

Title 2. Agriculture
CHAPTER 1 – AGRICULTURAL CODE
Oklahoma Agriculture Environmental Permitting Act

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Section 2A-21 - Short Title

Sections 12 through 20 of this act shall be known and may be cited as the "Oklahoma Agriculture Environmental Permitting Act".

Laws 2005, HB 1467, c. 292, § 12, emerg. eff. July 1, 2005.

Section 2A-22 – Definitions

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 "application" 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 "permit" includes but is not limited to:

- a. specific types of permits and other Department authorizations including certifications, registrations, licenses, and plan approvals,
- b. general permits and notices of intent for coverage by a general permit, and

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

6. "Qualified interest group" means any organization with twenty-five 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 any hearing regarding 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 by the Director;

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

a. the Tier I process,

b. published notice of application filing,

c. preparation of the draft permit or draft denial,

d. published notice of the 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 supervisor 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 response of the Department to comments, and

(3) denial of application, or

b. preparation of a proposed permit, the published notice of availability of the proposed permit and the response to comments and of the 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.

Laws 2005, HB 1467, c. 292, § 13, emerg. eff. July 1, 2005.

Section 2A-23 - Rules to Implement the Oklahoma Agriculture Environmental Permitting Act

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 and shall at a minimum be consistent with federal law. 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.

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

D. The rules for each tier shall:

1. Set forth uniform procedures for filing an application;
2. Contain specific uniform requirements for each type of notice and public participation or hearing opportunities required by the Oklahoma Agriculture Environmental Permitting Act;
3. Contain other provisions needed to implement and administer the Oklahoma Agriculture Pollutant Discharge Elimination System Act; and
4. Designate positions to which the Director may delegate, in writing, the power and duty to issue, renew, amend, modify, and deny permits.

Laws 2005, HB 1467, c. 292, § 14, emerg. eff. July 1, 2005.

Section 2A-24 - Authority, Powers, and Duties of Department of Agriculture, Food, and Forestry

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 Oklahoma 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;
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 promulgate rules.

Laws 2005, HB 1467, c. 292, § 15, emerg. eff. July 1, 2005.

Section 2A-25 - Published Notice of Filing of Tier II or III Application - Process Meetings

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 a timely request and determines that a significant degree of public interest in the application exists pursuant to rules of the Department, 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 regarding the proposed facility or activity for which a permit is sought that is scheduled and held by the applicant may be combined, with the agreement of the Department and the applicant, with the process meeting authorized by this paragraph.

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

Laws 2005, HB 1467, c. 292, § 16, emerg. eff. July 1, 2005.

Section 2A-26 - Preparation and Notice of Draft Denials and Draft Permit - Availability for Public Review

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 least thirty (30) calendar 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.

Laws 2005, HB 1467, c. 292, § 17, emerg. eff. July 1, 2005.

Section 2A-27 - Formal Public Meetings - Request - Notice - Location - Public Comment Period

A. Pursuant to the rules of the Oklahoma Department of Agriculture, Food, and Forestry, the Department shall promptly schedule and hold a formal public meeting if the Department receives timely written request for the meeting on the draft denial or draft permit.

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

C. 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) calendar days after the date notice of the draft denial or draft permit was published.

D. At the meeting, any person may submit oral or written statements and data concerning the draft denial or permit.

E. 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.

F. The meeting shall not be a quasi-judicial proceeding.

G. The applicant or a representative of the applicant may be present at the meeting to respond to questions.

Laws 2005, HB 1467, c. 292, § 18, emerg. eff. July 1, 2005.

Section 2A-28 - Draft Permits or Denials - Response to Comments - Proposed Permits - Hearings - Notice of Final Permit Decision - Appeals – Reconsideration

A. For draft permits or draft denials for Tier II applications on which no comment or public meeting request was received in a timely manner 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 received in a timely manner 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.

C. The response to comments shall be prepared within ninety (90) working 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.

D. 1. 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 any comments received in a timely manner and either issue a final denial in accordance with paragraph 5 of this subsection or prepare a proposed permit.

2. 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 tentative decision of the Department to issue the permit. The notice shall identify the locations where the proposed permit and the response of the Department 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-working-day opportunity to request an administrative hearing to participate in as a party.

3. The Department shall ensure that any additional notice requirements as otherwise provided by law are followed.

4. The opportunity to request a hearing shall be available to the applicant and any person or qualified interest group that alleges that the operation may have a direct, substantial, and immediate effect upon the health, environmental, pecuniary, or property interest or upon the legal interest of that person or qualified interest group.

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

6. If the final decision of the Department is to deny the permit, it shall give notice to the applicant and issue a final denial in accordance with subsection G of this section.

E. 1. When an administrative hearing is requested in a timely manner 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.

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

3. The Department shall hold a scheduling conference within sixty (60) calendar days after the end of the hearing request period.

4. 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 Oklahoma Agricultural Code and rules promulgated thereunder and whether the proposed permit should be issued as is, amended and issued, or denied.

5. 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.

F. 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 15 of this act. The Department then shall reopen the comment period and provide additional opportunity for a formal public meeting on the revised draft as described in Section 18 of this act.

G. 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.

H. Any appeal of a Tier III final permit decision or any final order connected to it shall be made in accordance with the provisions of the Oklahoma Agricultural Code and the Administrative Procedures Act. Any appeal shall be limited to the participants of the administrative proceedings.

I. 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 the Administrative Procedures Act as if the denial was an order. Disposition of the petition shall be by order of the Director according to the Administrative Procedures Act.

Laws 2005, HB 1467, c. 292, § 19, emerg. eff. July 1, 2005.

Section 2A-29 - Common and Routine Permit Applications - Expedited Permitting Process - General Permits

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.

Laws 2005, HB 1467, c. 292, § 20, emerg. eff. July 1, 2005.