modifying Department procedures for issuance of certain permits; adding certain statutory references to Environmental Quality Code; repealing Sections 23 and 26, Chapter 324, O.S.L. 1993, and 63 O.S. 1991, Section 1-2415, as amended by Section 148, Chapter 145, O.S.L. 1993 and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Sections 2-6-205.1, 2-6-501.1 and 2-10-303), which relate to discharge permits, wastewater treatment permits and

permit notice procedures; providing for  
codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 2-3-302 of Title 27A, unless  
there is created a duplication in numbering, reads as follows:

A. Upon filing an application for a Type 1 or Type 2 permit  
with the Department of Environmental Quality, the applicant shall  
publish notice of the filing in one (1) newspaper local to the  
proposed site and one (1) newspaper with statewide circulation. The  
notice shall identify locations where the application may be  
reviewed and give notice of a sixty-day opportunity for interested  
persons to submit written comments on the permit request. The  
notice shall include a thirty-day opportunity to request an  
informational meeting on the permit request and the related  
permitting process in which the applicant shall participate or give  
the date, time and place of such meeting, if previously scheduled.  
The notice shall also inform interested persons on how to request  
the Department to include their name on a mailing list for purposes  
of receiving the notice as specified in paragraph 3 of subsection B  
of this section.

B. 1. Upon conclusion of its technical review of the  
application, the Department shall prepare a draft denial or draft  
permit.

2. Notice of a draft denial shall be given by the Department  
and notice of a draft permit shall be given by the applicant  
according to paragraph 3 of subsection B of this section.

3. Notice shall be published as legal notice in one (1)  
newspaper local to the proposed site and in one (1) newspaper with

statewide circulation. Additionally, notice by mail shall be given to persons included on a mailing list at their request and boards of county commissioners of the county wherein the proposed site is located. Additional notice shall be given as is required by applicable federal requirements promulgated as rules by the Environmental Quality Board. Such notice shall identify locations where the draft denial or draft permit may be reviewed and shall provide for a forty-five-day period for public comment and opportunity to request a formal public meeting on the respective draft denial or permit.

C. The Department shall conduct a formal public meeting if, within forty-five (45) days after the date of publication specified in paragraph 3 of subsection B of this section, the Department receives written request for such meeting and determines that there is a significant degree of public interest in the draft denial or draft permit. Notice of the meeting shall be given to the public at least thirty (30) days prior to the meeting date. The public meeting shall be held at a location convenient to and near the proposed site not more than one hundred twenty (120) days after the expiration of the forty-five-day request period. Such meeting shall not be a quasi-judicial proceeding. The applicant or a representative of the applicant shall be present at the meeting to respond to questions.

D. The applicant shall make the application and amendments thereto, except for proprietary provisions otherwise protected by law, available for public review in a location to be specified by the Department in the county where the proposed site is located.

E. For Type 1 permits only, the Department shall give public notice of either its denial of the permit or its tentative decision to issue the permit after consideration of comments received. The notice of tentative issuance shall identify locations where the tentative permit and the Department's comment responsiveness summary

may be reviewed and shall provide for a thirty-day opportunity to request an administrative hearing.

1. Any person, including the applicant, or any qualified interest group, as defined by this section, who has raised one or more issues about the draft permit and submitted such to the Department during the formal public meeting, if any, or public comment period and who may have an interest adversely affected by the construction or operation of the proposed site or activity may request such a hearing to participate in as a party.

2. All requests for a hearing on a tentative permit that are granted by the Department 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. The Department shall move expeditiously to an evidentiary proceeding in which parties shall have the right to present evidence before the Department on whether the tentative permit and the technical data, models and analyses, and information in the application upon which the tentative permit is based are in substantial compliance with the laws and rules pertaining to such permit and whether the tentative permit should be issued as is, amended and issued, or denied.

F. This section applies to applications for Type 1 and Type 2 permits, and the major modifications of such permits, filed with the Department on or after January 1, 1995. The Environmental Quality Board shall promulgate rules to implement this section and by rule identify the permits to be designated as Type 1 and Type 2 and classify the major modifications of each.

G. For purposes of this section, a qualified interest group means any organization with twenty-five (25) or more members who are Oklahoma residents.

SECTION 2. AMENDATORY Section 12, Chapter 215, O.S.L. 1992, as amended by Section 49, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-5-112), is amended to read as follows:

Section 2-5-112. A. Upon the effective date of permitting ~~regulations~~ rules promulgated pursuant to the Oklahoma Clean Air Act, it shall be unlawful for any person to construct any new source, or to modify or operate any new or existing source of emission of air contaminants except in compliance with a permit issued by the Department, unless the source has been exempted or deferred or is in compliance with an applicable deadline for submission of an application for such permit.

