

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 1210

BY: GLOVER

(WATER AND WATER RIGHTS AND PUBLIC HEALTH -
AMENDING 82 O.S., SECTIONS 926.1, 926.3,
926.4 AND 926.10 - POLLUTION REMEDIES -
AMENDING 63 O.S., SECTIONS 1-901, 1-908
AND 1-909A -

EMERGENCY)

AUTHOR: Add the following Senate Author: ROBERTS (Principal)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"[WATERS AND WATER RIGHTS AND PUBLIC HEALTH -
AMENDING 82 O.S. 1981, SECTION 926.1, 63 O.S.
1981, SECTIONS 1-901 AND 1-908, WHICH RELATE
TO POWERS AND DUTIES OF THE STATE DEPARTMENT OF
HEALTH - CREATING THE OKLAHOMA WATER RESOURCES
BOARD POLLUTANT DISCHARGE ELIMINATION SYSTEM
ACT - EFFECTIVE DATE -

EMERGENCY]

SECTION 1. AMENDATORY 82 O.S. 1981, Section 926.1, is amended to read as follows:

Section 926.1 Wherever used in this act the following terms shall have the respective meanings hereinafter set forth or indicated, unless the context otherwise requires:

1. "Pollution" means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful or 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.

2. "Wastes" means industrial waste and all other liquid, gaseous or solid substances which may pollute or tend to pollute any waters of the state.

3. "System" means pipelines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastes to a point of ultimate disposal.

4. "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator or other works used for the purpose of treating, stabilizing or holding wastes.

5. "Disposal system" means a system for disposing of wastes, and includes sewerage systems and treatment works.

6. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems 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, ~~except privately owned reservoirs used in the process of cooling water for industrial purposes, provided that water released from any such reservoir into a stream~~

~~system of the state shall be and become waters of the state and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through, or border upon the State of Oklahoma or any portion thereof.~~

7. "Person" means the state, any municipality, political subdivision, institution, public or private corporation, individual, partnership or other entity.

8. "Board" means the Oklahoma Water Resources Board.

SECTION 2. AMENDATORY 82 O.S. 1981, Section 926.3, as amended by Section 1, Chapter 46, O.S.L. 1988 (82 O.S. Supp. 1990, Section 926.3), is amended to read as follows:

Section 926.3 The Oklahoma Water Resources Board shall have and is hereby authorized to exercise the following powers and duties:

1. To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the waters of this state;

2. To advise, consult and cooperate with other agencies of this state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the purposes of this act;

3. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions;

4. To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to water pollution and causes, prevention, control and abatement thereof as it may deem advisable and necessary in the public interest for the discharge of its duties under this act;

5. To collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

6. To adopt, modify or repeal and promulgate standards of quality of the waters of the state and to classify such waters

according to their best uses in the interest of the public under such conditions as the Board may prescribe for the prevention, control and abatement of pollution;

7. To adopt, modify, repeal, promulgate and enforce rules and regulations implementing or effectuating the powers and duties of the Board under this act and setting standards of water quality and classifying waters of the state;

8. To issue, modify, or revoke orders

- a. prohibiting or abating ~~discharges~~ disposal of wastes ~~into the waters of the state~~;
- b. requiring the construction of new disposal systems or any parts thereof or the modification, extension or alteration of existing disposal systems or any part thereof, or the adoption of other remedial measures to prevent, control or abate pollution; and
- c. such as the Board may deem necessary or convenient to enforce the provisions of this act and rules and regulations promulgated thereto or evidencing any other determination by the Board under this act;

9. To require the submission of and to review plans, specifications and other data relative to industrial disposal systems or any part thereof in connection with the issuance of such permits as are required by this act;

10. To issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution, permits for the ~~discharge~~ disposal of wastes ~~into the waters of the state~~, and for installation, modification or operation of industrial disposal systems or any parts thereof;

11. To exercise all incidental powers which are necessary and proper to carry out the purposes of this act; provided, however, the various conditions and requirements imposed under the provisions of this act, except the standard of quality of waters of the state

adopted by the Board pursuant to this act, which standards shall be utilized by all appropriate state agencies in implementing their respective duties to abate and prevent pollution to the waters of the state shall in no respect be construed as repealing or superceding any laws of the state relating to the pollution of the waters of the state but shall be rather held and construed as auxiliary and supplementary thereto. No permit, approval or authorization issued or granted by the Board under the provisions of this act shall in any respect supercede or otherwise affect any waste disposal ~~or waste discharge~~ laws, regulations or requirements of any other governmental agency of the state possessing jurisdiction and regulatory authority respecting the discharge of wastes or pollution to the waters of the state provided that the Board's authority over the discharge of pollutants into waters of the state shall be as set forth in Section 927.1 et seq. of this title.

