

ENROLLED SENATE  
BILL NO. 247

By: Easley of the Senate

and

Rice of the House

An Act relating to environment and natural resources; amending 17 O.S. 1991, Section 354, as amended by Section 19, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1994, Section 354), which relates to fuel assessments; modifying distribution of certain funds; amending Section 8, Chapter 398, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 5, Chapter 353, O.S.L. 1994, Section 12, Chapter 215, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 16, Chapter 373, O.S.L. 1994; 63 O.S. 1991, Section 1-2014, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 13, Chapter 373, O.S.L. 1994, Section 27, Chapter 373, O.S.L. 1994, 63 O.S. 1991, Section 1-2008, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 22, Chapter 373, O.S.L. 1994, 63 O.S. 1991, Section 1-2014.2, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 8 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, Section 1, Chapter 128, O.S.L. 1993, Section 28, Chapter 373, O.S.L. 1994, 63 O.S. 1991, Section 1-2421, as amended by Section 149, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993, Section 27, Chapter 353, O.S.L. 1994, Section 2, Chapter 373, O.S.L. 1994, Section 3, Chapter 373, O.S.L. 1994, Section 4, Chapter 373, O.S.L. 1994, Section 5, Chapter 373, O.S.L. 1994, Section 6, Chapter 373, O.S.L. 1994, Section 8, Chapter 373, O.S.L. 1994, Section 9, Chapter 373, O.S.L. 1994, Section 10, Chapter 373, O.S.L. 1994, Section 11, Chapter 373, O.S.L. 1994 and 82 O.S. 1991, Section 926.9, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 9, Chapter 324, O.S.L. 1993 (27A O.S. Supp. 1994, Sections 2-3-201, 2-3-501, 2-5-112, 2-7-111, 2-7-113.1, 2-7-116, 2-10-301.1, 2-10-303.1, 2-10-304, 2-10-307, 2-14-102, 2-14-103, 2-14-104, 2-14-201, 2-14-202, 2-14-301, 2-14-302, 2-14-303 and 2-14-304), which relate to the Oklahoma Uniform Environmental Permitting Act and investigations; updating statutory references; modifying powers and duties of Executive Director; modifying certain contested

case hearing procedures; stating procedures for issuance of certain Tier I, II and III permits; modifying certain permit requirements for certain hazardous waste facilities; stating intent; defining terms; modifying definitions; stating applicability of act; modifying rules for implementation; modifying certain powers and duties of the Department of Environmental Quality; modifying notice procedures; modifying procedures for issuing draft permits or denials; authorizing certain peace officers to elect participation in certain retirement systems; amending 63 O.S. 1991, Section 1-215, as amended by Section 306, Chapter 145, O.S.L. 1993 (63 O.S. Supp. 1994, Section 1-215), which relates to city-county health departments; authorizing Department of Environmental Quality to provide certain environmental services; providing for written notice to board of city-county health department; stating procedures for funding services; stating purpose; authorizing Department of Environmental Quality to operate certain air pollution control program and use certain fees; amending 68 O.S. 1991, Section 1359, as last amended by Section 16, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1359), which relates to certain sales tax exemptions; modifying authority to approve certain facilities for certain purposes; requiring Corporation Commission to utilize certain monies for certain purpose; requiring Commission to promulgate certain rules with advice from Storage Tank Advisory Council; authorizing Department of Environmental Quality to purchase property by certain date; stating requirements for property; repealing Section 29, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-6-205.2), which relates to administrative permit hearings for water quality discharge permits; repealing Section 7, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-203), which relates to certain powers and duties of the Executive Director of the Department of Environmental Quality; repealing 17 O.S. 1991, Section 354, as amended by Section 34, Chapter 324, O.S.L. 1993 (17 O.S. Supp. 1994, Section 354), which is a duplicate section; providing for noncodification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 8, Chapter 398, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 5, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-3-201), is amended to read as follows:

Section 2-3-201. A. The Environmental Quality Board shall appoint the Executive Director of the Department of Environmental

Quality. The Executive Director shall serve at the pleasure of the Board.

B. The Executive Director shall have experience in industry, conservation, environmental sciences or such other areas as may be required by the Environmental Quality Board.

C. The Executive Director shall provide for the administration of the Department and shall:

1. Be the executive officer and supervise the activities of the Department of Environmental Quality;

2. Employ, discharge, appoint or contract with, and fix the duties and compensation of such assistants, attorneys, chemists, geologists, environmental professionals, medical professionals, engineers, sanitarians, administrative, clerical and technical, investigators, aides and such other personnel, either on a full-time, part-time, fee or contractual basis, as in his judgment and discretion shall be deemed necessary, expedient, convenient or appropriate to the performance or carrying out of any of the purposes, objectives, responsibilities or statutory provisions relating to the Department of Environmental Quality, or to assist the Executive Director in the performance of his official duties and functions;

3. Establish internal policies and procedures for the proper and efficient administration of the Department; and

4. Exercise all incidental powers which are necessary and proper to implement the purposes of the Department pursuant to this Code.

D. The Executive Director shall not be an owner, stockholder, employee or officer of, nor have any other business relationship with or receive compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department of Environmental Quality and, with regard to the exercise of powers and duties associated with the Oklahoma Pollutant Discharge Elimination System Act, shall meet all requirements of Section 304 of the Clean Water Act and applicable federal regulations promulgated thereunder by the United States Environmental Protection Agency regarding conflict of interest.

E. 1. In addition to the powers and duties specified in subsection D of this section, the Executive Director shall have the power and duty to:

a. issue, deny, modify, amend, renew, refuse to renew, suspend, reinstate or revoke licenses or permits pursuant to the provisions of this Code, and rules promulgated by the Board, and

b. issue final orders and assess administrative penalties according to the Administrative Procedures Act, this Code and rules promulgated by the Board.

