

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 942

By: Justice

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5
6 AS INTRODUCED

7 An Act relating to environment and natural resources;
8 amending 27A O.S. 2011, Sections 2-14-301, 2-14-302
9 and 2-14-304, which relate to public notice of
10 application for certain permits and of issuance of
11 certain draft or proposed permits; authorizing the
12 Environmental Quality Board to promulgate rules
13 providing alternative or supplemental methods of
14 public notification; and providing an effective date.

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

16 SECTION 1. AMENDATORY 27A O.S. 2011, Section 2-14-301,
17 is amended to read as follows:

18 Section 2-14-301. A. Upon filing a Tier II or III application
19 with the Department of Environmental Quality, the applicant shall
20 publish notice of the filing as legal notice in one newspaper local
21 to the proposed new site or existing facility. The publication
22 shall identify locations where the application may be reviewed,
23 including a location in the county where the proposed new site or
24 existing facility is located. The Environmental Quality Board may
promulgate rules to provide public notice methods that are

1 alternative or supplemental to the requirement for publishing in a
2 local newspaper.

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

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

17 SECTION 2. AMENDATORY 27A O.S. 2011, Section 2-14-302,
18 is amended to read as follows:

19 Section 2-14-302. A. Upon conclusion of its technical review
20 of a Tier II or III application within the permitting timeframes
21 established by rules promulgated by the Board, the Department shall
22 prepare a draft denial or draft permit.

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

1 2. Notice of the draft denial or draft permit shall be
2 published as legal notice in one newspaper local to the proposed new
3 site or existing facility. The Environmental Quality Board may
4 promulgate rules to provide public notice methods that are
5 alternative or supplemental to the requirement for publishing in a
6 local newspaper. The notice shall identify places where the draft
7 denial or draft permit may be reviewed, including a location in the
8 county where the proposed new site or existing facility is located,
9 and shall provide for a set time period for public comment and for
10 the opportunity to request a formal public meeting on the respective
11 draft denial or draft permit. Such time period shall be set at
12 thirty (30) days after the date the notice is published unless a
13 longer time is required by federal regulations promulgated as rules
14 by the Board. In lieu of the notice of opportunity to request a
15 public meeting, notice of the date, time, and place of a public
16 meeting may be given, if previously scheduled.

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

22 SECTION 3. AMENDATORY 27A O.S. 2011, Section 2-14-304,
23 is amended to read as follows:
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1 Section 2-14-304. A. For draft permits or draft denials for
2 Tier II applications on which no comment or public meeting request
3 was timely received and on which no public meeting was held, the
4 final permit shall be issued or denied.

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

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

19 C. For a draft permit for a Tier III application, after the
20 public comment period and the public meeting, if any, the Department
21 shall prepare a response to comments and either issue a final denial
22 in accordance with paragraph 2 of this subsection or prepare a
23 proposed permit.
24

1 1. When a proposed permit is prepared, the applicant shall
2 publish notice, as legal notice in one newspaper local to the
3 proposed new site or existing facility, of the Department's
4 tentative decision to issue the permit. The Environmental Quality
5 Board may promulgate rules to provide public notice methods that are
6 alternative or supplemental to the requirement for publishing in a
7 local newspaper. Such notice shall identify the places where the
8 proposed permit and the Department's response to comments may be
9 reviewed, including a location in the county where the proposed new
10 site or existing facility is located and shall offer a twenty-day
11 opportunity to request an administrative hearing to participate in
12 as a party. The opportunity to request a hearing shall be available
13 to the applicant and any person or qualified interest group who
14 claims to hold a demonstrable environmental interest and who alleges
15 that the construction or operation of the proposed facility or
16 activity would directly and adversely affect such interest.

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

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

23 D. When an administrative hearing is timely requested on a
24 proposed permit in accordance with subsection C of this section, all

1 timely requests shall be combined in a single hearing. The hearing
2 shall be a quasi-judicial proceeding and shall be conducted by an
3 Administrative Law Judge in accordance with Article 2 of the
4 Administrative Procedures Act, the Code and rules promulgated by the
5 Environmental Quality Board.

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

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

9 3. The Department shall move expeditiously to an evidentiary
10 proceeding in which parties shall have the right to present evidence
11 before the Department on whether the proposed permit and the
12 technical data, models and analyses, and information in the
13 application upon which the proposed permit is based are in
14 substantial compliance with applicable provisions of the Code and
15 rules promulgated thereunder and whether the proposed permit should
16 be issued as is, amended and issued, or denied.

17 4. Failure of any party to participate in the administrative
18 proceeding with good faith and diligence may result in a default
19 judgment with regard to that party; provided however, that no final
20 permit shall be issued solely on the basis of any such judgment.

21 E. If the Department decides to reverse its initial draft
22 decision, it shall withdraw the draft denial or draft permit and
23 prepare a draft permit or draft denial, as appropriate. Notice of
24 the withdrawal of the original draft and preparation of the revised

1 draft shall be given as provided in Section 2-14-302 of this title.
2 The Department shall then re-open the comment period and provide
3 additional opportunity for a formal public meeting on the revised
4 draft as described in Section 2-14-303 of this title.

5 F. Upon final issuance or denial of a permit for a Tier III
6 application, the Department shall provide public notice of the final
7 permit decision and the availability of the response to comments, if
8 any.

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

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

20 SECTION 4. This act shall become effective November 1, 2016.

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