SECTION 3. AMENDATORY 82 O.S. 1981, Section 926.4, is amended to read as follows:

Section 926.4 A. It shall be unlawful for any person to cause pollution as defined in Section ~~4~~ 926.1 of this ~~act~~ title of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state. Any such action is hereby declared to be a public nuisance.

B. It shall be unlawful for any person to carry on any of the following activities without first securing such permit from the ~~Board, as is required by it~~ Executive Director, for the ~~discharge disposal~~ of ~~all industrial wastes which are or may be discharged thereby into the waters of the state:~~

1. The construction, installation, modification or operation of any industrial disposal system or part thereof or any extension or addition thereto;

2. The increase in volume or strength of any ~~industrial~~ wastes in excess of the permissive ~~discharges~~ limits specified under ~~any existing a~~ permit;

3. The construction, installation or operation of any industrial or commercial establishment subject to the permitting authority of the Board or any major extension or modification thereof or addition thereto, the operation of which would cause an increase in the disposal of wastes and discharge of wastes pollutants into the waters of the state or would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized; or

4. The construction or use of any new ~~outlet~~ outfall by any system subject to the permitting authority of the Executive Director pursuant to Sections 9 through 15 of this act for the discharge of any ~~industrial~~ pollutants or disposal of any wastes into the waters of the state.

The Board, under such conditions as it may prescribe, may require the submission of such plans, specifications and other information and may require public hearings thereon as it deems relevant in connection with the issuance of such permits.

~~C. Any person who is denied a permit by the Board or who has such permit revoked or modified shall be afforded an opportunity for a public hearing in connection therewith upon written application within twenty (20) days after receipt of notice from the Board of such denial, revocation or modification.~~

SECTION 4. AMENDATORY 82 O.S. 1981, Section 926.7, is amended to read as follows:

Section 926.7 A. Whenever the Board or Executive Director determines there are reasonable grounds to believe that there has been a violation of any of the provisions of this act, any permit, any rule or any order of the Board, ~~it shall give~~ or the Executive Director issued under the authority of this title, written notice

thereof shall be given to the alleged violator or violators specifying the cause of complaint. Such notice shall require that the matters complained of be corrected or that the alleged violator appear before the Board or the Executive Director at a time and place within the affected area or in a mutually agreeable location specified in the notice and answer the charges. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection D of this section not less than twenty (20) days before the time set for the hearing.

B. The Board or the Executive Director shall afford the alleged violator or violators an opportunity for a fair hearing in accordance with the ~~provisions of Section 8. On the basis of the evidence produced at the hearing, the Board shall make findings of fact and conclusions of law and enter an order thereon. The Board shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the Board itself, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Board which shall thereupon enter its order. The Board may, in its discretion, enter its order on the basis of such record or, before issuing its order, require additional hearings or further evidence to be presented. The order of the Board shall become final and binding on all parties unless appealed to the district court as provided in Section 11 of this act within thirty (30) days after notice has been sent to the parties~~ requirements of the Oklahoma Administrative Procedures Act.

All administrative orders issued after hearing shall be in writing and shall set forth findings of fact and conclusions of law.

C. Whenever ~~the Board finds that~~ an emergency exists involving discharges of pollutants to the waters of the state or disposal of wastes regulated by the Board or Executive Director under this title

and requiring immediate action to protect the public health or welfare, ~~it may~~ an emergency order may be issued by the Board or Executive Director without notice or hearing ~~issue an order~~ reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Notwithstanding the provisions of subsection B of this section, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately but on application ~~to the Board~~ shall be afforded a hearing within ten (10) days. On the basis of such hearing, ~~the Board shall continue~~ such order may be continued in effect, ~~revoke it or modify it;~~ revoked, or modified, provided, that any person aggrieved by such order continued after the hearing provided in this subsection may appeal to the district court of the area affected within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal.

D. Except as otherwise expressly provided, any notice, order or other instrument issued ~~by or under authority of the Board~~ this section may be served on any person affected thereby personally or by publication. Proof of such service shall be made as in case of service of a summons or by publication in a civil action, such proof to be filed in the office of the Board; or such service may be made by mailing a copy of the notice, order or other instrument by registered mail directed to the person affected at his last-known post office address as shown by the files or records of the Board, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the Board.

Every certificate or affidavit of service made and filed as herein provided shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

E. The provisions in this section for written notice, hearing, administrative orders and emergency orders shall not be conditions precedent for the Board or Executive Director to seek action in the district court as provided by Section 926.10 of this title.

