

Title 35 - Oklahoma Department of Agriculture, Food, and Forestry
Chapter 44 – Agriculture Pollutant Discharge Elimination System
Subchapter 1 – Agriculture Environmental Permitting and AGPDES

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Part 1 – General Provisions

35:44-1-1. Purpose and jurisdiction

- (a) The rules in this Subchapter implement the Oklahoma Agriculture Pollutant Discharge Elimination System Act and the Oklahoma Agriculture Environmental Permitting Act, 2 O.S. §§ 2A-1 et seq. and 2A-21 et seq., and apply to applicants for and holders of Oklahoma Department of Agriculture, Food, and Forestry (ODAFF) permits and other authorizations.
- (b) Any facility that discharges as that term is defined in 2 O.S. § 2A-2 of the Oklahoma Agriculture Pollutant Discharge Elimination System Act that are within the Oklahoma Department of Agriculture, Food, and Forestry's areas of environmental jurisdiction pursuant to 27A O.S. § 1-3-101 (D) required by federal regulations to obtain a National Pollutant Discharge Elimination System (NPDES) permit or an authorization pursuant to a NPDES general permit shall be required to obtain an Agriculture Pollutant Discharge Elimination System (AgPDES) permit or an authorization pursuant to an AgPDES general permit.
- (c) The Oklahoma Department of Agriculture, Food, and Forestry shall have the following areas of environmental responsibility except as provided in (d) of this subsection:
 - (1) Point source discharges and nonpoint source runoff from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,
 - (2) Pesticide control,
 - (3) Forestry and nurseries,
 - (4) Fertilizer,
 - (5) Facilities which store grain, feed, seed, fertilizer and agricultural chemicals,
 - (6) Dairy waste and wastewater associated with milk production facilities,
 - (7) Groundwater protection for activities subject to the jurisdictional areas of environmental responsibility of the Department,
 - (8) Utilization and enforcement of Oklahoma Water Quality Standards and implementation documents,
 - (9) Development and promulgation of a Water Quality Standards Implementation Plan for its jurisdictional areas of environmental responsibility, and
 - (10) Storm water discharges for activities subject to the jurisdictional areas of environmental responsibility of the Department.
- (d) The Department of Environmental Quality shall have environmental jurisdiction over:
 - (1) Including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at the facilities,
 - (A) Commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,
 - (B) Slaughterhouses, but not including feedlots at these facilities, and
 - (C) Aquaculture and fish hatcheries, and
 - (2) Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

35:44-1-2. Incorporation by reference of federal regulations

- (a) The following provisions of Title 40 of the Code of Federal Regulations and the requirements contained therein pertaining to the National Pollutant Discharge Elimination System are, unless otherwise specified, adopted and incorporated by reference in their entirety:
- (1) Part 3 (Electronic Reporting) in its entirety.
 - (2) The following from Part 122 (NPDES Permit Regulations):
 - (A) 122.2 (definitions), excluding those definitions that are less stringent than the state of Oklahoma definitions found in Title 2 of the Oklahoma Statutes, Sections 2A-2 and 2A-22.
 - (B) 122.3 (a)-(g) and (i) (exclusions).
 - (C) 122.4 (a), (b), (d), and (i) (prohibitions).
 - (D) 122.5 (b) and (c) (effect of a permit).
 - (E) 122.6 (continuation of expiring permits).
 - (F) 122.7 (b) and (c) (confidentiality of information).
 - (G) 122.21 (a)-(b), (e)-(i), (k), (m), (o), and (p) (application for permit).
 - (H) 122.22 (signatories to permit applications and reports).
 - (I) 122.23 (concentrated animal feeding operations).
 - (J) 122.26 (storm water discharges).
 - (K) 122.27 (a), and (b)(1) and (3) (silvicultural activities).
 - (L) 122.28 (general permits).
 - (M) 122.29 (new sources and new dischargers).
 - (N) 122.41 (conditions applicable to all permits).
 - (O) 122.42 (a) and (d)-(e) (additional conditions applicable to specified categories of NPDES permits).
 - (P) 122.43 (establishing permit conditions).
 - (Q) 122.44 (establishing limitations, standards, and other permit conditions).
 - (R) 122.45 (calculating NPDES permit conditions).
 - (S) 122.46 (duration of permits).
 - (T) 122.47 (schedules of compliance).
 - (U) 122.48 (requirements for recording and reporting of monitoring results).
 - (V) 122.50 (disposal of pollutants into wells, into publicly owned treatment works or by land application).
 - (W) 122.61 (transfer of permits).
 - (X) 122.62 (modification or revocation and reissuance of permits).
 - (Y) 122.63 (minor modifications permits).
 - (Z) 122.64 (termination of permits).
 - (3) The following from Part 124 (Procedures and Decisionmaking):
 - (A) 124.2 (definitions).
 - (B) 124.3(a) (application for a permit).
 - (C) 124.5(a), and (c) - (d) (modification, revocation and reissuance, or termination of permits).
 - (D) 124.6(a), (c) - (e) (draft permits).
 - (E) 124.8 (fact sheet).
 - (F) 124.10(a)(1)(ii), (iii), and (iv), (b) - (e) (public notice of permit actions and public comment period).
 - (G) 124.11 (public comments and requests for public hearings).
 - (H) 124.12(a) (public hearings).
 - (I) 124.13 (obligation to raise issues and provide information during the public comment period).
 - (J) 124.15 (issuance and effective date of permit).
 - (K) 124.16 (stays of contested permit conditions).
 - (L) 124.17(a) and (c) (response to comments).