2. The powers and duties specified in paragraph 1 of this subsection shall be exercised exclusively by the Executive Director and may not be delegated to other employees of the Department except as specifically provided in this ~~subsection~~ Code.

3. In the event of the Executive Director's temporary absence, the Executive Director may delegate the exercise of such powers and duties to an acting director during the Executive Director's absence subject to an organizational structure approved by the Board. In the event of a vacancy in the position of Executive Director, the Board may designate an interim or acting Executive Director who is authorized to exercise such powers and duties until a permanent Executive Director is employed.

4. Any designee exercising such powers and duties of the Executive Director as authorized or on a temporary, acting or

interim basis shall meet the requirements of subsection D of this section for the Executive Director.

4. 5. All references in this Code to the Department with respect to the exercise of the powers and duties specified in paragraph 1 of this subsection shall mean the exercise of such powers and duties by the Executive Director or his authorized designee.

SECTION 2. AMENDATORY Section 12, Chapter 215, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 16, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-5-112), is amended to read as follows:

Section 2-5-112. A. Upon the effective date of permitting rules promulgated pursuant to the Oklahoma Clean Air Act, it shall be unlawful for any person to construct any new source, or to modify or operate any new or existing source of emission of air contaminants except in compliance with a permit issued by the Department, 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~~ state consistent with the requirements of the Oklahoma Clean Air Act. Such authority shall include but shall not be limited to the authority to:

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

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

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. 1. This subsection shall apply to any contested case hearing held on any construction permit for a new source or for the modification of an existing source, or for the renewal of an operating permit, and in such other instances as shall be specified by the Board by rule.~~

~~2. No person, including the applicant, shall raise any reasonably ascertainable issue about a permit in a contested case hearing or any future proceeding, unless the same issues shall have been raised during public review at the formal public meeting or before the close of the public comment period held on the draft permit, and supported in writing, by appropriate argument and evidence as may be available at the time.~~

~~3. Any person, including the applicant, adversely affected by the decision of the Department in issuing or denying the permit may, within fifteen (15) days of the Department's decision, request in writing a contested case hearing before the Department. Any permit issued without appeal under this subsection or which shall become a final order pursuant to a contested case hearing as provided for in this subsection and pursuant to the Administrative Procedures Act and the Code and rules promulgated thereunder shall be enforceable by the Department.~~

~~4. Contested case hearing.~~

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

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

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

~~H. Operating permits for new sources.~~

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

~~1. The construction permit was issued pursuant to the public review requirements of the Code and rules promulgated thereunder; and~~

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

SECTION 3. 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 13, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, 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~~ Sections 2-7-113, 2-7-113.1 and 2-14-304 of this title shall not apply to soil farming operations conducted on the generator's plant site or nearby property under the control of the generator.

B. A hazardous waste facility for on-site treatment, recycling 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, recycling 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 shall be subject to public review and comment as part of the permit application pursuant to Section 2-7-113 of this title or the Oklahoma Uniform Environmental Permitting 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, recycling 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 on the draft permit or proposed permit pursuant to the provisions of Section 2-7-113 of this title or the Oklahoma Uniform Environmental Permitting Act,
- 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 new hazardous waste permits; and
3. Applications for permits to modify existing ~~storage or treatment~~ facilities which have either a permit or interim status when the proposed modification involves the opportunity for an administrative permit hearing.

E. The provisions of paragraphs 1 and 2 of subsection C of this section shall not apply to applications to increase existing storage, treatment, recycling 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 4. AMENDATORY Section 27, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-7-113.1), is amended to read as follows:

Section 2-7-113.1 A. The Department of Environmental Quality shall issue permits for hazardous waste facilities. A permit shall be issued only upon proper application and determination by the Department that the proposed site and facility are physically and technically suitable.

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

C. In accordance with the provisions of Section ~~41 2-14-304~~ of ~~the Oklahoma Uniform Environmental Permitting Act~~ this title, an administrative permit hearing shall be available on a proposed permit which is based on a Tier III hazardous waste permit application for a new ~~major~~ permit and or for the ~~major~~ modification of an existing ~~major~~ permit involving a fifty percent (50%) or more increase in permitted capacity for storage, treatment or disposal ~~(including but not limited to incineration).~~

~~D. A major modification of a major hazardous waste permit shall mean a Class III modification as defined in Section 270.42(c) of Title 40 of the Code of Federal Regulations.~~

~~E.~~ 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 or the Oklahoma Uniform Environmental Permitting Act. Any person aggrieved by such permit may seek judicial review.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-2008, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 22, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-7-116), is amended to read as follows:

Section 2-7-116. A. Except for emergency permits issued in accordance with ~~subsection C of~~ Section 2-7-113 or 2-7-113.1 of this title, no 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 2-7-124 of this title.

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

E. Prior to the issuance of any permit, the applicant shall, upon request of the Department, produce evidence of the applicant's financial status indicating that the applicant is financially able to operate and maintain a hazardous waste facility as required by the Oklahoma Hazardous Waste Management Act. If the applicant is not financially able to operate and maintain a hazardous waste facility, as required by the Oklahoma 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 6. AMENDATORY 63 O.S. 1991, Section 1-2014.2, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 8 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 2-7-118. A. Facilities that recycle hazardous waste shall be exempt from subsection C of ~~Section~~ Sections 2-7-113 and 2-7-113.1, and Section 2-7-115 of this title 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, the Oklahoma Environmental Permitting Act, and rules promulgated thereunder, ~~for an operations~~ a 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~~ a 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. An approved class 1 ~~operations~~ permit modification shall be required for a permitted recycling facility to increase the capacity of its recycling units or add new or different recycling units.

