

Codification through the 2011 legislative session.

**Subchapter 1, 3**

Board adoption - February 25, 2011

Gubernatorial approval - April 12, 2011

Legislative approval and final adoption - May 4, 2011

Effective date - July 1, 2011

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 611. GENERAL WATER QUALITY**

Subchapter	Section
1. General Provisions .....	252:611-1-1
3. Certifications .....	252:611-3-1
5. Groundwater Pollution Control .....	252:611-5-1

## SUBCHAPTER 1. GENERAL PROVISIONS

### Section

- 252:611-1-1. Purpose
- 252:611-1-2. Definitions
- 252:611-1-3. Adoption and incorporation by reference
- 252:611-1-4. Site and natural resource assessment
- 252:611-1-5. Uniform permitting
- 252:611-1-6. Nonpoint source pollution control
- 252:611-1-7. Planning and wasteload allocations

#### **252:611-1-1. Purpose**

The purpose of this Chapter is to protect, maintain and improve the quality of waters of the state, as set forth in Title 27A O.S. § 2-6-102 and to enforce and protect Oklahoma's Water Quality Standards (OAC 785:45). This Chapter implements the broad authority of the DEQ over surface, ground and other waters of the state.

#### **252:611-1-2. Definitions**

In addition to definitions adopted by reference, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**CPP**" means the continuing planning process documents required pursuant to this chapter and 40 CFR Part 130.

"**Discharge point**" means the point at which wastes enter waters of the state or become waters of the state.

"**Underground storage systems**" means storage tanks, containers and other storage reservoirs, transfer lines, pumps, fittings, overflow prevention devices, and any associated anticorrosion measures and/or leak prevention/detection systems, the volume of which is 10% or more beneath the surface of the ground.

#### **252:611-1-3. Adoption and incorporation by reference**

40 CFR Part 130 is adopted and incorporated by reference, as published on July 1, 2010, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

#### **252:611-1-4. Site and natural resource assessment**

(a) When necessary the DEQ may require a site assessment to determine the nature of pollution at a site.

(b) The cost of environmental assessments shall be paid by the responsible party(ies) or as allowed by law. Requirements for the conduct of and the content of natural resource assessments may include short term and long term biological studies, monitoring, sampling, pathway assessment, cost/benefit analysis, and the development of alternative corrective action, remediation, replacement and mitigation plans. Appropriate deadlines may be set for completion and submittal of portions of the assessment and the final assessment.

#### **252:611-1-5. Uniform permitting**

In addition to the requirements of the Code and this Chapter, all applicants seeking permits or other authorizations are subject to the tiered application procedural requirements of the Oklahoma Uniform Environmental Permitting Act, 27A O.S. § 2-14-101 *et seq.* and rules promulgated thereunder.

#### **252:611-1-6. Nonpoint source pollution control**

Best Management Practices (BMPs) shall be required in the watersheds of Scenic Rivers and Outstanding Resource Waters as designated in the OWQS.

### **252:611-1-7. Planning and wasteload allocations**

Compliance with the requirements of 40 CFR Part 130 and the CPP is required prior to issuance of a permit by the DEQ under OAC 252:606 for a new facility or modified permit that increases an existing limit for flow or pollutant load or adds a new pollutant.

## **SUBCHAPTER 3. CERTIFICATIONS**

### **Section**

- 252:611-3-1. Water quality certifications required
- 252:611-3-2. Requirements for certification
- 252:611-3-3. Public notice
- 252:611-3-4. Conditional certification
- 252:611-3-5. Waiver
- 252:611-3-6. Duration of certification

### **252:611-3-1. Water quality certifications required**

(a) **Certification from state required.** In accordance with the provisions of Section 401 of the federal Clean Water Act and the Environmental Quality Code, any applicant for a federal license, permit or project to conduct any activity including but not limited to, the construction or operation of facilities, dredge or fill, or other activities, which may result in any discharge into, or pollution or alteration of the waters of the State of Oklahoma, shall first obtain a water quality certification from the DEQ for such activity, facility or discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA, OWQS, and other applicable state requirements.

(b) **Types of federal applications for which certification issued.** The DEQ issues, renews and modifies water quality certifications including, but not limited to, the following list. However, certification is not required for state issued NPDES Permits.

- (1) Permits issued by the U.S. Environmental Protection Agency, under the National Pollutant Discharge Elimination System (NPDES) program;
- (2) Permits issued by the U.S. Army Corps of Engineers under the Section 404 permit program for the discharge of dredged or fill materials;
- (3) Applications to the Federal Energy Regulatory Commission for a federal license to construct and operate a hydroelectric facility;
- (4) Applications to the Nuclear Regulatory Commission for a license to operate a facility;
- and
- (5) Permit issued by the U.S. Coast Guard that results in the discharge of wastewater or pollutants into navigable waters.

### **252:611-3-2. Requirements for certification**

(a) An application for a water quality certification shall be made in writing pursuant to the requirements of the Uniform Permitting Act and shall clearly state that the applicant is requesting a 401 water quality certification and include:

- (1) one copy of the application for the corresponding federal permit, or license for federal authorization of activities;
- (2) one copy of any draft federal permit, license, or authorization, if available;
- (3) copies of any relevant maps, drawings, studies, environmental impact assessments, plans, information relating to endangered, rare or threatened species including Finding of No Significant Impact (FONSI) or exemption, and other appropriate documents;
- (4) a legal description of the project location;
- (5) a description of all surface water, groundwater, or natural resources potentially affected by the proposed activities;~~and~~
- (6) one copy of any mitigation plan, when mitigation is required by a federal entity; and
- (7) a one-hundred dollar (\$100.00) non-refundable application fee. To assist in meeting rising costs to the Department for the issuance of 401 water quality certifications, the

application fee amount shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fee up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments shall occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(b) The applicant shall provide copies of any applicable water quality-related comments and responses received in response to any public notice, if any.