SECTION 5. AMENDATORY 82 O.S. 1981, Section 926.10, is amended to read as follows:

Section 926.10 A. Any person who shall violate any of the provisions of, or who fails to perform any duty imposed by, Sections 926.1 through ~~926.13~~ 927.7 of this title or who violates any rule, permit or order or determination of the Board or Executive Director promulgated or issued pursuant to this act title shall, upon conviction, be guilty of a misdemeanor and in addition thereto may be enjoined from continuing such violation. In addition to other penalties or liabilities as may be imposed by law, ~~violations may be punishable~~ the Board or Executive Director may in administrative proceedings or a court of competent jurisdiction in civil proceedings by assessment of a may impose an administrative or civil penalty of not more than ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) for each violation or, in criminal proceedings, by a fine of not less than Two Hundred Dollars (\$200.00) for each violation and not more than ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) for each violation or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment, provided that the maximum civil or criminal penalty per day for each violation of Sections 926.1 through 926.13 of this title shall be not more than Ten Thousand Dollars (\$10,000.00). Each day upon which such violation occurs shall constitute a separate violation. Any administrative or civil penalties collected shall be deposited in the Water Quality Fund established under Section 1085.7 of this title.

B. It shall be the duty of the Attorney General and district attorney ~~at their discretion on the request of~~ if requested by the Board to bring an action for an injunction against any person violating the provisions of Sections 926.1 through 926.13 of this title or Section 9 through 15 of this act or violating any rule, permit or order or determination of the Board or Executive Director made under this title. Nothing in this section shall be construed, however, to limit the powers of the Board or Executive Director to enforce the provisions of Sections 926.1 through 926.13 of this title and Sections 9 through 15 of this act or the terms of any permit, license or certification issued by the Board or Executive Director or to otherwise commence or maintain court proceedings. In any action for an injunction brought pursuant to this section, any findings of the Board after hearing or due notice shall be ~~prima facie evidence of the facts found therein~~ subject to review as set forth in the Oklahoma Administrative Procedures Act.

C. In addition to other penalties as may be imposed by law, any person who knowingly makes any false statement, representation or certification in any discharge permit form, in any notice or report required by a ~~discharge~~ permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by regulations and standards adopted by the Board shall, upon conviction, be guilty of a misdemeanor and may be

subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each such violation.

D. Nothing in this act shall in any way impair or in any way affect a citizen's right to recover damages for pollution.

SECTION 6. AMENDATORY 63 O.S. 1981, Section 1-901, is amended to read as follows:

Section 1-901. For the purposes of this article:

(a) The term "waters of the state" shall include all streams ~~and springs, all ground water, and all bodies of surface water, whether natural or artificially impounded, within the boundaries of the State of Oklahoma,~~ lakes, ponds, marshes, water courses, 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 contained within the boundaries of, flowing through, or bordering upon the State of Oklahoma or any portion thereof.

(b) The term "sewage" shall include any substance that contains any discharge from the bodies of human beings or animals, or contaminating chemicals or other contaminating wastes from domestic, manufacturing or other forms of industry.

(c) The term "bottled water" means any water, including water to which chemicals or other substances may have been added, which is placed in bottles or other containers to be sold or offered for sale for drinking, culinary or other domestic purposes involving a likelihood of the water being ingested by human beings.

(d) The term "bottled water plant" means any place, premises, or structure, including water supply, facilities and equipment, used in the treatment or processing of the water or the filling of containers in the preparation of bottled water.

(e) The term "Oklahoma State Department of Health regulated system" means:

(1) any publicly owned treatment works but not publicly or privately owned industrial treatment works,

(2) any pollutant treatment and discharge system at facilities for which the State Department of Health or State Commissioner of Health issues the following kinds of licenses or permits under the Oklahoma Public Health Code as of January 1, 1991:

(A) hospitals and related institutes under Section 1-701 et seq. of Title 63 of the Oklahoma Statutes,

(B) group homes for the developmentally disabled and physically handicapped under Section 1-818.1 et seq. of Title 63 of the Oklahoma Statutes,

(C) residential care homes under Section 1-820 et seq. of Title 63 of the Oklahoma Statutes,

(D) adult day care centers under Section 1-870 et seq. of Title 63 of the Oklahoma Statutes,

(E) psychiatric and chemical dependency facilities under Section 1-880.1 et seq. of Title 63 of the Oklahoma Statutes,

(F) public water supply systems under Sections 1-904 and 1-907 of Title 63 of the Oklahoma Statutes, except those at facilities or activities specified for regulation by the Oklahoma Water Resources Board under Section 11 of this act,

- (G) bottled water plants under Section 1-915 of Title 63 of the Oklahoma Statutes,
- (H) septic tank and cesspool cleaners under Section 1-1009 of Title 63 of the Oklahoma Statutes,
- (I) public bathing places under Section 1-1013 et seq. of Title 63 of the Oklahoma Statutes,
- (J) manufacturers, processors and packers of food under Section 1-1111 of Title 63 of the Oklahoma Statutes, except meat, poultry, sheep, rabbit and other forms of meat processing facilities subject to regulation under Title 2 of the Oklahoma Statutes,
- (K) sellers of food under Section 1-1118 of Title 63 of the Oklahoma Statutes, except at facilities specified for regulation by the Oklahoma Water Resources Board under Section 11 of this act,
- (L) manufacturers, wholesalers or brokers of food or drugs under Section 1-1119 of Title 63 of the Oklahoma Statutes, except those specified for regulation by the Oklahoma Water Resources Board under Section 11 of this act,
- (M) frozen food locker plants and branch frozen food locker plants under Section 1-1120 et seq. of Title 63 of the Oklahoma Statutes,
- (N) hotels as defined and licensed under Section 1-1201 of Title 63 of the Oklahoma Statutes,