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 owner or operator of any unit in this state permitted as a hazardous waste recycling unit shall burn as fuel in such unit any substance which the owner or operator knows, or should know, contains hazardous waste which has a heating value of less than five thousand (5,000) British Thermal Units per pound when which has been blended with other materials or wastes to produce and produces 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 7. AMENDATORY Section 1, Chapter 128, O.S.L. 1993 (27A O.S. Supp. 1994, Section 2-10-301.1), is amended to read as follows:

Section 2-10-301.1 The Department shall not issue a permit for the lateral expansion of a landfill disposal site beyond the existing permitted boundary having a new permitted boundary located within one half (1/2) mile of an outside wall of any dwelling occupied at the time a permit application is made unless the owner of the dwelling has been notified of the application and of the opportunity to participate in a public meeting pursuant to ~~Section 1-2415 of the Solid Waste Management Act~~ the Oklahoma Uniform Environmental Permitting Act.

SECTION 8. AMENDATORY Section 28, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-10-303.1), is amended to read as follows:

Section 2-10-303.1 In accordance with the provisions of Section ~~11 2-14-304~~ of the ~~Oklahoma Uniform Environmental Permitting Act~~ this title, an administrative permit hearing shall be available on a proposed permit which is based on a Tier III solid waste permit application for a new ~~major~~ permit or for the major modification of an existing ~~major~~ permit involving a fifty percent (50%) or more increase in permitted capacity for storage, treatment or disposal ~~(including but not limited to incineration)~~.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-2421, as amended by Section 149, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1994, Section 2-10-304), is amended to read as follows:

Section 2-10-304. A. Requests for variances from specific requirements of any particular rule must be made a part of the permit application of any applicant and the opportunity to request a public meeting or administrative permit hearing, or both, shall have been offered prior to authorization of the variance to any applicant, including any unit of government. Further, any application for a variance for substitute technology which equals or exceeds the protection accorded by the particular rule shall not be granted unless an opportunity to request a public meeting or administrative permit hearing, or both, has been offered.

B. ~~The~~ Except as otherwise provided in this subsection, the Department shall not approve a variance from the rules of the Board for a solid waste disposal site to be located within any one-hundred year flood plain unless the variance is conditioned upon the subsequent redefinition of the one-hundred year plain to not include the land area proposed for the variance. A variance may be granted for the siting of a solid waste transfer station within a one-hundred year flood plain conditioned upon the requirement that no solid waste will be retained or stored by any means during non-operating hours on any portion of the permitted site that is within the one-hundred year flood plain.

SECTION 10. AMENDATORY Section 27, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-10-307), is amended to read as follows:

Section 2-10-307. A permit application for a solid waste transfer station or yard-waste composting site shall be subject to any applicable public comment, public meeting and administrative hearing requirements as set forth for the application tier in Section 2-10-303 of Title 27A of the Oklahoma Statutes the Oklahoma Uniform Environmental Permitting Act, unless the board of county commissioners of the county of the proposed site, after opportunity for written or oral public comment, has found the application to be within the scope of the county's solid waste management plan.

SECTION 11. AMENDATORY Section 2, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-102), is amended to read as follows:

Section 2-14-102. It is the intent of the Oklahoma Legislature that the Oklahoma Uniform Environmental Permitting Act provide for uniform permitting provisions regarding notices and public participation opportunities that apply consistently and uniformly to applications for ~~major air quality, solid waste, hazardous waste and water quality permits~~ and other permit authorizations issued by the Department of Environmental Quality ~~and to provide for procedures relating to the processing of applications for nonmajor permits.~~

SECTION 12. AMENDATORY Section 3, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-103), is amended to read as follows:

Section 2-14-103. For the purposes of the Oklahoma Uniform Environmental Permitting Act:

1. "Application" means a document or set of documents, filed with the Department of Environmental Quality for the purpose of receiving a permit or the modification, amendment or renewal thereof from the Department. "Application" includes any subsequent additions, revisions or modifications submitted to the Department which supplement, correct or amend a pending application;

2. "Council" means ~~the Air Quality Council, the Hazardous Waste Management Advisory Council, the Solid Waste Management Advisory Council or the Water Quality Advisory Council~~ any advisory council authorized by the Legislature to recommend rules to the Environmental Quality Board;

3. "Draft permit" means a draft document prepared by the Department after it has ~~tentatively~~ found ~~an~~ a Tier II or III application for a ~~new major permit or for the major modification or renewal of a major permit~~ to be administratively and technically complete, pursuant to the requirements of the Oklahoma Environmental Quality Code and rules promulgated thereunder, and that such application may warrant the issuance, modification or renewal of the ~~major~~ permit;

4. ~~Information~~ "Permit" means a permission required by law and issued by the Department, the application for which has been classified as Tier I, II or III by the Board. The term "permit" includes but is not limited to:

- a. specific types of permits and other Department authorizations including certifications, registrations, licenses and plan approvals, and
- b. an approved variance from a promulgated rule; however, for existing facilities the Department may require additional notice and public participation opportunities for variances posing the potential for increased risk;

5. "Process meeting" means a meeting open to the public which is held by the Department, pursuant to the provisions of the Oklahoma Uniform Environmental Permitting Act, to explain the permitting process and the public participation opportunities applicable to a specific major permit Tier III application;

~~5. "Major modification" means a type of modification of a major air quality, hazardous waste, solid waste, or water quality permit determined by the Board upon recommendation of the appropriate Council to be major;~~

~~6. "Major permit" means a type of air quality, hazardous waste, solid waste, or water quality permit determined by the Environmental Quality Board upon recommendation of the appropriate Council to be major;~~