(c) Additional information may be required by the DEQ.

(d) Applications that do not contain the information list above are incomplete.

(e) The federal agency may submit an application for certification or other information on behalf of the applicant. The applicant is responsible to provide any additional information requested by the DEQ and ensure that the application is complete.

### **252:611-3-3. Public notice**

(a) If public notice has not been made by the appropriate federal agency, the DEQ will mail notice of certification application to all interested persons who have submitted a written request to the DEQ to receive such notices.

(b) The DEQ will coordinate certifications for NPDES permits with the U.S. EPA in a manner which is consistent with EPA regulations in 40 CFR '124.53; provided however, that if a time in excess of sixty days from the date the draft permit is mailed to the DEQ is necessary for certification, the DEQ reserves the right to notify the Regional Administrator that a longer time is required.

### **252:611-3-4. Conditional certification**

A conditional certification shall only be effective if the federal agency includes in the federal permit or authorization, all limitations, requirements and conditions specified by the DEQ in the conditional certification. The conditions may include effluent or other limitations, monitoring requirements, and any other terms and conditions deemed necessary to assure that the discharge and associated activities will comply with the applicable water quality requirements.

### **252:611-3-5. Waiver**

Any waiver of the requirements for certification must be written and signed by the DEQ and must specify the activities and location for which the waiver is issued.

### **252:611-3-6. Duration of certification**

A certification shall be valid until the corresponding federal permit, license or authorization is terminated, renewed or modified. Before a federal permit is reissued, renewed, or modified, the applicant shall file a new application for certification with the DEQ. The certification may

be revoked or modified upon subsequent amendments or revisions to State water quality requirements, modification, revocation, or expiration of the federal permit, license or authorization to which the certification is addressed.

## **SUBCHAPTER 5. GROUNDWATER POLLUTION CONTROL**

### **Section**

252:611-5-1. Proposed or required site assessment and remediation projects

252:611-5-2. Application for approval of plan

252:611-5-3. Review by the DEQ

### **252:611-5-1. Proposed or required site assessment and remediation projects**

(a) Any person proposing remediation of or required by the Department to take action to remediate groundwater shall comply with any applicable requirements of the Oklahoma Water Resources Board for withdrawal and requirements of the Department for site assessment and remediation.

(b) Any person proposing a remediation project relating to ground water or required to undertake such a project by the DEQ is required to obtain prior approval by the DEQ of a site assessment plan and remediation plan.

(c) Any discharge to waters of the state resulting from remediation of groundwater shall require an authorization or permit under the Oklahoma Pollutant Discharge Elimination System Act and rules promulgated thereunder (OAC 252:605), or a 401 water quality certification, as appropriate. Other disposal methods may also require separate permits, plans or authorizations from the Department.

(d) The applicant shall comply with requirements of the DEQ relating to the drilling of monitoring wells, sampling, performance of laboratory analyses, recordkeeping, reporting, on-site revegetation, mitigation, or other actions to prevent, abate or control pollution.

### **252:611-5-2. Application for approval of plan**

(a) Each application for the DEQ's approval of a ground water site assessment and remediation plan shall contain the following information:

- (1) name and address of applicant, the owner of the property, and, where known, identification of person(s) who may be responsible for any pollution events and/or remediation efforts;
- (2) copy of pertinent studies already completed;
- (3) a topographic map of the area and information regarding the groundwater resources potentially affected;
- (4) description of the pollutants suspected to occur and any reports related to spills, discharges, or other pollution events;
- (5) proposed location of monitoring wells and sampling points as appropriate;
- (6) drawings and data sufficient to describe groundwater flow and geological features;
- (7) location of water wells, sewers, utility lines, buildings and other significant structures.

(b) The DEQ may require the submission of other information as necessary for the evaluation of the proposed plan. The DEQ may require analyses of samples by a laboratory certified by the DEQ, specify additional or modified sampling and monitoring requirements, require records and specify reporting requirements.

### **252:611-5-3. Review by the DEQ**

Among the factors to be considered by the DEQ in review of any proposed plan or project under this Subchapter are:

- (1) Corrective action levels of pollutants or clean up levels for pollutants specified in the Oklahoma Water Quality Standards;
- (2) Existing and future effects of the contamination;
- (3) Existing and future uses of the affected aquifer and underlying aquifers;
- (4) Current technology for such clean-up;

(5) Current knowledge on health and environmental effects of varying concentrations of pollutants.

**Supplemental Information**  
**GLOSSARY OF TERMS**

**"Board"** means the Environmental Quality Board.

**"Clean Water Act"** or **"CWA"** means the federal Water Pollution Control Act, 33 U.S.C. § 251 *et seq.*, as amended.

**"Code"** means the Environmental Quality Code, 27A O.S. § 2-1-101 *et seq.*, as amended.

**"DEQ"** means the Oklahoma Department of Environmental Quality.

**"Director"** and **"Executive Director"** means the Executive Director of the DEQ.

**"EPA"** means the United States Environmental Protection Agency.

**"Oklahoma's Water Quality Standards"** and **"OWQS"** and **"Standards"** means the rules promulgated by the Oklahoma Water Resources Board at OAC 785:45 which classify waters of the state, designate the uses for which the various waters of the State shall be maintained and protected and prescribe the water quality standards required to sustain designated uses.

**"OPDES Act"** means the Oklahoma Pollutant Discharge Elimination System Act, 27A O.S. § 2-6-101 *et seq.*