B. The Department shall have the authority and the responsibility, in accordance with rules of the Board, to implement a comprehensive permitting program for the State of Oklahoma consistent with the requirements of the Oklahoma Clean Air Act. Such authority shall include but shall not be limited to the authority to:

1. Expeditiously issue, reissue, modify and reopen for cause, permits for new and existing sources for the emission of air contaminants, and to grant a reasonable measure of priority to the processing of applications for new construction or modifications. The Department may also revoke, suspend, deny, refuse to issue or to reissue a permit upon a determination that any permittee or applicant is in violation of any substantive provisions of the Oklahoma Clean Air Act, or any rule promulgated thereunder or any permit issued pursuant thereto;

2. Refrain from issuing a permit when issuance has been objected to by the Environmental Protection Agency in accordance with Title V of the Federal Clean Air Act;

3. Revise any permit for cause or automatically reopen it to incorporate newly applicable rules or requirements if the remaining

permit term is greater than three (3) years; or incorporate insignificant changes into a permit without requiring a revision;

4. Establish and enforce reasonable permit conditions which may include, but not be limited to:

- a. emission limitations for regulated air contaminants,
- b. operating procedures when related to emissions,
- c. performance standards,
- d. provisions relating to entry and inspections, and
- e. compliance plans and schedules;

5. Require, if necessary, at the expense of the permittee or applicant:

- a. installation and utilization of continuous monitoring devices,
- b. sampling, testing and monitoring of emissions as needed to determine compliance,
- c. submission of reports and test results, and
- d. ambient air modeling and monitoring;

6. Issue:

- a. general permits covering similar sources, and
- b. permits to sources in violation, when compliance plans, which shall be enforceable by the Department, are incorporated into the permit;

7. Require, at a minimum, that emission control devices on stationary sources be reasonably maintained and properly operated;

8. Require that a permittee certify, no less frequently than annually, that the facility is in compliance with all applicable requirements of the permit and to promptly report any deviations therefrom to the Department;

9. Issue permits for a term not to exceed five (5) years, except that solid waste incinerators may be allowed a term of up to twelve (12) years provided that the permit shall be reviewed no less frequently than every five (5) years;



10. Specify requirements and conditions applicable to the content and submittal of permit applications; set by rule, a reasonable time in which the Department must determine the completeness of such applications; and

11. Determine the form and content of emission inventories and require their submittal by any source or potential source of air contaminant emissions.

C. Rules of the Board may set de minimis limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee, or be subject to public review. Any source so exempted, however, shall remain under jurisdiction of the Department and shall be subject to any applicable rules or general permit requirements.

D. To ensure against unreasonable delay on the part of the Department, the failure of the Department to act in either the issuance, denial or renewal of a permit in a reasonable time, as determined by rule, shall be deemed to be a final permit action solely for purpose of judicial review under the Administrative Procedures Act, with regard to the applicant or any person who participated in the public review process. The Supreme Court or the district court, as the case may be, may require that action be taken by the Department on the application without additional delay. No permit, however, may be issued by default.

E. The Department shall notify, or require that any applicant notify, all states whose air quality may be affected and that are contiguous to the State of Oklahoma, or are within fifty (50) miles of the source of each permit application or proposed permit for those sources requiring permits under Title V of the Federal Clean Air Act, and shall provide an opportunity for such states to submit written recommendations respecting the issuance of the permit and its terms and conditions.

F. A change in ownership of any facility or source subject to permitting requirements under this section shall not necessitate any action by the Department not otherwise required by the Oklahoma Clean Air Act. Any permit applicable to such source at the time of transfer shall be enforceable in its entirety against the transferee in the same manner as it would have been against the transferor, as shall any requirement contained in any rule, or compliance schedule set forth in any variance or order regarding or applicable to such source. Provided however, no transferee in good faith shall be held liable for penalties for violations of the transferor unless the transferee assumes all assets and liabilities through contract or other means. For the purposes of this subsection, good faith shall be construed to mean neither having actual knowledge of a previous violation or constructive knowledge which would lead a reasonable person to know of the violation. It shall be the responsibility of the transferor to notify the Department in writing within ten (10) days of the change in ownership.