~~7.~~ 6. "Proposed permit" means a document, based on a draft permit and prepared by the Department after consideration of comments received on the draft permit, which indicates the Department's ~~tentative~~ decision to issue a final permit pending the outcome of an administrative permit hearing, if any;

~~8.~~ 7. "Qualified interest group" means any organization with twenty-five or more members who are Oklahoma residents; ~~and~~

~~9.~~ 8. "Response to comments" means a document prepared by the Department after its review of timely comments received on a draft denial or draft permit pursuant to public comment opportunities ~~authorized by the Oklahoma Uniform Environmental Permitting Act~~ which:

- a. specifies ~~the~~ any provisions, ~~if any,~~ of the draft permit that were changed in the proposed or final permit and the reasons for such changes, and
- b. briefly describes and responds to all significant comments raised during the public comment period or formal public meeting about the draft denial or draft permit;

9. "Tier I" means a basic process of permitting which includes application, notice to the landowner and Department review. For the Tier I process a permit shall be issued or denied by a technical supervisor of the reviewing Division or local representative of the Department provided such authority has been delegated thereto by the Executive Director;

10. "Tier II" means a secondary process of permitting which includes:

- a. the Tier I process,
- b. published notice of application filing,
- c. preparation of draft permit or draft denial,
- d. published notice of draft permit or draft denial and opportunity for a formal public meeting, and
- e. public meeting, if any.

For the Tier II process, a permit shall be issued or denied by the Director of the reviewing Division provided such authority has been delegated thereto by the Executive Director; and

11. "Tier III" means an expanded process of permitting which includes:

- a. the Tier II process except the notice of filing shall also include an opportunity for a process meeting,
- b. preparation of the Department's response to comments, and
- c. denial of application, or
- d. preparation of a proposed permit, published notice of availability of proposed permit and response to comments and of opportunity for an administrative permit hearing; and administrative permit hearing if any.

For the Tier III process a permit shall be issued or denied by the Executive Director.

SECTION 13. AMENDATORY Section 4, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-104), is amended to read as follows:

Section 2-14-104. A. ~~The Oklahoma Uniform Environmental Permitting Act shall apply to applications for major and nonmajor permits and to applications for modifications and renewals of such permits filed with the Department on or after July 1, 1996, unless exempt in part or in whole as provided by this section.~~

B. ~~Permit applications~~ Applications subject to the Oklahoma Uniform Environmental Permitting Act shall continue to be subject to additional or more comprehensive notice provisions of the Code or and public participation opportunities set forth in rules of the Board enacted or promulgated pursuant to federal requirements for individual state permitting programs.

C. ~~Unless required otherwise by federal requirements enacted into state law or promulgated as rules by the Board, the following exemptions shall apply.~~

1. ~~Certifications, registrations and other authorizations that are neither major nor nonmajor permits shall be exempt from compliance with the Oklahoma Uniform Environmental Permitting Act.~~

2. ~~The following applications are exempt from the permitting process as set forth in Sections 8, 9, 10 and 11 of this article:~~

- ~~a. applications for nonmajor permits and the modifications, amendments and renewals thereof,~~
- ~~b. applications for minor modifications of major permits, and~~
- ~~c. applications for amendments of major permits.~~

~~3. The following applications are exempt from the provisions of Section 8 of this article:~~

- ~~a. applications for major modifications of major air quality and water quality permits,~~
- ~~b. applications for major modifications of major hazardous waste or solid waste permits except for those major modifications involving the proposed increase of an existing hazardous waste or solid waste facility's permitted capacity for storage, treatment or disposal (including incineration) by fifty percent (50%) or more,~~
- ~~c. applications for renewals of major air quality, hazardous waste, solid waste and water quality permits,~~
- ~~d. applications for new major water quality discharge permits for new discharges subject to the Oklahoma Pollutant Discharge Elimination System Act, Section 2-6-201 et seq. of Title 27A of the Oklahoma Statutes, and~~
- ~~e. applications for new major air quality permits for proposed and existing facilities.~~

SECTION 14. AMENDATORY Section 5, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-201), is amended to read as follows:

Section 2-14-201. A. The Board shall have the authority to promulgate rules to implement the Oklahoma Uniform Environmental Permitting Act for each tier which will to the greatest extent possible:

- 1. Enable applicants ~~for major permits~~ to follow a consistent application process;
- 2. Ensure that uniform public participation opportunities are offered ~~as part of the permitting procedure for major permits;~~
- 3. Provide for uniformity in notices required of ~~permit~~ applicants; and
- 4. Set forth procedural application requirements ~~for nonmajor permits.~~

B. Such rules shall:

1. ~~Identify the types of permits to be designated as major and nonmajor~~ Designate applications as Tier I, II or III. In making such determinations, the Board and each recommending Council shall consider information and data offered on:

- a. the significance of the potential impact of the type of activity on the environment,
- b. the amount, volume and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted or land applied,
- c. the degree of public concern traditionally connected with the type of activity,
- d. the federal classification, if any, for such proposed activity, operation or type of site or facility, and
- e. any other factors relevant to such determinations;

2. ~~Identify the types of modifications of major permits to be designated as major or minor, and classify the types of amendments of major permits.~~ For purposes of this section, the Board and each recommending Council shall ensure that such ~~modification and~~

~~amendment~~ designations are consistent with any analogous classifications, ~~if any,~~ set forth in applicable federal programs;.