- (M) 124.19 (appeal of RCRA, UIC, NPDES, and PSD permits).
- (N) 124.56 (fact sheets).
- (O) 124.59 (conditions requested by the Corps of Engineers and other government agencies).
- (P) 124.62 (decision on variances).
- (4) Part 125 (Criteria and Standards), Subparts A and D.
- (5) Part 412 (Effluent Limitations Guideline for Concentrated Animal Feeding Operations (CAFO) Point Source Category) in its entirety.
- (6) Part 450 (Construction and Development Point Source Category) in its entirety.
- (b) Narrative provisions of this subchapter control over any provision of regulations of the Environmental Protection Agency (EPA) adopted by reference and the rules are interpreted consistently with state compliance, with the requirements of 40 CFR Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.
- (c) Environmental Protection Agency Form 1 (general information for all applicants), Form 2b (concentrated animal feeding operations application), Form 2c (other applications), and the storm water construction activity Notice of Intent shall be incorporated by reference.

35:44-1-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (2015 Revision).

Part 2 – The Process

35:44-1-20. Compliance

Applicants and permittees are subject to the laws and rules pertaining to ODAFF as they exist on the date of filing an application.

35:44-1-21. Filing an application

- (a) **Tier I.** The applicant shall file (2) copies of a Tier I application unless the application form or instructions specifies that only one (1) copy is needed.
- (b) **Tier II and III.** The applicant shall file three (3) copies of Tier II and Tier III applications with ODAFF and place one (1) copy for public review in the county in which the site, facility or activity is located.

35:44-1-22. Fees

- (a) Fees shall be submitted with the application or notice of intent and, except as herein provided, shall not be refunded.
- (b) No fee shall be required for a notice of termination or a notice of change, other than change of permittee or co-permittee.
- (c) As of July 1, 2010, a request for a storm water construction waiver (rainfall erosivity) shall be:
 - (1) One hundred fifty dollars (\$150.00) for electronic submissions.
 - (2) Two hundred dollars (\$200.00) for paper submissions.
- (d) As of July 1, 2010, application fees for authorizations covered under a general permit shall be as follows:
 - (1) Renewal or change of permittee or co-permittee shall be seventy-five dollars (\$75.00) submitted electronically by e-permitting.
 - (2) Renewal or change of permittee or co-permittee shall be one hundred dollars (\$100.00) submitted by paper.
 - (3) New applications for authorizations covered under a general permit shall be three hundred fifty dollars (\$350.00).

- (4) Significant expansions of facilities covered under authorizations of existing general permits shall be three hundred fifty dollars (\$350.00).
 - (5) The annual fee for an authorization covered under a general permit during the term of that permit shall be eight hundred dollars (\$800.00).
 - (6) Storm water authorizations for construction sites of agriculture related activities shall be three hundred sixteen dollars (\$316.00).
- (e) As of July 1, 2010, individual permit application fees shall be as follows:
- (1) Renewals of individual permits of existing facilities shall be three hundred fifteen dollars (\$315.00).
 - (2) New applications for individual new proposed facilities shall be three hundred fifty dollars (\$350.00).
 - (3) Annual fees for individual permittees during the term of the individual permit shall be one thousand two hundred and fifty dollars (\$1,250.00).
 - (4) In no case shall an individual permittee be required to pay an annual fee in the same fiscal year an application or renewal fee was paid.
- (f) To assist in meeting costs to the Department of the AgPDES program associated with permitting, the fees set out in this section may be adjusted on July 1st of each year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar.

35:44-1-23. Receipt of applications

When an application and appropriate fee are received, each program shall:

- (1) File stamp the application with the date of receipt;
- (2) Assign the application to a permit reviewer; and
- (3) Enter this information in a database or log book.