- (O) milk production, process and distribution and hauling under Section 1-1130.1 et seq. of Title 63 of the Oklahoma Statutes,
- (P) atomic energy and radiation protection under Section 1-1501 et seq. of Title 63 of the Oklahoma Statutes, except at facilities or activities specified for regulation by the Oklahoma Water Resources Board under Section 11 of this act,
- (Q) nursing homes and specialized facilities under Section 1-1901 et seq. of Title 63 of the Oklahoma Statutes and Section 1-851.1 et seq. of Title 63 of the Oklahoma Statutes,
- (R) controlled industrial waste under Section 1-2001 et seq. of Title 63 of the Oklahoma Statutes, except at facilities or activities specified for regulation by the Oklahoma Water Resources Board under Section 11 of this act,
- (S) solid waste disposal sites, recycling facilities and solid waste management systems under Section 1-2300 et seq. of Title 63 of the Oklahoma Statutes,
- (T) waste tire facilities under Section 1-2324 et seq. of Title 63 of the Oklahoma Statutes, and
- (U) ambulance services under Section 1-2501 et seq. of Title 63 of the Oklahoma Statutes, and
- (3) any pollutant treatment and discharge system at industrial solid waste monofill under Section 2258.4 of Title 63 of the Oklahoma Statutes, and

(4) any category of discharges, facilities or activities, which may become regulated by the Clean Water Act and regulations thereunder after the effective date of this act, as designated by the Governor.

(f) The term "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 agribusiness waste discharged into water. This term shall not include water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the appropriate state agencies have previously approved the well used either to facilitate production or for disposal purposes and if the appropriate state agencies determine that such injection or disposal will not result in the degradation of ground or surface water resources.

(g) The term "publicly owned treatment works" shall mean any device or system used in the treatment, including recycling and reclamation of municipal sewage or industrial waste of a liquid nature which is owned by the state or a city, town, borough, county, parish, district, association or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

(h) The term "publicly or privately owned industrial treatment works" shall mean any device or system used primarily for the storage, treatment, recycling, and reclamation of industrial or commercial waste of a liquid nature, which is owned by the state, or a city, town, borough, county, parish, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes or other

wastes, or which is owned by a private person or other similar entity.

(i) The term "discharge" shall mean when used without qualification a discharge of a pollutant or pollutants and means any addition of any pollutant to waters of the state from any point source.

(j) The term "point source" shall mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, or vessel or other floating craft, from which pollutants or wastes are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

SECTION 7. AMENDATORY 63 O.S. 1981, Section 1-908, is amended to read as follows:

Section 1-908. (a) No ~~person~~ Oklahoma State Department of Health regulated system as defined in the Oklahoma Statutes, shall, without a permit from the State Commissioner of Health, construct or let a contract for any construction work of any nature for a sanitary sewer system, ~~or solid waste fill,~~ or a sewage or waste treatment plant, or for any extension thereof, either in whole or in part; ~~or place, or permit to be placed or discharged, or permit to flow, into any of the waters of the state, or elsewhere, any sewage.~~

(b) An application for such permit shall be made to the Commissioner on forms prescribed by the ~~State Board of Health Commissioner,~~ and shall be accompanied by the map or maps and plans and specifications, prepared by a licensed engineer, for the construction of such sanitary sewage system, or sewage or waste treatment plant, ~~or solid waste fill,~~ or extension thereof, together with a complete description of the design of the system, sewer outfall and sewage or waste treatment plant, and together with other

data and information as may be required by the Commissioner; and no other extension or change of any kind shall be made in the manner of sewage or waste treatment without an additional permit issued by the Commissioner, which permit may be obtained in a similar manner from the Commissioner.

(c) Whenever complaint shall be made to the Commissioner ~~by the mayor of any city, or the president of the board of trustees of any incorporated town, or by the local health officer,~~ of the pollution or the polluted condition of any of the waters of the state, ~~situated within the county,~~ the Commissioner shall make an investigation covering the pollution or the polluted condition concerning which complaint is made; and whenever the Commissioner shall have reason to believe that any waters of the state are being polluted ~~in a manner prejudicial to the health of any of the inhabitants of the state,~~ he shall make an investigation covering such pollution or polluted condition. It shall be the duty of any person concerned in such pollution to furnish, on demand, to the Commissioner information relative to the amount and character of the polluting material discharged into the waters by such person.