C. Such rules shall for each tier:

~~3. 1. Set forth uniform procedures to be followed for filing a permit an application with the Department;~~

~~4. 2. Contain specific uniform requirements for each type of notice required pursuant to by the Oklahoma Uniform Environmental Permitting Act or rules promulgated thereunder;~~

~~5. Establish permitting processes for types of nonmajor permits and for types of major modifications and amendments of major permits; provided, however, that if notice and public participation opportunities are required, such requirements shall not exceed those set forth in Sections 8, 9 and 10 of this article for the tier unless required otherwise by applicable federal regulations promulgated as rules of the Board or a holding of the Oklahoma Supreme Court; and~~

~~6. Establish permitting processes for types of minor modifications of major permits; provided, however, if notice and public participation opportunities are required, such requirements shall not exceed those set forth in Sections 8, 9 and 10 of this article unless required otherwise by applicable federal regulations promulgated as rules of the Board.~~

3. Contain other provisions needed to implement and administer this article; and

4. Designate positions to which the Executive Director may delegate, in writing, the power and duty to issue, renew, amend, modify and deny permits.

~~C. D. Such rules shall be adopted by the Board by March 1, 1996, and shall in no way limit the ability of the Department to satisfy federal requirements for state program authorization or delegation.~~

SECTION 15. AMENDATORY Section 6, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-202), is amended to read as follows:

Section 2-14-202. A. The Department is hereby authorized to implement and enforce the provisions of the Oklahoma Uniform Environmental Permitting Act and rules promulgated thereunder.

B. In addition to authority under the Oklahoma Environmental Quality Code, the Department shall have the power and duty to:

1. ~~Review permit~~ Evaluate applications for administrative and technical completeness pursuant to requirements of the Code and rules promulgated thereunder, and, when necessary to determine such completeness, request changes, revisions, corrections, or supplemental submissions;

2. ~~Review~~ Evaluate notices related to ~~permit~~ applications for sufficiency of content and compliance and require that omissions or inaccuracies be cured;

3. ~~Review and consider~~ Consider timely and relevant comments received;

4. Prepare responses to comments, draft and final denials, and draft, proposed and final permits;

5. Cooperate with federal agencies as is required for federal review or oversight of state permitting programs;

6. ~~Enforce the provisions of the Oklahoma Uniform Environmental Permitting Act, rules promulgated thereunder, and permits and orders issued pursuant thereto~~ Consolidate processes related to multiple, pending applications filed by the same applicant for the same facility or site in accordance with rules of the Board; and

7. Otherwise exercise all incidental powers as necessary and proper to implement the provisions of the Oklahoma Uniform Environmental Permitting Act and rules promulgated thereunder.

SECTION 16. AMENDATORY Section 8, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-301), is amended to read as follows:

Section 2-14-301. A. Upon filing ~~an~~ a Tier II or III application ~~for a major permit~~ with the Department, the applicant shall publish notice of the filing as legal notice in one newspaper local to the proposed new site or existing facility. The publication shall:

~~1. Identify~~ identify locations where the application may be reviewed, including a location in the county where the proposed new site or existing facility is located.

~~2. Give notice of a sixty-day opportunity for interested persons to submit written comments on the permit request;~~

~~3. Include~~ B. For Tier III applications, the publication shall also include notice of a thirty-day opportunity to request, or give the date, time and place for, ~~an information~~ a process meeting on the permitting process. If the Department receives timely request and determines that a significant degree of public interest in the application exists, it shall schedule and hold such meeting. The applicant shall be entitled to attend the meeting and may make a brief presentation on the permit request. Any local community meeting to be held by the applicant on the proposed facility or activity for which a permit ~~or permit modification~~ is sought may, with the agreement of the Department and the applicant, be combined with the ~~information~~ process meeting authorized by this paragraph ~~and~~.

~~4. Provide any other notice required by law.~~

~~B. C.~~ The provisions of this section shall not stay the Department's review of the application.

SECTION 17. AMENDATORY Section 9, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-302), is amended to read as follows:

Section 2-14-302. A. Upon conclusion of its technical review of ~~an~~ a Tier II or III application ~~for a major permit or the major modification or renewal of a major permit~~ within the permitting timeframes established by rules promulgated by the Board, the Department shall prepare a draft denial or draft permit. ~~For applications subject to the provisions of Section 8 of this article, the Department's review shall also include any timely and relevant comments received during the public comment period.~~

1. Notice of a draft denial shall be given by the Department and notice of a draft permit shall be given by the applicant.

2. Notice of the draft denial or draft permit shall be published as legal notice in one newspaper local to the proposed new site or existing facility. The notice shall identify places where the draft denial or draft permit may be reviewed, including a location in the county where the proposed new site or existing facility is located, and shall provide for a set time period for public comment and for the opportunity to request a formal public meeting on the respective draft denial or draft permit. Such time period shall be set at thirty (30) days after the date the notice is published unless a longer time is required by federal regulations promulgated as rules by the Board. In lieu of the notice of opportunity to request a public meeting, notice of the date, time, and place of a public meeting may be given, if previously scheduled. ~~Additional notice shall be given as is required by rules of the Board promulgated pursuant to applicable federal programs.~~

B. Upon the publication of notice of a draft permit, the applicant shall make the draft permit and the application, except for proprietary provisions otherwise protected by law, available for public review at a location in the county where the proposed new site or existing facility is located.

SECTION 18. AMENDATORY Section 10, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-303), is amended to read as follows:

Section 2-14-303. The Department shall expeditiously schedule and hold a formal public meeting if the Department receives written timely request for such meeting, pursuant to the provisions of Section ~~9~~ 2-14-302 of this ~~article~~ title, and determines there is a significant degree of public interest in the draft denial or draft permit.

1. Notice of the meeting shall be given to the public at least thirty (30) days prior to the meeting date.

2. The public meeting shall be held at a location convenient to and near the proposed new site or existing facility not more than one hundred twenty (120) days after the date notice of the draft denial or draft permit was published.

3. At the meeting, any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements.

4. The public comment period shall automatically be extended to the close of the public meeting. Upon good cause shown, the presiding officer may extend the comment period further to a date certain by so stating at the meeting.