G. ~~Public review.~~

~~1. Public meetings.~~

- ~~a. Any applicant for a construction permit for a new source or for the modification of an existing source, or for the renewal of an operating permit, and in such other instances as shall be specified by the Board by rule, shall, upon the preparation of a draft permit by the Department, publish notice of such preparation in at least one newspaper of general circulation in the nearest city or town in which the facility is located or is proposed to be located. The notice must include:~~
- ~~(1) a description of the facility, its purpose and location or proposed location,~~

- ~~(2) a statement that any person who may be adversely affected by emissions of air contaminants from the facility may submit written comments to, or request a formal public meeting from, the Department, or both,~~
- ~~(3) a description of the manner in which written comments may be submitted, the manner in which any request for a meeting must be made, how the Department may be contacted for further information and where a copy of the draft permit will be available for inspection and copying, and~~
- ~~(4) any other information which the Board may by rule specify.~~

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

~~has been alleged, the Department shall immediately set a date for the meeting and shall cause to be mailed to all persons who requested the meeting, information concerning the date, time and place. The applicant shall also cause to be published in the manner provided in this paragraph, notice of the date, time and place and the purpose of the formal public meeting. Said notice shall be published at least thirty (30) calendar days prior to the meeting.~~

- ~~c. At the meeting, which shall be attended by both the Department and the applicant, persons may submit oral or written statements concerning the draft permit; provided, however, that the person conducting the meeting, who shall be a representative of the Department, may set reasonable time limits for the presentation of oral comments and for any question and answer session. The purpose of this meeting shall be to inform the public concerning the permit and the operation of the source. Failure of the applicant to participate in good faith shall constitute grounds for the Department to deny the permit. The presiding officer shall have the discretion to conclude the comment period at the close of the hearing, or may extend or reopen the comment period as necessary.~~
- ~~d. No person, including the applicant, shall raise any reasonably ascertainable issue in any future proceeding, unless the same issues shall have been raised at this meeting or before the close of the public comment period, and supported in writing, by appropriate argument and evidence as may be available at the time.~~

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

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

~~2. Contested case hearing.~~

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

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

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

~~3.~~ Operating permits for new sources. Operating permits may be issued to new sources without public review upon a proper determination by the Department that:

~~(1)~~ 1. The construction permit was issued pursuant to the public review requirements, ~~7~~i and

~~(2)~~ 2. The operating permit, as issued, does not differ from the construction permit in any manner which would otherwise subject the permit to public review.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-2002, as last amended by Section 86, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-7-103), is amended to read as follows:

Section 2-7-103. As used in the Oklahoma Hazardous Waste Management Act:

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

2. "Affiliated person" means:

- a. any officer, director or partner of the applicant,
- b. any person employed by the applicant as a general or key manager who directs the operations of the site or facility which is the subject of the application, and
- c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity;

3. "Council" means the Hazardous Waste Management Advisory Council;

4. "Demonstrated pattern of prohibited conduct" means a series of conduct of the same or like character in violation of state or federal environmental laws which, as a result of the applicant's or affiliated person's reckless disregard thereof, actually endangers, or reasonably has the potential to endanger, human health or the environment;

5. "Disclosure statement" means a written statement by the applicant which contains:

- a. the full name, business address, and social security number of the applicant, and all affiliated persons,
- b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant, and a description of the on-going organizational relationships as they may impact operations within the state,
- c. a description of the experience and credentials of the applicant, including any past or present permits,

licenses, certifications, or operational authorizations relating to environmental facility regulation,

- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any affiliated person which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal in the ten (10) years immediately preceding the filing of the application relating to the generation, transportation, storage, treatment, recycling or disposal of "hazardous waste" as defined by the Oklahoma Hazardous Waste Management Act or by the United States Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the United States Environmental Protection Agency, and
- e. a listing of any federal environmental agency and any state environmental agency outside this state that has or has had regulatory responsibility over the applicant;

6. "Disposal" means the final disposition of hazardous waste;

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

8. "Guarantor" means any person other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to the Oklahoma Hazardous Waste Management Act;



9. "Hazardous waste" means waste materials and byproducts, either solid or liquid or containerized gas, which are:

- a. to be discarded by the generator or recycled,
- b. toxic to human, animal, aquatic or plant life, and
- c. generated in such quantity that they cannot be safely disposed of in properly operated, state-approved solid waste landfills or waste, sewage or wastewater treatment facilities.

The term "hazardous waste" may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludges, tank bottoms containing heavy metallic ions, toxic organic chemicals, and materials such as paper, metal, cloth or wood which are contaminated with hazardous waste.