(d) If the Commissioner shall find that any of the waters of the state have been, or are being, polluted ~~in a manner prejudicial to the health of any of the inhabitants of the state,~~ he shall make an order requiring such pollution to cease ~~within a reasonable time,~~ ~~or~~ and requiring such manner of treatment or of disposition of the sewage or other polluting material as may in his judgment be necessary to prevent the further pollution of such waters. It shall be the duty of the person to whom such order is directed to fully comply with the order of the Commissioner. If such person considers the requirements of the order to be illegal, unjust or unreasonable, he may, ~~within thirty (30) days after the making of the order,~~ appeal therefrom ~~to the district court of the county in which the pollution or polluted conditions occur,~~ in the same manner as

appeals from other orders of the Commissioner, ~~and the court shall hear the case without delay and shall render a decision approving, setting aside or modifying the order~~ pursuant to the Administrative Procedures Act.

SECTION 8. AMENDATORY Section 1, Chapter 335, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-909A), is amended to read as follows:

Section 1-909A.

A. 1. a. This section of the Public Health Code shall be known and may be cited as the "Oklahoma State Department of Health Pollutant Discharge Elimination System Act".

b. No ~~person~~ Oklahoma State Department of Health regulated system as defined by this Code shall ~~place, discharge, or allow the placement or discharge of~~ sewage pollutants into the waters of the state without a permit issued by the State Commissioner of Health.

2. An application for a permit shall be made to the Commissioner on forms prescribed by the Commissioner, and shall be accompanied by such information as may be required, by the Commissioner, to ensure compliance with the provisions of this section. Upon receipt of applications therefor, the Commissioner may issue permits for the ~~placement or discharge of sewage~~ pollutants from Oklahoma State Department of Health regulated systems and may stipulate in the permits the conditions upon which such discharges are to be permitted. The Commissioner shall issue such permits whenever the Commissioner determines that the discharges will not:

- a. violate regulations controlling or limiting such discharges adopted by the State Board of Health,
- b. adversely affect the beneficial uses of the waters of the state,

- c. violate any of the Oklahoma Water Quality Standards,
or
- d. threaten the health of the public.

3. The Commissioner shall issue permits for the ~~placement or~~ discharge of ~~sewage~~ pollutants from Oklahoma State Department of Health regulated systems for fixed terms not exceeding five (5) years.

4. The Commissioner may modify or revoke any ~~sewage~~ pollutant discharge permit subject to regulation by the Commissioner for cause, including but not limited to the following:

- a. violation of regulations controlling or limiting discharges adopted by the State Board of Health,
- b. violation of any condition of the permit,
- c. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts upon which the decision to issue the permit was based,
- d. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, or
- e. violation of any of the Oklahoma Water Quality Standards.

B. 1. The Commissioner may, at his own discretion, and shall upon receipt of a complaint, investigate the condition of any of the waters of the state, and of any place wherein the discharge of ~~sewage or sewage effluent~~ pollutants may violate regulations concerning such discharges subject to regulation by the Commissioner, or which may adversely affect the beneficial uses of the waters of the state or threaten the health of the public. It shall be the duty of any person to furnish to the Commissioner, on demand, information relative to an investigation, including the amount and character of any ~~sewage~~ pollutant being discharged to the

waters of the state from Oklahoma State Department of Health regulated systems.

2. If the Commissioner finds that:

- a. regulations controlling or limiting any such discharges are being violated,
- b. the waters of the state are being or have been polluted so as to adversely affect the beneficial uses thereof,
- c. Oklahoma's Water Quality Standards are being violated, or
- d. the discharge ~~or placement of sewage or sewage effluent~~ a pollutant from an Oklahoma State Department of Health regulated system is causing or constituting a threat to public health,

the Commissioner shall issue an order requiring such discharges ~~or placement of sewage or sewage effluent~~ pollutants to cease and shall:

- ~~a.~~ e. require the manner of treatment or disposal of the ~~sewage or sewage effluent~~ pollutants as may in the judgment of the Commissioner be necessary to comply with the requirements of the regulations of the Board,
- ~~b.~~ f. comply with Oklahoma's Water Quality Standards,
- ~~c.~~ g. prevent pollution,
- ~~d.~~ h. protect beneficial uses of the waters of the state, or
- ~~e.~~ i. remove any threat to the health of the public.