5. Such meeting shall not be a quasi-judicial proceeding.

6. The applicant or a representative of the applicant shall be present at the meeting to respond to questions.

SECTION 19. AMENDATORY Section 11, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-14-304), is amended to read as follows:

Section 2-14-304. A. ~~For draft permits or draft denials prepared in accordance with Section 9 of this article, and subsection D of this section when applicable, for Tier II applications on which no comment or public meeting request was timely received and on which no public meeting was held, the Executive Director shall, respectively, issue or deny the final permit shall be issued or denied.~~

B. ~~For draft permits or draft denials prepared in accordance with Section 9 of this article, and subsection D of this section when applicable, for Tier II applications on which comment or a public meeting request was timely received or on which a public meeting was held, the Department, upon consideration of after considering the comments, shall prepare a response to comments and tentatively determine whether issue the draft permit should be issued as is, as amended and issued, or denied or whether the draft make final denial should be made final.~~

~~1.~~ The response to comments shall be prepared within ninety (90) days after the close of the public comment period unless extended by the Executive Director upon a determination that additional time is required due to circumstances outside the control of the Department. Such circumstances may include, but shall not be limited to, an act of God, a substantial and unexpected increase in the number of applications filed, additional review duties imposed on the Department from an outside source, or outside review by a federal agency.

~~2. If the Department's tentative decision is to issue a permit and no opportunity for an administrative hearing on the permit is~~

~~provided by the Code, the Department shall prepare, and the Executive Director shall issue, the final permit.~~

~~3. If the Department's tentative decision is to issue a permit and an opportunity for an administrative hearing on the permit is provided by Sections 27, 28 or 29 of this act,~~

C. For a draft permit for a Tier III application, after the public comment period and the public meeting, if any, the Department shall prepare a response to comments and either issue a final denial in accordance with paragraph 2 of this subsection or prepare a proposed permit and.

1. When a proposed permit is prepared, the applicant shall publish notice, as legal notice in one newspaper local to the proposed new site or existing facility, of the Department's tentative decision to issue the permit. Such notice shall identify the places where the proposed permit and the Department's response to comments may be reviewed, including a location in the county where the proposed new site or existing facility is located and shall offer a twenty-day opportunity to request an administrative hearing to participate in as a party. The opportunity to request a hearing shall be available to: the applicant and

~~a. any person or qualified interest group:~~

~~(1) who has raised one or more issues about the proposed facility or activity during the public comment period or formal public meeting on the draft permit, and~~

~~(2) who claims to hold a demonstrable environmental interest and who alleges that the construction or operation of the proposed facility or activity would directly and adversely affect such interest; and~~

~~b. any applicant who has raised one or more issues about the draft permit in the comment period or formal public meeting.~~

If no written administrative hearing request is received by the Department by the end of twenty (20) days after the publication date of the notice, the ~~Executive Director shall issue the final permit shall be issued.~~

~~4. 2. If the Department's final decision is to deny the permit, it shall give notice to the applicant and issue a final denial in accordance with subsection F of this section.~~

~~C. D.~~ When an administrative hearing is timely requested on a proposed permit in accordance with subsection B C of this section, all timely requests shall be combined in a single hearing. The hearing shall be a quasi-judicial proceeding and shall be conducted by an Administrative Law Judge in accordance with the Administrative Procedures Act, the Code and rules promulgated by the Environmental Quality Board.

1. The applicant shall be a party to the hearing.

2. The Department shall schedule a prehearing conference within sixty (60) days after the end of the hearing request period.

3. 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 proposed permit and the technical data, models and analyses, and information in the application upon which the proposed permit is based are in substantial compliance with applicable provisions of the Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

4. Failure of any party to participate in the administrative proceeding with good faith and diligence may result in a default

judgment with regard to that party; provided however, that no final permit shall be issued solely on the basis of any such judgment.

~~D.~~ E. If the Department decides to reverse its initial draft decision, it shall withdraw the draft denial or draft permit and prepare a draft permit or draft denial, as appropriate. Notice of the withdrawal of the original draft and preparation of the revised draft shall be given as provided in Section ~~9~~ 2-14-302 of this ~~article title~~. The Department shall then re-open the comment period and provide additional opportunity for a formal public meeting on the revised draft as described in Section ~~10~~ 2-14-303 of this ~~article title~~.

~~E.~~ F. Upon final issuance or denial of a permit for a Tier III application, the Department shall provide public notice of the final permit decision and the availability of the response to comments, if any. ~~Additional notice of the Department's permitting decisions shall be given as is required by rules of the Board promulgated pursuant to applicable federal program permitting requirements.~~

~~F.~~ G. Any appeal of a final permit decision or any final order connected therewith shall be made in accordance with the provisions of the Code, and the Administrative Procedures Act ~~and rules promulgated thereunder~~.

H. Any applicant, within ten (10) days after final denial of the application for a new original permit on which no final order was issued, may petition the Department for reconsideration on the grounds stated in subsection A of Section 317 of Title 75 of the Oklahoma Statutes as if the denial was an order. Disposition of the petition shall be by order of the Executive Director according to subsections B and D of Section 317 of Title 75 of the Oklahoma Statutes.

SECTION 20. AMENDATORY 68 O.S. 1991, Section 1359, as last amended by Section 16, Chapter 278, O.S.L. 1994 (68 O.S. Supp. 1994, Section 1359), is amended to read as follows:

Section 1359. Exemptions - Manufacturers.