The term "hazardous waste" shall not include domestic sewage;

10. "Hazardous waste facility" means and includes storage and treatment facilities and disposal sites;

11. "History of noncompliance" means any past operations by an applicant or affiliated persons which clearly indicate a reckless disregard for environmental regulation or demonstrate a pattern of prohibited conduct which could reasonably be expected to result in endangerment to human health or the environment if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record;

12. "Multi-user on-site treatment facility" means a treatment facility for hazardous waste generated by the co-owners of the facility and which meets the criteria specified by the Oklahoma Hazardous Waste Management Act;

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

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

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

~~16. "Qualified interest group" means any organization with twenty-five or more members who must be legal residents of the State of Oklahoma, that expresses an interest in the outcome of a construction permit application;~~

~~17.~~ "Recycling" means the reuse, processing, treating, neutralizing or rerefining of hazardous waste into a product which is being reused or which has been sold for beneficial use. Hazardous waste which is intended for fuel is not deemed to be recycled until it is actually burned;

~~18.~~ 17. "Regeneration" or "regenerated" means the regeneration of spent activated carbon to render it reusable, and any treatment, storage or disposal associated therewith;

~~19.~~ 18. "Site" or "proposed site" means the surface area of a disposal site, or other hazardous waste facility, as applied for in the application for a permit for the facility;

~~20.~~ 19. "Storage facility" means any location where the temporary holding of hazardous waste occurs, including any tank, pit, lagoon, pond, or other specific place or area;

~~21.~~ 20. "Treatment" means the detoxification, neutralization, incineration or biodegradation of hazardous waste in order to remove or reduce its harmful properties or characteristics; and

~~22.~~ 21. "Treatment facility" means any location where treating or recycling of hazardous waste occurs.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-2014, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last

amended by Section 29, Chapter 324, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-7-111), 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 of Environmental Quality 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 ~~2-7-113~~ 1 of this ~~title~~ act 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. 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 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. 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 has been made and that a minority of the affected property owners would not consent. The Department may then issue 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, as part of the permit application, shall be subject to public review and comment pursuant to Section ~~2-7-113~~ 1 of this ~~title~~ act 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 2-7-113 of this title~~ Section 1 of this act shall apply to applications for variances,
- 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 5. AMENDATORY 63 O.S. 1991, Section 1-2414.1, as last amended by Section 150, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-10-305), is amended to read as follows:

Section 2-10-305. A. In considering applications for solid waste disposal site permits which were originally filed with the State Department of Health prior to April 30, 1990, the Department shall require applicants to submit information based on an individual on-site observation for determining the highest seasonal phreatic groundwater table. The original notice and opportunity to request a public meeting regarding such applications shall be deemed to comply with the Oklahoma Solid Waste Management Act and the Environmental Quality Code for any submittals by the same applicant for the same site.

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

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-2006, as last amended by Section 96, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-7-113), is amended to read as follows:

Section 2-7-113. A. The Department of Environmental Quality shall issue permits for the construction and for the operation of hazardous waste facilities. A construction permit shall be issued

only upon proper application and determination by the Department that the proposed site and facility are physically and technically suitable. ~~Upon submission of an application for a construction permit, which shall be a public record, the applicant shall notify affected property owners.~~

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

~~C. If any of the affected property owners or qualified interest groups request an administrative permit hearing, such hearing shall be held before a construction permit is issued. All affected property owners and qualified interest groups who request an administrative permit hearing shall be joined as parties to the hearing pursuant to rules promulgated by the Board. At such administrative permit hearing, the Department shall hear testimony and accept evidence pertaining only to the physical and technical suitability of the proposed hazardous waste facility.~~

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



~~E. C.~~ The Department may, upon determining that public health or safety requires emergency action, issue a temporary permit for treatment or storage of hazardous waste or recyclable material for a period not to exceed ninety (90) days without the prior notices and opportunity to request a public meeting or the administrative permit hearing required by ~~this section~~ Section 1 of this act. Any person aggrieved by such permit may seek judicial review.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-2008, as last amended by Section 99, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-7-116), is amended to read as follows:

Section 2-7-116. A. The Department of Environmental Quality shall issue permits for the operation of hazardous waste facilities. No operation permit shall be issued except upon proper application, proof of sufficient liability insurance and financial responsibility, formal public meeting, if requested, and such other requirements as provided by the Oklahoma Hazardous Waste Management Act and the Environmental Quality Code.

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

shall be maintained for a period of five (5) years after the date of last operation of the facility.

C. Prior to the issuance of any permit, the applicant shall post a bond or acceptable alternate financial assurance guaranteeing proper closure and guaranteeing the performance of the maintenance and monitoring functions set out in Section 107 of this act.

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

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

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

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

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

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

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

SECTION 8. REPEALER Sections 23 and 26, Chapter 324, O.S.L. 1993, and 63 O.S. 1991, Section 1-2415, as amended by Section 148, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Sections 2-6-205.1, 2-6-501.1 and 2-10-303), are hereby repealed.

SECTION 9. 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.