C. The State Board of Health, in addition to any other authority and responsibility granted to it by law, shall have the power to adopt regulations to control and limit the ~~placement and discharge of sewage and the effluent from sewage collection systems and sewage treatment facilities~~ pollutants from Oklahoma State

Department of Health regulated systems. The Board shall have the authority to adopt regulations which:

1. Allow the inclusion of technology-based effluent limitations in discharge permits for Oklahoma State Department of Health regulated systems where such limitations will not adversely affect beneficial uses of the waters of the state;

2. Require the inclusion of water quality related effluent limitations in discharge permits where necessary to protect beneficial uses of the waters of the state;

3. Establish standards for the removal of toxic materials from effluent discharges;

4. Establish standards of pretreatment for introduction of materials into ~~sewage treatment facilities~~ Oklahoma State Department of Health regulated systems which are publicly owned treatment works subject to regulation by the Oklahoma State Department of Health or Commissioner and which are determined not to be susceptible to treatment by such facilities or which would interfere with the operation of such facilities;

5. Prohibit or control the discharge of ~~sewage~~ pollutants into wells except as regulated by the Oklahoma Corporation Commission pursuant to federally delegated authority under the Federal Safe Drinking Water Act;

6. Ensure that the public and any other state, the waters of which may be affected, receive notice of each application for a discharge permit from an Oklahoma State Department of Health regulated system, and prescribe circumstances under which will be provided an opportunity for a public hearing before deciding whether to issue a discharge permit;

7. Ensure that the Administrator of the United States Environmental Protection Agency receives a copy of each application to the Commissioner for a discharge permit;

8. Ensure that any other state, the waters of which may be affected by the activities allowed by a proposed permit for an Oklahoma State Department of Health regulated system, may submit written recommendations on the application to the Commissioner. The regulations shall provide that if such recommendations or any parts thereof are not adopted, the Commissioner will notify the affected state in writing and shall provide the reasons therefor;

9. Ensure that information is provided to the Commissioner regarding:

- a. materials being introduced into ~~sewage treatment facilities~~ Oklahoma State Department of Health regulated systems which are publicly owned treatment works subject to regulation by the Oklahoma State Department of Health or Commissioner from new and existing sources,
- b. substantial changes in the volume or character of such materials, and
- c. the impact thereof on the quality and quantity of the effluent being discharged from the facilities;

10. Ensure that persons to whom Oklahoma State Department of Health regulated system discharge permits have been issued, and industrial users of ~~publicly owned sewage treatment facilities~~ Oklahoma State Department of Health regulated systems which are publicly owned treatment works subject to regulation by the Oklahoma State Department of Health or Commissioner:

- a. comply with all toxic effluent and pretreatment standards,
- b. provide records and reports, and
- c. allow inspections of facilities as necessary to investigate compliance with the requirements of the applicable discharge permits issued by the Commissioner, and the regulations of the Board;

11. Ensure that no permit is issued by the Commissioner which would substantially impair the anchorage and navigation of any of the navigable waters of the United States-;

12. Provide for the issuance and enforcement of permits to Oklahoma State Department of Health regulated systems for the discharge of storm water into the waters of the state, including into storm sewers; and for the issuance of both individual and general discharge permits to Oklahoma State Department of Health regulated systems.

D. 1. Whenever required to carry out the provisions of the regulations adopted by the Board, the Commissioner shall have the power and duty to:

- a. develop or assist in the development of any effluent limitation, or other limitation, prohibition, effluent regulation, or pretreatment regulation,
- b. determine whether any person is in violation of any such effluent limitation, or other limitation, prohibition, effluent regulation or pretreatment regulation,
- c. enforce any requirements established pursuant to this section, or
- d. carry out the provisions of Sections 1-901 through 1-911 of Title 63 of the Oklahoma Statutes.

2. The Commissioner shall require the owner or operator of any ~~discharging facility~~ Oklahoma State Department of Health regulated system to:

- a. establish and maintain the records as prescribed by the Commissioner,
- b. make such reports as prescribed by the Commissioner,
- c. install, use and maintain such monitoring equipment or use monitoring methods including but not limited to

where appropriate, physical, chemical, and biological monitoring methods as required by the Commission,

- d. sample effluents, in accordance with such methods, at locations, at the intervals, and in the manner as the Commissioner shall prescribe, and
- e. provide such other information as the Commissioner may reasonably require.

3. The Commissioner or the authorized representative of the Commissioner including but not limited to an authorized contractor acting as a representative of the Commissioner, upon presentation of his credentials:

- a. shall have a right of entry upon or through any premises in which an effluent source is located or in which any records required to be maintained pursuant to paragraph 2 of this subsection are located, and
- b. may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required pursuant to paragraph 2 of this subsection, and may sample any effluents which the owner or operator of such source is required to sample pursuant to paragraph 2 of this subsection.

4. Any records, reports, or information obtained pursuant to this subsection shall:

- a. in the case of effluent data, be related to any applicable effluent limitations, toxic or pretreatment standards, and
- b. be available to the public except that upon a showing satisfactory to the Commissioner by any person that records, reports, or information, or particular parts thereof, other than effluent data, to which the Commissioner has access pursuant to this section, if made public would divulge methods or processes

entitled to protection as trade secrets of such person, the Commissioner shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of the Uniform Trade Secrets Act. Nothing in this subsection shall prohibit the Commissioner, or an authorized representative of the Commissioner including but not limited to any authorized contractor acting as a representative of the Commissioner, 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.

