

Title 2. Agriculture
CHAPTER 1 – AGRICULTURAL CODE
Oklahoma Agriculture Pollutant Discharge Elimination System Act

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Section 2A-1 - Short Title - Purpose - Applicability - Water Programs

A. Sections 2 through 11 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:

1. Implement the federal National Pollutant Discharge Elimination System requirements;
2. Assist the Oklahoma Department of Agriculture, Food, and Forestry in obtaining authorization to implement the federal Clean Water Act programs; and
3. Issue permits to the persons or organizations owning or operating facilities regulated within the areas of environmental jurisdiction of the Department.

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.

D. Water programs within the environmental jurisdiction of the Department are hereby established that shall be responsible for:

1. Water quality including, but not limited to, point source and nonpoint source pollution;
2. Water protection; and
3. Discharges and potential discharges to waters of the state.

Laws 2005, HB 1467, c. 292, § 2, emerg. eff. July 1, 2005.

Section 2A-2 – Definitions

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

1. "Administrative hearing", "administrative permit hearing", "enforcement hearing" and "administrative enforcement hearing" mean a quasi-judicial individual proceeding, held by the Oklahoma Department of Agriculture, Food, and Forestry, 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;

2. "Administrative Procedures Act" means the Oklahoma Administrative Procedures Act;

3. "Director" means the individual appointed by the Commissioner to perform the duties identified in Section 6 of this act;

4. "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 or nonpoint source regulated by the Department within its areas of environmental jurisdiction;

5. "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 and treatment systems;

6. "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 and includes schedules of compliance;

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

8. "Formal public meeting" means a formal public forum, held by the Department when authorized by the provisions of the Oklahoma Agricultural Code, and conducted by a presiding officer pursuant to the requirements of the Oklahoma Agricultural Code and rules promulgated thereunder, at which an opportunity is provided for the presentation of oral comments made and written views submitted 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;

9. "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;

10. "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 and which is within the Department's environmental jurisdiction. The term "point source" shall not include agricultural storm water discharges and return flows from irrigated agriculture;

11. "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;

12. "Pollution" means the presence or the release in the environment of any substance, contaminant or pollutant, any other alteration of the physical, chemical or biological properties of the environment, the release of any liquid, gaseous or solid substance into the environment:

- a. in quantities which are or will likely create a nuisance, or
- b. 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;

13. "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;

14. "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;

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

16. "Treatment works" means any facility within the Department's jurisdictional areas of environmental responsibility, as specified in Section 1-3-101 of Title 27A of the Oklahoma Statutes used for the purpose of treating or stabilizing waste or waste water that does not discharge directly to a publicly owned treatment works; and

17. "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 promulgated rules, are not waters of the state.

Laws 2005, HB 1467, c. 292, § 3, emerg. eff. July 1, 2005.

Section 2A-3 - Powers, Duties, and Authority of State Board of Agriculture

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 at least as stringent as 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 Agriculture Pollutant Discharge Elimination System 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 whose waters may be affected receive notice of each application for a discharge permit;

5. Ensure that any state whose waters 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 incorporated, 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;

7. Establish management standards for sludge which are no less stringent than applicable federal regulations; and

8. 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:

- a. 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,
- b. make reports, to install, calibrate, use, and maintain monitoring equipment or methods including biological monitoring methods,
- c. take samples of effluents in the manner as may be prescribed, and
- d. 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 may issue permits for the discharge of pollutants and storm water from facilities and activities within the areas of environmental jurisdiction of the Department specified in Section 1-3-101 of Title 27A of the Oklahoma Statutes;

3. Take necessary and appropriate actions to revoke, modify, refuse to renew, suspend, place on probation, reinstate, 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 Agriculture Pollutant Discharge Elimination System program of the Department; 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.

Laws 2005, HB 1467, c. 292, § 4, emerg. eff. July 1, 2005.

Section 2A-4 - Employee Disclosure of Compensation or Other Interest

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

of the Oklahoma Department of Agriculture, Food, and Forestry. 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 participation of an employee in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.
Laws 2005, HB 1467, c. 292, § 5, emerg. eff. July 1, 2005.

Section 2A-5 - Director of the Agriculture Pollutant Discharge Elimination System

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

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

C. The 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 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 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 Oklahoma 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 on behalf of the Oklahoma Department of Agriculture, Food, and Forestry 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 temporary absence of the Director, the Director may delegate the exercise of these powers and duties to an acting director during the absence of the Director 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 the powers and duties until a permanent Director is employed.

4. 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.

5. All references in the Oklahoma 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.

Laws 2005, HB 1467, c. 292, § 6, emerg. eff. July 1, 2005.

Section 2A-6 - Pollutant Discharge Permits

A. It shall be unlawful for any person regulated by the Oklahoma Department of Agriculture, Food, and Forestry pursuant to its environmental jurisdiction to discharge any pollutant into

waters of the state except in accordance with a permit from the Director of the Agriculture Pollutant Discharge Elimination System.

B. Prior to issuing the pollutant discharge permits, the Director shall prescribe schedules of compliance and conditions as necessary 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.

C. The Director shall:

1. Have authority to issue individual permits and authorizations under general permits for pollutants, 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 for facilities subject to the environmental jurisdiction of the Department 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,
 - c. 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
 - d. 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 limits, 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 State Board of Agriculture 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.

Laws 2005, HB 1467, c. 292, § 7, emerg. eff. July 1, 2005.

Section 2A-7 - Inspection and Sampling in Licensed and Unlicensed Facilities - Limitations on Issuance of Permits - Availability of Records, Reports, etc.