35:44-1-24 Administrative completeness review

The reviewer shall have sixty (60) calendar days from the file-stamped date of filing to determine if the application is administratively complete.

- (1) **Not complete.** If the reviewer decides that the application is not complete, ODAFF shall immediately send a Notice of Deficiencies to the applicant by mail, describing with reasonable specificity the deficiencies and requesting supplemental information. The reviewer may continue to ask for specific information until the application is administratively complete. If the reviewer does not notify the applicant of deficiencies, the period for technical review shall begin at the close of the administrative completeness review period.
- (2) **Complete.** When the application is administratively complete, the reviewer shall enter the date in the database or log book and immediately notify the applicant by mail. The period for technical review begins.

35:44-1-25. Technical review

- (a) Each program shall have the time period specified in these rules to review each application for technical compliance with the relevant rules and to reach a final determination. If the data in the application does not technically comply with the relevant rules or law, the reviewer may notify the applicant by certified mail, describing with reasonable specificity the deficiencies and requesting supplemental information.
- (b) Any environmental permit that is not described in this Subchapter shall be reviewed with all due and reasonable speed.

35:44-1-26. When review times stop

The time period for review stops during:

- (1) litigation;
- (2) public review and participation, including waiting periods, comment periods, public meetings, administrative hearings, ODAFF preparation of response to comments or review by state or federal agencies;
- (3) requests for supplemental information; and
- (4) the time in which an applicant amends the application of their own accord.

35:44-1-27. Supplemental time

The Notice of Deficiencies and request for supplemental information may state that up to thirty (30) additional calendar days may be added to the application processing time. Requests for supplemental information may also state that additional days for technical review equal to the number of days the applicant used to respond may be added to the review time.

35:44-1-28. Extensions

Extensions to the time lines shall only be made at the request of an applicant and at the discretion of the Department, except as provided in section 35:44-1-29 (2). Requests of applicants shall not be unnecessarily denied.

35:44-1-29. Failure to meet deadline

Where failure to meet a deadline by the Department is imminent, then:

- (1) At least thirty (30) calendar days prior to the deadline ODAFF shall reassign staff or retain outside consultants to meet the deadline; or
- (2) The applicant may agree to an extension of time for a specific purpose and period of time with refund of the entire application fee, unless a refund is prohibited by law.

35:44-1-30. Notices

- (a) **Statutory requirements for notice.** The Agriculture Environmental Permitting Act requires an applicant to publish notice of filing a legal notice in one newspaper local to the proposed location or existing facility in accordance with 2 O.S. § 2A-25.
- (b) **Notice to landowner.** Applicants shall certify by affidavit that they own the real property, have a current lease or easement which is given to accomplish the permitted purpose or have provided legal notice to the landowner.
- (c) **Notice content.** The applicant shall provide ODAFF with a draft notice for approval prior to publication. All published legal notices shall contain the:
 - (1) Name and address of the applicant;
 - (2) Name, address and legal description of the site, facility and activity;
 - (3) Purpose of notice;
 - (4) Type of permit or permit action being sought;
 - (5) Description of activities to be regulated;
 - (6) Locations where the application may be reviewed;
 - (7) Names, addresses and telephone numbers of contact persons for ODAFF and for the applicant;
 - (8) Description of public participation opportunities and time period for comment and requests; and
 - (9) Any other information required by ODAFF rules.
- (d) **Proof of publication.** Within twenty (20) calendar days after the date of publication, an applicant shall provide ODAFF with a written affidavit of publication for each notice published. In case of a mistake in a published notice, ODAFF shall require a legal notice of correction or

republication of the entire notice, whichever is appropriate. Inconsequential errors in spelling, grammar or punctuation shall not be cause for correction or republication.

- (e) **Additional notice.** Applicants for a NPDES permit are subject to additional notice provisions of federal requirements adopted by reference as ODAFF rules.
- (f) Notices provided by ODAFF will include a fact sheet or statement of basis and the draft permit.

35:44-1-31. Withdrawing applications

- (a) **By applicant.** An applicant may withdraw an application at any time with written notice to ODAFF and forfeiture of fees.
- (b) **By ODAFF.** Except for good cause shown, when an applicant fails to supplement an application within 180 calendar days after the mailing date of a Notice of Deficiencies, or by an agreed date, ODAFF shall void the application. ODAFF shall notify the applicant of an opportunity to show cause why this should not occur.