E. Upon application to the federal government by the Governor, the Commissioner is empowered to assume and obtain authorization to implement and maintain a portion of the National Pollutant Discharge Elimination System created by the federal Clean Water Act. Upon the effective date of this act, the Commissioner shall issue permits for the discharge of pollutants from facilities and activities known as "Oklahoma State Department of Health regulated systems" as defined in this Code.

F. Whenever on the basis of any information available the Commissioner finds that any Oklahoma State Department of Health regulated system has violated any of the provisions of Sections 1-901 through 1-909A of this Code, or any permit condition or limitation implementing any of such sections in a permit issued by the Commissioner, the Commissioner may, after providing notice and opportunity for a hearing to the alleged violator, assess an administrative fine for such violation of Twenty-five Thousand Dollars (\$25,000.00) per day of violation, not exceeding One Hundred Twenty-five Thousand Dollars (\$125,000.00). In determining the

amount of any penalty assessed under this subsection, the Commissioner shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such 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. In administering the provisions of this subsection, the Commissioner shall provide public notice of any proposed penalty and provide an opportunity for any person to be heard thereon. The State Board of Health may adopt procedural regulations to implement the requirements of this subsection. Hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act. All administrative fines collected shall be deposited in the Public Health Special Fund.

G. Any citizen having an interest which is or may be adversely affected may intervene in an administrative proceeding before the Commissioner to obtain an order prohibiting any person from any act in violation of this act or regulations thereunder, which act is endangering or causing damage to public health or the environment.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 927.1 of Title 82, unless there is created a duplication in numbering, reads as follows:

Sections 927.1 through 927.7 of this title shall be known and may be cited as the "Oklahoma Water Resources Board Pollutant Discharge Elimination System Act".

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 927.2 of Title 82, unless there is created a duplication in numbering, reads as follows:

Terms used in this act shall have the meanings set forth in Section 926.1 of this title. In addition, for purposes of this act:

1. "Board" means the Oklahoma Water Resources Board, an agency of the State of Oklahoma.

2. "Executive Director" and "Director" mean the Executive Director of the Oklahoma Water Resources Board.

3. "Clean Water Act" means the federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., as amended.

4. "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, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

5. "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 agribusiness waste discharged into water. This term shall not include water, gas or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the appropriate state agencies have previously approved the well used either to facilitate production or for disposal purposes and if the appropriate state agencies determine such injection or disposal will not result in the degradation of ground or surface water resources.

6. "Effluent limitation" means any established restriction or quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the state, including schedules of compliance.

7. "Discharge" when used without qualification includes a discharge of a pollutant or pollutants, and means any addition of any pollutant to waters of the state from any point source.

8. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

9. "Publicly owned treatment works" shall mean any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial waste of a liquid nature which is owned by the state or a city, town, borough, county, parish, district, association or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

10. "Publicly or privately owned industrial treatment works" shall mean any device or system used primarily for the storage, treatment, recycling, and reclamation of industrial or commercial waste of a liquid nature, which is owned by the state, or a city, town, borough, county, parish, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes or other wastes, or which is owned by a private person or other similar entity.

11. "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 contained within the boundaries of, flowing through, or bordering upon the State of Oklahoma or any portion thereof.

12. "Oklahoma Water Resources Board regulated system" means those facilities or activities designated in paragraph 3 of Section 11 of this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 927.3 of Title 82, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Water Resources Board shall have and is hereby authorized to exercise the following powers and duties:

1. To adopt, modify, repeal, promulgate and enforce rules and regulations implementing or effectuating the powers and duties of the Board under this title, which rules and regulations may incorporate by reference any applicable regulations of the U.S. Environmental Protection Agency, including but not limited to rules which:

- a. allow the inclusion of technology-based effluent limitations and require water quality-related effluent limitations in discharge permits to the extent necessary to protect the beneficial uses of the waters of the state and to comply with the requirements of the Clean Water Act,
- b. establish standards for the removal of toxic materials and pollutants from effluent discharges,
- c. apply in terms and conditions of Executive Director issued permits applicable national standards of performance pursuant to Section 306 of the Clean Water Act,
- d. prohibit the discharge of pollutants into wells except as regulated by the Oklahoma Public Health Code and the Oklahoma Corporation Commission pursuant to federally delegated authority under the federal Safe Drinking Water Act,