A. Any holder of a permit or applicant for a permit shall be deemed to have given consent to any authorized officer, employee, or agent of the Oklahoma Department of Agriculture, Food, and Forestry to:

1. Enter and inspect the facility in accordance with the provisions of the Oklahoma Agriculture Pollutant Discharge Elimination System Act;
2. Investigate complaints;
3. Have access at any reasonable time for the purposes of reviewing and copying any records required to be maintained;
4. Inspect any monitoring equipment, methods, disposal systems, or other facilities or equipment as may be required;
5. Have 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; and
6. Obtain copies of records, plans, reports, or other information required by the Department to be submitted upon request and subject to and made available for inspection at reasonable times to any authorized representative of the Department. 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.

B. For unpermitted facilities, authorized employees or representatives, upon presentation of a credential and, if necessary, a proper warrant 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. A right of entry for the purpose of investigating complaints;
3. Access, at any reasonable time, for the purposes of reviewing and copying any records required to be maintained;

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

5. 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 result, in the judgment of the United States Secretary of the Army acting through the Chief of Engineers, 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. 1. 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, shall be considered confidential in accordance with the purposes of the federal Uniform Trade Secrets Act.

2. Nothing in this section 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.

3. Any records, reports, or information required to be submitted for permitting, compliance, or review that would not be considered confidential by the Environmental Protection Agency shall not be kept confidential pursuant to this subsection.

E. 1. The Board shall promulgate standard precautions for the prevention of the transmission of communicable diseases to humans and animals to be used when inspecting animal feeding operations.

2. Except for emergency situations or when enforcement of a permit requires the use of the standard precautions, Department employees shall observe the health standards and sanitary requirements of the facility.

Laws 2005, HB 1467, c. 292, § 8, emerg. eff. July 1, 2005.

Section 2A-8 - Rules Prescribing Permit Requirements Applicable to Discharges of Storm Water

The State Board of Agriculture shall promulgate rules which prescribe permit requirements applicable to discharges composed entirely of storm water that shall at a minimum meet federal law. The rules may require permits on a case-by-case basis, exempt categories of discharges, or provide a schedule for obtaining the permit. 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 no later than the

date that the Department is to receive authorization to administer a state National Pollutant Discharge Elimination System program.

Laws 2005, HB 1467, c. 292, § 9, emerg. eff. July 1, 2005.

Section 2A-9 - Violations - Administrative Enforcement Procedures - Private Actions - Intervention - Orders – Fines

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. However, provisions of this section for written notice, enforcement hearing, and administrative orders shall not be conditions precedent for seeking 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 the right of a person to recover damages for pollution that are otherwise allowed by law in a court of competent jurisdiction.

C. Any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any 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.

D. Whenever, on the basis of any information available, the Department finds that any person 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 may 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 or denial, placing on probation, reinstatement, 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.

E. 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 individual officers or 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.

F. 1. 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 assess, after providing notice and opportunity for an enforcement hearing to the alleged violator, an administrative fine of not more than Ten Thousand Dollars (\$10,000.00) per day for each violation.

2. The total amount of the administrative 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, the ability to pay, any prior history of violations, the degree of culpability, the 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.

3. Enforcement hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act.

G. 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 D of this section.

2. Any person who violates any provision of the Oklahoma Agriculture Pollutant Discharge Elimination System 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 D of this section, shall be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation.

3. 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.

4. 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.

5. 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.

H. 1. Any person who violates any provision of this act, any order of the Director, or any condition or limitation in a permit issued pursuant to this act may be punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Ten Thousand Dollars (\$10,000.00) per day for each violation, or by imprisonment for not more than six (6) months for each violation, or both.

2. Any person who knowingly makes any false material statement, representation, or certification in, omits material data from, or tampers with any application, notice, 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 the Oklahoma Agriculture Pollutant Discharge Elimination System Act, shall be punishable, upon conviction, by a fine of not more than Ten Thousand Dollars (\$10,000.00) per day for each violation, 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 for each violation, or by imprisonment for not more than four (4) years, or by both. In addition, the Director shall deny issuance of the permit or require submission of a new application.

3. 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.

I. 1. 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 the Oklahoma Agriculture Pollutant Discharge Elimination System 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.

2. If the 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.

3. In the civil action, the Department shall join the operator of the source as a party to the action.

4. The action shall be brought in the district court in the county in which the treatment works is located.

5. The court shall have jurisdiction to restrain the violation and to require the operator of the treatment works and the 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.

6. Nothing in this subsection shall be construed to limit or prohibit any other authority the Department may have under this section.

J. 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 Oklahoma Administrative Procedures Act. The court 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, a civil action may be brought 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, attorney fees and costs for the collection proceeding and a 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 penalties of the person and nonpayment penalties which are unpaid as of the beginning of the quarter.

- K. 1. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this act, any rule, any order of the Director, or any condition or limitation in a permit issued pursuant to this act.
2. Any action for injunctive relief to redress or restrain a violation of any person of a provision of this act, any rule, any order of the Director, or any condition or limitation in a permit issued pursuant to this act or recovery of any administrative or civil penalty assessed may be brought by:
- a. the district attorney of the appropriate district court of the State of Oklahoma,
 - b. the Attorney General on behalf of the State of Oklahoma, or
 - c. the Department on behalf of the State of Oklahoma.
3. It shall be the duty of the Attorney General and district attorney if requested by the Director to bring such action.

Laws 2005, HB 1467, c. 292, § 10, emerg. eff. July 1, 2005.

Section 2A-10 - Applications for and Provisions of Permits and Other Authorizations

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 is 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.

Laws 2005, HB 1467, c. 292, § 11, emerg. eff. July 1, 2005.