

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1270

By: Crutchfield of the Senate

and

Pope of the House

COMMITTEE SUBSTITUTE

[agriculture - Oklahoma Agriculture Pollutant
Discharge Elimination System Act - corrective
action - codification - effective date -
emergency]

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

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

A. Sections 1 through 10 of this act shall be known and may be
cited as the "Oklahoma Agriculture Pollutant Discharge Elimination
System Act".

B. The purpose of the Oklahoma Agriculture Pollutant Discharge
Elimination System Act is to implement:

1. The federal National Pollutant Discharge Elimination System
requirements;

2. Assist the Oklahoma Department of Agriculture, Food, and
Forestry in obtaining delegation of the federal Clean Water Act
programs; and

3. Issue permits to the persons or organizations owning or
operating facilities regulated within its areas of environmental
jurisdiction.

C. The provisions contained in the Oklahoma Agriculture Pollutant Discharge Elimination System Act shall only apply to those programs established pursuant to the environmental jurisdiction of the Department as stated in Section 1-3-101 of Title 27A of the Oklahoma Statutes, and shall include but not be limited to the Oklahoma Licensed Managed Feeding Operations Act and the Oklahoma Concentrated Animal Feeding Operations Act programs.

D. Water programs are hereby established which shall be responsible for water quality, including, but not limited to, point source and nonpoint source pollution within the environmental jurisdiction of the Department, water protection, and discharges to waters of the state.

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

As used in the Oklahoma Agriculture Pollutant Discharge Elimination System Act:

1. "Administrative hearing" means a quasi-judicial and an individual proceeding, held by the Department when authorized by the provisions of the Oklahoma Agricultural Code and conducted pursuant to:

- a. the Administrative Procedures Act;
- b. the Oklahoma Agricultural Code, and
- c. rules promulgated thereunder.

The term "administrative hearing" shall include "administrative permit hearing", "enforcement hearing" and "administrative enforcement hearing";

2. "Administrative Procedures Act" means the Administrative Procedures Act of this state;

3. "AgPDES" means Agriculture Pollutant Discharge Elimination System;

4. "Board" means the State Board of Agriculture;

5. "Department" means the Oklahoma Department of Agriculture, Food, and Forestry;

6. "Director" means the individual appointed by the Commissioner to perform the duties identified in Section 2A-5 of Title 2 of the Oklahoma Statutes;

7. "Discharge" includes but is not limited to a discharge of a pollutant or pollutants, and means any addition of any pollutant to waters of the state from any point source regulated by the Department within its areas of environmental jurisdiction;

8. "Disposal system" means pipelines or conduits, pumping stations and force mains and all other devices, construction, appurtenances and facilities used for collecting, conducting or disposing of wastewater, including treatment systems;

9. "Drainage basin" means all of the water collection area adjacent to the highest water line of a reservoir which may be considered by the Department to be necessary to protect adequately the waters of the reservoir. The Department may extend a drainage basin upstream on any watercourse to any point within six hundred (600) feet of the highest water line of the reservoir;

10. "Effluent limitation" means any established restriction imposed by the Department on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into waters of the state, including schedules of compliance;

11. "Enforcement hearing" means a quasi-judicial individual proceeding conducted pursuant to the Administrative Procedures Act, the Agricultural Code and rules promulgated thereunder, for the purpose of enforcing the provisions of the Agricultural Code, rules promulgated thereunder and orders, permits, or licenses issued pursuant thereto;

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

13. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined and includes, but is not limited to, agricultural storm water runoff and return flows from irrigated agriculture;

14. "Organization" means a legal entity, other than a government, established or organized for any purpose. The term "organization" includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other legal entity;

15. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal feeding operation, from which pollutants or wastes are or may be discharged. The term "point source" shall not include agricultural storm water discharges and return flows from irrigated agriculture;

16. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into waters of the state;

17. "Pollution" means the presence in the environment of any of the following:

- a. substance, contaminant or pollutant,
- b. any other alteration of the physical, chemical or biological properties of the environment,
- c. the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance, or

- d. the release of any liquid, gaseous or solid substance into the environment in quantities which render or will likely render the environment harmful, detrimental, or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property.