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

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

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

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

4. Sales of containers when sold to a person regularly engaged in the business of reselling empty or filled containers or when

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

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

6. Sale of tangible personal property when sold by the manufacturer to a person who transports it to a state other than Oklahoma for immediate and exclusive use in a state other than Oklahoma. Provided, no sales at a retail outlet shall qualify for the exemption under this paragraph;

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

8. Sales of tangible personal property to a qualified manufacturer to be consumed or incorporated in a new manufacturing facility or to expand an existing manufacturing facility. For purposes of this subsection, sales made to a contractor or subcontractor that has previously entered into a contractual relationship with a qualified manufacturer for construction or expansion of a manufacturing facility shall be considered sales made to a qualified manufacturer. For the purposes of this subsection, "qualified manufacturer" means any enterprise whose total cost of construction material for a new or expanded facility exceeds the sum of Five Million Dollars (\$5,000,000.00) and in which at least one hundred (100) new full-time-equivalent employees, as certified by the Employment Security Commission, are added and maintained for a period of at least thirty-six (36) months as a direct result of the new or expanded facility. Provided however, where the total cost of construction material for a new or expanded facility exceeds Ten Million Dollars (\$10,000,000.00) and the combined cost of construction material, machinery, equipment and other tangible personal property exempt from sales tax under the provisions of this subsection exceeds the sum of Fifty Million Dollars (\$50,000,000.00) the required number of new full-time-equivalent employees under this subsection shall be reduced to seventy-five (75) new employees. The employment requirement of this subsection can be satisfied by the employment of a portion of the required number of new full-time-

equivalent employees at a manufacturing facility that is related to or supported by the new or expanded manufacturing facility so long as both facilities are owned by one person or business entity. For purposes of this section "manufacturing facility" shall mean building and land improvements used in manufacturing as defined by the Standard Industrial Classification Code and shall also mean building and land improvements used for the purpose of packing, repackaging, labeling or assembling for distribution to market, products at least seventy percent (70%) of which are made in Oklahoma by the same company but at an off-site in-state manufacturing facility or facilities. It shall not include a retail outlet unless said retail outlet is operated in conjunction with and on the same site or premises as the manufacturing facility. Up to ten percent (10%) of the square feet of a manufacturing facility building may be devoted to office space used to provide clerical support for the manufacturing operation. Such ten percent (10%) may be in a separate building as long as it is part of the same contiguous tract of property on which the manufacturing facility is located. Only sales of tangible personal property made after June 1, 1988, shall be eligible for the exemption provided by this subsection;

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

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

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

12. Sales of any pattern used in the process of manufacturing iron, steel or other metal castings. The exemption provided by this subsection shall be applicable irrespective of ownership of the pattern provided that such pattern is used in the commercial production of metal castings; and

13. Deposits or other charges made and which are subsequently refunded for returnable cartons, crates, pallets, and containers used to transport cement and cement products.

SECTION 21. AMENDATORY 63 O.S. 1991, Section 1-215, as amended by Section 306, Chapter 145, O.S.L. 1993 (63 O.S. Supp. 1994, Section 1-215), is amended to read as follows:

Section 1-215. A. The director of the city-county health department shall direct and supervise all public health activities in the county, except in incorporated cities and towns which are not governed by the provisions of Sections 210 to 218 of this article, and which have not entered into any agreement for the operation of the health department of such city or town. Such director shall administer and enforce all municipal and county ordinances and rules relating to public health matters, and he shall also administer state laws, and rules of the State Board of Health pertaining to public health, subject to administrative supervision of the State Commissioner of Health. Such director shall also administer such state laws and rules of the Department of Environmental Quality as determined by, and subject to the supervision of, the Executive Director of the Department of Environmental Quality. Any other powers, authority, duties or functions which are now or may hereafter be conferred by law on county or city superintendents of public health are hereby conferred on such director of the city-county health department.

B. The director of the city-county health department is authorized to perform such environmental services, under the ~~supervision~~ direction of the Executive Director of the Department of Environmental Quality, as may be mutually agreed upon, to implement the provisions of the Oklahoma Environmental Quality Code. The director of the city-county health department shall agree to continue to perform such environmental services as were provided during fiscal year 1993 and shall not disproportionately reduce the level of support. The Department of Environmental Quality shall enter into agreements for this work with those city-county health departments that successfully perform such environmental services. Employees performing such environmental services shall participate fully in the training and standardization programs of the Department of Environmental Quality, shall utilize procedures at least as stringent as the statewide standard procedures, and shall respond to complaints in the same manner as the Department of Environmental Quality employees. Employees who supervise such environmental services shall be jointly selected by the directors of the city-county health department and the Department of Environmental Quality. Employees desiring to transfer to similar positions in the other agency shall receive priority consideration and shall be exempt from any examination or other employment requirements for new state or local employees. As Department of Environmental Quality programs expand, the Department of Environmental Quality may, pursuant to a contract, assign employees to the city-county health departments. Any new initiatives mandated of city-county health departments by the Department of Environmental Quality will be funded by the Department of Environmental Quality.

C. A board or director of a city-county health department, in any county with a population of more than two hundred twenty-five thousand (225,000) according to the latest Federal Decennial Census, may notify the Department of Environmental Quality that 180 days after receipt of notice it will cease to provide or to fund one or more environmental services such that its fiscal year 1993 level of effort is not maintained. Such notice shall identify the recipients of the services and the associated funding. After providing such

notice, the Environmental Quality Board shall by emergency and permanent rules promulgate specific fee schedules requiring the Department of Environmental Quality to charge such fees to cover the lost funding essential to providing such environmental services in such jurisdictional area.