35:44-1-32. Permit issuance or denial

- (a) **Compliance required.** A new, modified or renewed permit or other authorization sought by the applicant shall not be issued until ODAFF has determined the application is in substantial compliance with applicable requirements of ODAFF laws and rules.
- (b) **Conditions for issuance.** ODAFF may not issue a new, modified or renewed permit or other authorization sought by the applicant if:
 - (1) The applicant has not paid all monies owed to ODAFF or is not in substantial compliance with the ODAFF laws and rules and the terms of any existing ODAFF permits and orders. ODAFF may impose special conditions on the applicant to assure compliance and a separate schedule which ODAFF considers necessary to achieve required compliance; or
 - (2) Material facts were misrepresented or omitted from the application and the applicant knew or should have known of such misrepresentation or omission.
- (c) **Burden of persuasion.** The applicant bears the burden of persuading ODAFF that the permit should issue. Title 75 O.S. § 307 is the appropriate mechanism to address any alleged failure by ODAFF to conform the issuance or denial of the permit to the requirements of a Final Order.

35:44-1-33. Tier II and III modifications

For Tier II and III permit modification actions, only those issues relevant to the modifications shall be reopened for public review and comment.

35:44-1-34. Permit decision-making authority

- (a) **Designated positions.** The AgPDES Director may delegate duties in writing to qualified officials who meet the standards set in Title 2 of the Oklahoma Statutes, Sections 2A-4 and 2A-5 the power and duty to issue, renew, amend, modify and deny permits and take other authorization or registration action.
- (b) **Revision.** The AgPDES Director may amend any delegated duties in writing.

35:44-1-35. Pre-issuance permit review and correction

- (a) **Applicant review.** ODAFF may ask an applicant to review its permit for calculation and clerical errors or mistakes of fact or law before the permit is issued.
- (b) **Correction.** ODAFF may correct any permit before it is issued.
 - (1) **Notice of significant corrections.** For permits based on Tier II and III applications, an applicant shall publish legal notice in one newspaper local to the site of any correction or change proposed by ODAFF which significantly alters a facility's permitted size, capacity or limits.

- (2) **Comments.** ODAFF shall open a public comment period and reconvene a public meeting and administrative hearing to receive public comments on the proposed significant corrections.

35:44-1-36. Consolidation of permitting process

- (a) **Discretionary.** Whenever an applicant applies for more than one permit for the same site, ODAFF may authorize, with the consent of the applicant, the review of the applications to be consolidated so that each required draft permit, draft denial, and proposed permit is prepared at the same time and public participation opportunities are combined.
- (b) **Scope.** When consolidation is authorized by ODAFF:
 - (1) The procedural requirements for the highest specified tier shall apply to each affected application.
 - (2) ODAFF may also authorize the consolidation of public comment periods, process and public meetings, and administrative permit hearings.
 - (3) Final permits may be issued together.
- (c) **Renewal.** ODAFF may coordinate the expiration dates of new permits issued to an applicant for the same facility or activity so that all permits are of the same duration.
- (d) **Multiple modifications.** Subsections (a) and (b) of this section shall also apply to multiple Tier II and III applications for permit modifications.

Part 3 – Tiers and Time Lines

35:44-1-37. Water quality time lines, permit issuance, and permit application

- (a) The Division shall technically review applications for Tier I, II, and III permits and issue or deny permits within 180 calendar days.
- (b) Permits shall become effective within thirty (30) calendar days of notice of issuance.
- (c) Prior to expiration of the permit, the permittee shall apply for a renewal or new authorization as follows:
 - (1) Ninety (90) calendar days for Tier I permits,
 - (2) One hundred eighty (180) calendar days for Tier II permits, or
 - (3) By the date specified in a new permit or upon submission of a notice of termination.

35:44-1-38. Water quality applications - Tier I

The following water quality authorizations require Tier I applications:

- (1) New, modified or renewed authorization under a general permit, except authorization pursuant to a concentrated animal feeding operations general permit.
- (2) Transfer of discharge permit considered minor pursuant to 40 CFR 122.63(d).
- (3) Minor modification of discharge permit or of an authorization pursuant to a general permit.
- (4) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.

35:44-1-39. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

- (1) New individual discharge permit for small and medium concentrated animal feeding operations.
- (2) Permit renewal or major modification for a facility with individual discharge permit, including concentrated animal feeding operation permits.
- (3) New, modified or renewed general permit promulgation.
- (4) New, major modification, or renewed authorization under a concentrated animal feeding operation general permit.
- (5) Any new individual discharge permit for a non-major facility.

35:44-1-40. Water quality applications - Tier III

A new individual discharge permit requires a Tier III application for any facility not already covered by Tier I or II, including a new large concentrated animal feeding operation or a new major discharge facility.

35:44-1-41. Permit duration

- (a) Any permit issued pursuant to these rules shall not exceed a duration of five (5) years.
- (b) The conditions of an expired permit shall continue in force until the effective date of a new permit or until a notice of termination is submitted, whichever comes first.