18. "Formal public meeting" means a formal public forum, held by the Department when authorized by the provisions of the Agricultural Code, and conducted by a presiding officer pursuant to the requirements of the Agricultural Code and rules promulgated thereunder, at which an opportunity is provided for the presentation of oral and written views within reasonable time limits as determined by the presiding officer. Public meeting shall mean a "public hearing" when held pursuant to requirements of the Code of Federal Regulations or the Oklahoma Agriculture Pollutant Discharge Elimination System Act. A public meeting shall not be a quasi-judicial proceeding;

19. "Schedule of compliance" means a schedule of remedial measures including but not limited to an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard;

20. "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

21. "Storm water" means rainwater runoff, snow melt runoff, and surface runoff and drainage;

22. "Treatment works" means any facility used for the purpose of treating or stabilizing waste or waste water; and

23. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds and lagoons designed to meet federal and state requirements other than cooling ponds as defined in the federal Clean Water Act or rules promulgated pursuant thereto are not waters of the state.

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

A. The State Board of Agriculture shall have the power and duty to promulgate rules implementing and effectuating the Oklahoma Agriculture Pollutant Discharge Elimination System Act. The rules may incorporate by reference any applicable rules, regulations, and policies of the United States Environmental Protection Agency adopted under the federal Clean Water Act. Any rules shall be in reasonable accord with the United States Environmental Protection Agency regulations and policies, including but not limited to rules that:

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

2. Apply applicable national standards of performance promulgated pursuant to Section 306 of the federal Clean Water Act in establishing terms and conditions of Director-issued permits;

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

4. Ensure that the public and any other state, the waters of which may be affected, receive notice of each application for a discharge permit;

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

6. Establish a fee schedule to implement the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act; and

7. Establish management standards for sludge which are no less stringent than applicable federal regulations and establish procedures and requirements necessary to ensure compliance with applicable federal laws.

B. The Department shall have authority to:

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

2. Take all actions that may be necessary or incidental to implement and maintain a pollutant discharge permit program and sludge program, including the authority to assume and obtain authorization to implement and maintain a portion of the National Pollutant Discharge Elimination System state permit program and a state sludge program pursuant to Section 402 and other provisions of the federal Clean Water Act and other applicable federal law. The Director shall issue permits for the discharge of pollutants and storm water from facilities and activities within its areas of environmental jurisdiction specified in Section 1-3-101 of Title 27A of the Oklahoma Statutes;

3. Take necessary and appropriate actions to revoke and reissue, modify, suspend, place on probation, or otherwise administer and enforce discharge permits and sludge permits issued by the United States Environmental Protection Agency which are transferred to the Department upon federal authorization of the Department's Agriculture Pollutant Discharge Elimination System program; and

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-4 of Title 2, unless there is created a duplication in numbering, reads as follows:

Any employee of the Oklahoma Department of Agriculture, Food, and Forestry in a technical, supervisory or administrative position relating to the review, issuance, or enforcement of permits pursuant to the Oklahoma Agricultural Code who is an owner, stockholder, employee or officer of, or who receives compensation from, any

corporation, partnership, or other business or entity which is subject to regulation by the Department shall disclose the interest to the Commissioner. Disclosures shall be submitted for Board review and shall be made a part of the Board minutes available to the public. This section shall not apply to financial interests occurring by reason of an employee's participation in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-5 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner of Agriculture shall appoint the Director of AgPDES Administration. The Director of the Agriculture Pollutant Discharge Elimination System shall serve at the pleasure of the Commissioner.

B. The Director of the Agriculture Pollutant Discharge Elimination System shall have experience in agriculture, forestry, conservation, environmental sciences, or other areas as may be required by the Commissioner.

C. The Director of the Agriculture Pollutant Discharge Elimination System 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 and, with regard to the exercise of powers and duties associated with the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall meet all requirements of Section 304 of the federal Clean Water Act and applicable federal regulations promulgated thereunder by the United States Environmental Protection Agency regarding conflict of interest.