D. If during any fiscal year a board or director of a city-county health department, in any county with a population of more than two hundred twenty-five thousand (225,000) according to the latest Federal Decennial Census, fails to contract for, fails to provide or elects to stop providing any environmental services such that its fiscal year 1993 level of effort is not maintained, the Department of Environmental Quality, with written notice to the board of the city-county health department, may assume the duty of providing the services. Said notice shall request the identification of recipients of the services. Within one hundred eighty (180) days after such identification is received, the Environmental Quality Board shall promulgate rules setting fee schedules therefor and requiring the Department of Environmental Quality to charge fees essential to providing such services. Upon such cessation, to recover the lost funding, the appropriate proportion of funds, used by the city-county board of health to support those environmental services in fiscal year 1993 shall be paid, upon invoice at the end of the fiscal year, to the Department of Environmental Quality Revolving Fund for the period of time between the cessation of service and the effective date of the rules.

SECTION 22. AMENDATORY 82 O.S. 1991, Section 926.9, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 9, Chapter 324, O.S.L. 1993 (27A O.S. Supp. 1994, Section 2-3-501), 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 or permitting 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. Peace officers who become employed under this section who have service credit in the Oklahoma Law Enforcement Retirement System may, within thirty (30) days after becoming employed, elect to continue membership in the Oklahoma Law Enforcement Retirement System; otherwise they shall be eligible to enroll only in the Oklahoma Public Employees Retirement System.

SECTION 23. AMENDATORY 17 O.S. 1991, Section 354, as amended by Section 19, Chapter 344, O.S.L. 1993 (17 O.S. Supp. 1994, 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 State Highway Construction and Maintenance Fund pursuant to paragraph 2 of subsection C of this section;

3. The Corporation Commission pursuant to paragraph 2 of subsection C of this section; and

4. The Environmental Trust Revolving 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 2 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 shall be deposited in the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund

created in Section 353 of this title in amounts necessary to maintain the maintenance level of the Indemnity Fund pursuant to subsection D of this section;

2. ~~a.~~ Revenue Except as otherwise provided in subsection D of this section, revenue from the assessment shall be deposited as follows:
  - a. the first One Million Dollars (\$1,000,000.00) collected during each fiscal year shall be earmarked for appropriation to the Corporation Commission in such amount to be used solely for regulatory activities associated with the exploration and production of oil and gas,
  - b. the second One Million Dollars (\$1,000,000.00) collected during each fiscal year shall be deposited in the Environmental Trust Revolving Fund created in Section 2-3-403 of Title 27A of the Oklahoma Statutes, to be used solely for the cleanup of abandoned oil and gas processing and refining sites, and
  - c. the balance of the monies collected during each fiscal year shall be deposited in the State Transportation Fund ~~except as otherwise provided in subsection D of this section;~~ and
- ~~b.~~ Revenue from the assessment imposed by subsection A of this section which is deposited in 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 required maintenance level on or before December 31, 1999, the 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 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 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 for appropriation to the Corporation Commission, and in the Environmental Trust Revolving Fund and the State Transportation Fund as provided in subsection C of this section.

SECTION 24. A. Of the One Million Dollars (\$1,000,000.00) earmarked for the Corporation Commission by subparagraph a of paragraph 2 of subsection C of Section 23 of this act, the first Two Hundred Thousand Dollars (\$200,000.00) shall be used for the purpose of funding the career ladder system for various positions in the Conservation Division as set forth in the provisions of Section 149 of Title 52 of the Oklahoma Statutes.

B. The Corporation Commissioners and Corporation Commission are hereby directed to promulgate rules to implement the provisions of Section 340 of Title 17 of the Oklahoma Statutes. Implementation of said section should be done with the advice and recommendations of the Storage Tank Advisory Council and should be accomplished in a manner comparable to the implementation of advisory councils for the Department of Environmental Quality as originally intended by the Oklahoma Legislature.

SECTION 25. A. On or before November 15, 1996, the Department of Environmental Quality is hereby authorized to purchase, upon legislative authority, a renovated real property with funds in the "Department of Environmental Quality Revolving Fund". Purchase of the real property shall not exceed Three Million Two Hundred Thousand Dollars (\$3,200,000.00). The real property shall consist of sufficient square footage to accommodate staff offices, staff conference areas, records and computer areas, general storage areas, laboratory areas and other necessary areas for the operation of the Department of Environmental Quality. Said purchase must also include sufficient parking areas and spaces to accommodate Department employees, public or visitor spaces, with a permanent easement for access to adjoining streets, and also must include adequate covenants and restrictions as to common walls, common utilities or other shared space. The projected cost of operating and maintaining the real property during the first year shall not exceed the cost of operations and maintenance of current offices incurred by and for the Department of Environmental Quality in fiscal year 1994.

B. The Department of Environmental Quality, in the acquisition of title to the real property by purchase, shall conduct all necessary bid and contract procedures. Such procedures shall be conducted in accordance with all applicable state rules and law, including the Central Purchasing Act and Title 61 of the Oklahoma Statutes.

SECTION 26. REPEALER Section 29, Chapter 373, O.S.L. 1994, and Section 7, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Sections 2-6-205.2 and 2-14-203), are hereby repealed.

SECTION 27. REPEALER 17 O.S. 1991, Section 354, as amended by Section 34, Chapter 324, O.S.L. 1993 (17 O.S. Supp. 1994, Section 354), is hereby repealed.

SECTION 28. The provisions of Sections 24 and 25 of this act shall not be codified in the Oklahoma Statutes.

SECTION 29. Sections 1, 3, 5, 6, 9, 11, 12, 13, 14, 20, 21, 22, 23, 24, 25, 26 and 27 of this act shall become effective July 1, 1995.

SECTION 30. Sections 2, 4, 7, 8, 10, 15, 16, 17, 18 and 19 of this act shall become effective July 1, 1996.

SECTION 31. 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 17th day of May, 1995.

President of the Senate

Passed the House of Representatives the 18th day of May, 1995.

Speaker of the House of Representatives