

SHORT TITLE: Environment and Natural Resources; modifying the
Uniform Environmental Permit Act; emergency.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 247

By: Easley of the Senate

and

Rice of the House

AS INTRODUCED

An Act relating to environment and natural resources; 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 24, Chapter 373, O.S.L. 1994, Section 1, Chapter 128, O.S.L. 1993, Section 28, Chapter 373, O.S.L. 1994, 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, and Section 11, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Sections 2-3-201, 2-5-112, 2-7-111, 2-7-113.1, 2-7-116, 2-7-118, 2-10-301.1, 2-10-303.1, 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; 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; 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 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 22, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-7-118), which is a duplicate section and which relates to hazardous waste 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; providing an effective date;
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 or her 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 or her 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 ~~2-7-113~~ 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 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 shall be subject to public review and comment as part of the permit application pursuant to ~~Section 2-7-113~~ the Oklahoma Uniform Environmental Permitting Act, Section 2-14-101 et seq. of this title prior to final approval or disapproval by the Department. Upon submittal of the proposed plan to the Department, the applicant shall be required to mail a copy of said plan to the affected property owners and shall promptly thereafter certify to the Department that such mailing has been made. If a permit is issued, the permittee shall send the final plan by first-class mail to the last-known address of all affected property owners.
- c. An emergency and release response plan for a new or existing facility, located or to be located within the city limits or within the emergency response area of any incorporated city or town, which proposes to begin receiving hazardous waste from off-site shall not be approved by the Department until at least sixty (60) days after the city or town has been served with a copy of the plan by the applicant. During said sixty-day period the city or town shall have the opportunity to review the plan and comment to the Department upon the ability of the city to comply with any item in the plan requiring the participation of or assistance by

the city or town or any departments or agencies thereof.

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

- a. the request for variance, and a detailed rationale, shall be included in the permit application,
- b. the Department shall receive and consider comments on the appropriateness of the proposed variance at any formal public meeting or administrative permit hearing conducted on the draft permit or proposed permit pursuant to the provisions of ~~Section 2-7-113~~ the Oklahoma Uniform Environmental Permitting Act, Section 2-14-101 et seq. of this title,
- c. the applicant shall bear the burden of establishing clearly and convincingly to the Department that the design, construction and operation of the proposed facility will be such that the risk of a release of hazardous waste or hazardous waste constituents directly or indirectly to groundwater is minimal, and
- d. the permit application shall provide for the establishment and maintenance of a bond or other financial assurance as described and for the purposes specified in subsection B of this section.

D. The provisions of this section shall apply to:

1. Applications for future proposed sites;
2. Pending applications for new hazardous waste permits; and
3. Applications for 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 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 ~~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 hazardous waste permit application for a new ~~major~~ permit and 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 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~~ E of Section ~~2-7-113~~ 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 24, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Section 2-7-118), is amended to read as follows:

Section 2-7-118. A. Facilities that recycle hazardous waste shall be exempt from subsection C of Section 2-7-113 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 hazardous waste which has a heating value of less than
five thousand (5,000) British Thermal Units per pound when blended
with other materials or wastes to produce a hazardous waste fuel
with a heating value equal to or exceeding five thousand (5,000)
British Thermal Units per pound shall be burned as fuel in any unit
in this state permitted as a hazardous waste recycling unit.

SECTION 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 incineration).

SECTION 9. 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 applicable public comment, public meeting and administrative hearing requirements as set forth in Section 2-10-303 the Oklahoma Uniform Environmental Permitting Act, Section 2-14-101 et seq. of Title 27A of the Oklahoma Statutes this title, 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 10. 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 authorizations issued by the Department of Environmental Quality and ~~to provide for procedures relating to the processing of applications for nonmajor permits.~~

SECTION 11. 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 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 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, amendment or renewal of the ~~major~~ permit;

4. "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. "Permit" includes specific types of permits and other Department authorizations including certifications, registrations, licenses and plan approvals, and the

renewal, modification or amendment thereof. "Permit" includes an approved variance from a promulgated rule; however, a request for a variance at an existing facility shall not be processed at a lesser tier than required of the underlying permit for the facility and the Department may require additional notice and public participation opportunities for variances posing increased environmental risk;

5. "Information "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 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 designated technical supervisor of the reviewing Division or local representative of the Department;

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 a designated technical supervisor and the Director of the reviewing Division; 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 and the Division Director and a designated technical supervisor of the reviewing Division.

SECTION 12. 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 opportunity 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

~~e. 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 13. 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. Delegate the Executive Director's 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 14. 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 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 15. 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 16. 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 17. 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 18. 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 the Department shall 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.

~~6.~~ D. When an administrative hearing is timely requested on a proposed permit in accordance with subsection B 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. 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.

~~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.~~

SECTION 19. REPEALER Section 29, 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 22, Chapter 353, O.S.L. 1994, and Section 7, Chapter 373, O.S.L. 1994 (27A O.S. Supp. 1994, Sections 2-6-205.2, 2-7-118 and 2-14-203), are hereby repealed.

SECTION 20. Sections 1 through 18 of this act shall become effective July 1, 1996.

SECTION 21. 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.

45-1-0171

MJM