D. 1. The Director of the Agriculture Pollutant Discharge Elimination System shall have the power and duty to:

- a. issue, deny, modify, amend, renew, refuse to renew, suspend, place on probation, reinstate or revoke licenses or permits pursuant to the provisions of the Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture, and
- b. issue final orders and assess administrative penalties according to the Administrative Procedures Act, the Agricultural 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 Director and may not be delegated to other employees of the Department except as specifically provided in the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

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

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

5. Any designee exercising the powers and duties of the Director as authorized or on a temporary, acting, or interim basis shall meet the requirements of subsection C of this section for the Director.

6. All references in the Agricultural 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 Director or authorized designee.

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

A. It shall be unlawful for any facility, activity, or entity regulated by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to its environmental jurisdiction to discharge any pollutant into waters of the state or elsewhere without first obtaining a permit from the Director.

B. Pollutant discharge permits issued by the Director of the Agriculture Pollutant Discharge Elimination System may include schedules of compliance and conditions as the Director may prescribe that:

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

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

3. Require compliance with national standards of performance and toxicity;

4. Set limitations or prohibitions designed to prohibit the discharge of pollutants;

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

6. Set terms and conditions for sludge and land application of wastewater and for impoundments in accordance with rules promulgated by the Board; and

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

B. The Director shall:

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

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

3. Have the authority to require conditions in permits issued to facilities subject to the Department's environmental jurisdiction requiring the permittee to give notice to the Department of:

a. new introductions into the treatment works of pollutants at a regulated facility from any source which would be a new source as defined in Section 306 of the federal Clean Water Act,

b. pollutants being introduced from a source which would be a point source subject to Section 301 of the federal Clean Water Act if it were discharging directly to waters of the state, a substantial change in volume or character of pollutants being introduced into the treatment works by a source introducing pollutants into the works at the time of issuance of the permit, or

c. other conditions as may be required under the federal Clean Water Act or state law.

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

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

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

- a. violation of any condition of the permit, including but not limited to conditions related to monitoring requirements, entry, and inspections,
- b. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts, or
- c. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

7. Have all necessary authority to implement and enforce Department programs and requirements established by the Board in duly promulgated rules;

8. Have all necessary or incidental authority to investigate and abate violations of permits issued by the Director, violations of administrative orders, violations of duly promulgated rules, and violations of the Oklahoma Agriculture Pollutant Discharge Elimination System Act; and

9. Have all necessary and incidental authority to apply sanctions through administrative proceedings for violations, including but not limited to violations of requirements to obtain permits, terms, and conditions of permits, effluent standards and limitations and water quality standards, and violations of requirements for recording, reporting, monitoring, entry, inspection, and sampling.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-7 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee, or agent of the Oklahoma Department of Agriculture, Food, and Forestry to enter and inspect the facility in accordance with the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act.

B. Authorized employees or representatives, upon presentation of credential and a proper warrant if necessary, shall have:

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

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

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

4. Access for the purpose of inspecting and sampling any effluent streams or any discharge of pollutants to waters of the state or for inspection and sampling of any sludge source, storage, beneficial use, reuse, or disposal site.

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

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

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

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

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

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

E. Any records, reports, or information obtained pursuant to this section shall be available to the public, except that upon submission of sufficient evidence showing that records, reports, or information, or particular parts thereof, other than effluent data, if made public would divulge methods or processes entitled to protection as trade secrets of that person, the record, report, or information, or particular portion thereof shall be considered confidential in accordance with the purposes of the federal Uniform Trade Secrets Act. Nothing in this subsection shall prohibit the Department or an authorized representative of the Department, including, but not limited to, any authorized contractor, from disclosing records, reports, or information to other officers, employees, or authorized representatives of the State of Oklahoma or the United States concerned with carrying out provisions of state or federal law under their respective jurisdictions or within their respective authorities.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-8 of Title 2, unless there is created a duplication in numbering, reads as follows:

The State Board of Agriculture shall promulgate rules which prescribe permit requirements applicable to discharges composed entirely of storm water. The rules may require permits on a case-by-case basis, exempt categories of discharges, or provide a schedule for obtaining the permit; provided, however, that no later than the date that the Department is to receive authorization to administer a state National Pollutant Discharge Elimination Systems program, the Board shall have promulgated rules for storm water discharges which comply with Environmental Protection Agency requirements for approval of the state National Pollutant Discharge Elimination Systems program.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-9 of Title 2, unless there is created a duplication in numbering, reads as follows:

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

B. The Oklahoma Agriculture Pollutant Discharge Elimination System Act shall not in any way impair or in any way affect a person's right to recover damages for pollution in a court of

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

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

D. 1. A copy of any order issued pursuant to this section shall be sent immediately to the violator. In any case in which an order or notice to a violator is issued to a corporation, a copy of the order shall be served on any appropriate corporate officers or corporate service agents.

2. Any order issued pursuant to this section shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation and maintenance requirement and not to exceed a reasonable time in

the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order or notice issued by the Director may be served in any manner allowed by Oklahoma Rules of Civil Procedure applicable to a civil summons.

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

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

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

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

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

G. 1. Any person who:

- a. negligently violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any order issued by the Director hereunder, or any permit condition or limitation in a permit issued pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or

- b. negligently introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes the treatment works to violate any effluent limitation or condition in a permit issued to the treatment works pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act,

shall be punished by a fine of not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Twenty-five Thousand Dollars (\$25,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year, or by both. If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be a fine of not more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the State Penitentiary for not more than two (2) years, or by both.

2. Any person who:

- a. knowingly violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any order issued by the Director hereunder, or any permit condition or limitation in a permit issued pursuant to this act, or
- b. knowingly introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local

requirements or permits, which causes the treatment works to violate any effluent limitation or condition in a permit issued to the treatment works pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act,

shall be punished by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year or in the State Penitentiary for not more than three (3) years, or by both. If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be a fine of not more than One Hundred Thousand Dollars (\$100,000.00) per day of violation, or by imprisonment in the State Penitentiary for not more than six (6) years, or by both.

3. a. Any person who knowingly violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System Act, or any permit condition or limitation in a permit issued hereunder by the Director, and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or by imprisonment in the State Penitentiary for not more than fifteen (15) years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than One Million Dollars (\$1,000,000.00). If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, the maximum punishment

shall be doubled with respect to both fine and imprisonment.

b. For the purpose of subparagraph a of this paragraph:

- (1) in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury, a person shall be responsible only for actual awareness or actual belief that he or she possessed, and knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant; provided, however, that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information, and
- (2) it is an affirmative defense to prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, business, profession, or of a medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person had been made aware of the risks involved prior to giving consent, and this defense may be established under this subparagraph by a preponderance of the evidence.

4. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the

Oklahoma Agriculture Pollutant Discharge Elimination System Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this act, shall upon conviction be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for not more than two (2) years, or by both. If a conviction of a person is for a violation committed after a first conviction of that person under this paragraph, punishment shall be by a fine of not more than Twenty Thousand Dollars (\$20,000.00) per day of violation, or by imprisonment for not more than four (4) years, or by both.

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

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

this subsection shall be construed to limit or prohibit any other authority the Department may have under this section.

I. 1. Any person against whom an administrative compliance or penalty order is issued under this section may obtain review of the order by filing a petition for review in district court pursuant to the Administrative Procedures Act. The court shall not set aside or remand the order unless there is not substantial evidence in the administrative record, taken as a whole, to support the finding of a violation or unless the assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the assessment of the penalty constitutes an abuse of discretion. No stay of an administrative penalty order shall be granted until the amount of penalty assessed has been deposited with the reviewing district court pending resolution of the petition for review.

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

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

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

3. Any person who fails to pay on a timely basis the amount of an assessment of an administrative or civil penalty shall be required to pay, in addition to the amount and interest, attorneys fees and costs for collection proceeding and quarterly nonpayment

penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of the person's penalties and nonpayment penalties which are unpaid as of the beginning of the quarter.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-10 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. For permits or other authorizations required pursuant to the Oklahoma Agricultural Code, applicants shall file applications in the form and manner established by the Oklahoma Department of Agriculture, Food, and Forestry. The Department shall review the applications as filed and subsequently amended or supplemented. Any permit issued or authorization granted may include conditions.

B. Permits and other authorizations required pursuant to the Oklahoma Agriculture Pollutant Discharge Elimination System Act may contain provisions requiring that operations shall be in compliance with municipal and other local government ordinances, rules, and requirements. A determination or certification that the operations under the requested permit or authorization conform or comply with those ordinances, rules, or requirements, the enforcement of which are not within the jurisdiction or authority of the Department, shall not be considered by the Department in its review and approval or denial of a permit or authorization.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-21 of Title 2, unless there is created a duplication in numbering, reads as follows:

Sections 11 through 20 of this act shall be known and may be cited as the "Oklahoma Agriculture Environmental Permitting Act".

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-22 of Title 2, unless there is created a duplication in numbering, reads as follows:

For the purposes of the Oklahoma Agriculture Environmental Permitting Act:

1. "Application" means a document or set of documents, filed with the Oklahoma Department of Agriculture, Food, and Forestry for the purpose of receiving a permit or the modification, amendment, or renewal thereof from the Department. The term includes any subsequent additions, revisions, or modifications submitted to the Department that supplement, correct, or amend a pending application;

2. "Draft permit" means a draft document prepared by the Department after it has found a Tier II or III application for a permit to be administratively and technically complete and that the application may warrant the issuance, modification, or renewal of the permit;

3. "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 State Board of Agriculture. The term 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;

4. "Process meeting" means a meeting open to the public which is held by the Department to explain the permitting process and the public participation opportunities applicable to a specific Tier III application;

5. "Proposed permit" means a document, based on a draft permit and prepared by the Department after consideration of comments received on the draft permit, that indicates the Department's

decision to issue a final permit pending the outcome of an administrative permit hearing, if any;

6. "Qualified interest group" means any organization with 25 or more members who are Oklahoma residents;

7. "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 which:

- a. specifies any provisions of the draft permit that were changed in the proposed or final permit and the reasons for the 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;

8. "Tier I" means a basic process of permitting that 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 the authority has been delegated thereto by the Director;

9. "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 the authority has been delegated thereto by the Director; and

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

- a. (1) the Tier II process except the notice of filing shall also include an opportunity for a process meeting,
- (2) preparation of the Department's response to comments, and
- (3) denial of application, or
- b. 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 an administrative permit hearing if any.

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

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-23 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Agriculture Environmental Permitting Act shall apply to applications filed with the Oklahoma Department of Agriculture, Food, and Forestry on or after July 1, 2004.

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

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-24 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Agriculture shall have the authority to promulgate rules to implement the Oklahoma Agriculture Environmental

Permitting Act for each tier that will to the greatest extent possible:

1. Enable applicants to follow a consistent application process;
 2. Ensure that uniform public participation opportunities are offered;
 3. Provide for uniformity in notices required of applicants;
- and
4. Set forth procedural application requirements.

B. The rules shall designate applications as Tier I, II, or III. In making these determinations, the Board shall consider information and data offered on:

1. The significance of the potential impact of the type of activity on the environment;
2. The amount, volume, and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted, or land applied;
3. The degree of public concern traditionally connected with the type of activity;
4. The federal classification, if any, for the proposed activity, operation, or type of site or facility; and
5. Any other factors relevant to the determinations.

For purposes of this section, the Board shall ensure that designations are consistent with any analogous classifications set forth in applicable federal programs.

C. The rules shall for each tier:

1. Set forth uniform procedures for filing an application;
2. Contain specific uniform requirements for each type of notice required by the Oklahoma Agriculture Environmental Permitting Act; provided, however, that if notice and public participation opportunities are required, the requirements shall not exceed those set forth for the tier unless required otherwise by applicable

federal regulations promulgated as rules of the Board or a holding of the Oklahoma Supreme Court;

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

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

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-25 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Department of Agriculture, Food, and Forestry is hereby authorized to implement and enforce the provisions of the Oklahoma Agriculture Environmental Permitting Act and rules promulgated thereunder.

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

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

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

3. 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. Consolidate processes related to multiple, pending applications filed by the same applicant for the same facility or site in accordance with rules of the State Board of Agriculture; and

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

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-26 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon filing a Tier II or III application with the Oklahoma Department of Agriculture, Food, and Forestry, the applicant shall publish notice of the filing as legal notice in one newspaper of general circulation local to the proposed new site or existing facility. The publication shall identify public locations where the application may be reviewed, including a public location in the county where the proposed new site or existing facility is located.

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, 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 pursuant to rules of the Department of Agriculture, Food, and Forestry it shall schedule and hold the meeting. The applicant shall be entitled to attend the meeting and may make a brief presentation on the permit request. Any local community meeting scheduled and held by the applicant regarding the proposed facility or activity for which a permit is sought may, with the agreement of the Department and the applicant, be combined with the process meeting authorized by this paragraph.

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

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-27 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon conclusion of its technical review of a Tier II or III application within the permitting timeframes established by rules promulgated by the State Board of Agriculture, the Oklahoma Department of Agriculture, Food, and Forestry shall prepare a draft denial or draft permit.

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 of general circulation local to the proposed new site or existing facility. The notice shall identify public locations where the draft denial or draft permit may be reviewed, including a public 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. The 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.

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 public location in the county where the proposed new site or existing facility is located.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-28 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Department of Agriculture, Food, and Forestry shall promptly schedule and hold a formal public meeting if the Department receives written timely request for the meeting and determines there

is a significant degree of public interest, pursuant to the rules of the Department of Agriculture, Food, and Forestry 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.

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. The 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-29 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. For draft permits or draft denials for Tier II applications on which no comment or public meeting request was timely received and on which no public meeting was held, the final permit shall be issued or denied.

B. For draft permits or draft denials for Tier II applications on which comment or a public meeting request was timely received or on which a public meeting was held, the Oklahoma Department of Agriculture, Food, and Forestry, after considering the comments, shall prepare a response to comments and issue the draft permit as is or as amended or make final denial.

The response to comments shall be prepared within ninety (90) days after the close of the public comment period unless extended by the Director upon a determination that additional time is required due to circumstances outside the control of the Department. 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.

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.

1. When a proposed permit is prepared, the applicant shall publish notice, as legal notice in one newspaper of general circulation local to the proposed new site or existing facility, of the Department's tentative decision to issue the permit. The notice shall identify the locations where the proposed permit and the Department's response to comments may be reviewed, including a public 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 any person or qualified interest group 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 that interest.

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 final permit shall be issued.

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.

D. When an administrative hearing is timely requested on a proposed permit in accordance with subsection 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 Oklahoma Agricultural Code, and rules promulgated by the State Board of Agriculture.

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 promptly 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 Agricultural 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.

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 2A-26 of Title 2 of the Oklahoma Statutes. The Department shall then reopen the comment

period and provide additional opportunity for a formal public meeting on the revised draft as described in Section 2A-28 of Title 2 of the Oklahoma Statutes.

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.

G. Any appeal of a Tier III final permit decision or any final order connected therewith shall be made in accordance with the provisions of the Agricultural Code and the Administrative Procedures Act.

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 Director according to subsections B and D of Section 317 of Title 75 of the Oklahoma Statutes.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2A-30 of Title 2, unless there is created a duplication in numbering, reads as follows:

For common and routine permit applications, the Oklahoma Department of Agriculture, Food, and Forestry may expedite the permitting process by issuing permits of general applicability, hereafter identified as general permits. General permits shall be subject to all the Tier II administrative procedures including the public participation requirements. The administrative process for rulemaking shall not be applicable to the issuance of general permits. Individual applicants may obtain authorization through the Tier I process to conduct an activity covered by a general permit. General permits are limited to activities under the Tier I and Tier II classifications.

SECTION 21. This act shall become effective July 1, 2004.

SECTION 22. 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.

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