- e. ensure that the public and any other state, whose waters may be affected, receive notice of each application for a discharge permit from an Oklahoma Water Resources Board regulated system, and prescribe circumstances under which an opportunity for a public hearing will be provided prior to making a decision whether to issue such discharge permit,
- f. ensure that any other state, the waters of which may be affected by the activities allowed by a proposed permit for an Oklahoma Water Resources Board regulated system, may submit written recommendations on the permit application to the Executive Director. The regulations shall provide that if such recommendations or any parts thereof are not adopted, the Executive Director will notify the affected state in writing and shall provide the reasons therefor,
- g. ensure that persons to whom Oklahoma Water Resources Board regulated system discharge permits have been issued, and users of Oklahoma Water Resources Board regulated systems which are publicly or privately owned industrial treatment works:
 - (1) comply with all toxic effluent and all other standards and effluent limitations,
 - (2) provide records and reports, and
 - (3) allow inspections of facilities as necessary to investigate compliance with the requirements of the applicable discharge permits issued by the Executive Director, and the regulations of the Board,
- h. ensure that the Administrator of the United States Environmental Protection Agency receives a copy of

each application to the Board or Executive Director for a discharge permit,

- i. ensure that no permit is issued by the Executive Director which would substantially impair the anchorage and navigation of any of the navigable waters of the United States,
- j. develop or assist in development of any effluent limitation or other limitation, prohibition, or effluent regulation,
- k. establish criteria pursuant to which the Executive Director may assess and impose penalties in administrative proceedings;

provided that discharges into privately owned reservoirs or impoundments used in the process of cooling waters for industrial purposes shall not be subject to effluent limitations for heat;

2. To require the owner or operator of any Oklahoma Water Resources Board regulated system for the treatment, storage or transport of pollutants or Oklahoma Water Resources Board regulated point source or industrial user of an Oklahoma Water Resources Board regulated treatment works regulated by the Oklahoma Water Resources Board Pollutant Discharge Elimination System Act to 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 by the Executive Director or in connection with any other purposes or requirements of this act, to make reports, to install, calibrate, use and maintain monitoring equipment or methods including biological monitoring methods, take samples of effluents in such manner as may be prescribed, and provide such other information as may be reasonably required;

3. Notwithstanding any other provisions of previously enacted law, the Board and Executive Director shall have authority to take all actions which may be necessary or incidental to implement and

maintain a pollutant discharge permit 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 pursuant to Section 402 of the Clean Water Act. Upon the effective date of this act, the Executive Director shall issue permits for the discharge of pollutants from the following facilities and activities which shall be known as Oklahoma Water Resources Board regulated systems:

- a. publicly or privately owned industrial treatment works,
- b. oil and gas activities,
- c. agribusiness, except facilities specified for regulation by the Oklahoma State Department of Health under Section 1-901(e) (2) (O),
- d. mining,
- e. manufacturing, construction, gasoline service stations, transportation and public utilities,
- f. service and wholesale and retail trade, except as specified for regulation under a license or permit issued by the Oklahoma State Department of Health or Commissioner of Health pursuant to the Oklahoma Public Health Code, as of January 1, 1991, defined as a "Oklahoma State Department of Health regulated system" in Section 1-901 of Title 63 of the Oklahoma Statutes,
- g. storm water discharges from any facility or activity required to be permitted by the Executive Director under this act,
- h. any category of discharges, facilities or activities, which may become regulated by the federal Clean Water Act and regulations thereunder after the effective date of this act, as designated by the Governor;

provided, however, that for discharges from oil and gas drilling and production facilities, the Oklahoma Water Resources Board and the Oklahoma Corporation Commission may jointly adopt rules relating to inspections, technical assistance and enforcement which may be conducted by the Oklahoma Corporation Commission, and provided further that the discharges from agribusiness activities, the Oklahoma Water Resources Board and the Oklahoma State Department of Agriculture may jointly adopt rules relating to inspections, technical assistance and enforcement which may be conducted by the Oklahoma State Department of Agriculture;

4. To exercise sole authority and all powers necessary or incidental to the authority to issue, deny, condition, revoke, modify and enforce water quality certifications for all federal permits pursuant to Section 401 of the Clean Water Act and to adopt standards of water quality pursuant to Section 302 of the Clean Water Act;

5. To adopt, modify, repeal, promulgate and enforce rules and standards to assure that data and information submitted to the Board or Executive Director by permit applicants, laboratories, or other persons is accurate and reliable and to establish, implement and maintain a program for laboratory certification and collect fees in connection therewith; and

6. To exercise all incidental powers which are necessary and proper to carry out the purposes of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 927.4 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any provisions of previously enacted law, the Executive Director shall have the sole authority to make decisions and final adjudications regarding discharge permit applications for Oklahoma Water Resources Board regulated systems, and the issuance, modifications, revocations, administrative appeals

or stays affecting such permits. The Director shall have the power and authority to determine whether any person is in violation of any permit issued by the Board or Executive Director, effluent limitation or other limitation, prohibition, effluent or permit regulation, and other related regulations and provisions of Sections 926.1 through 926.13 of this title and Sections 9 through 15 of this act. The Director shall have authority to take appropriate enforcement action and to render final decisions in administrative proceedings. Provided, however, that the Board shall have the authority to approve or disapprove the filing of any enforcement action in a district court.

B. The Executive Director must meet all requirements of Section 304 of the Clean Water Act and applicable federal regulations promulgated thereunder by the U.S. Environmental Protection Agency regarding conflict of interest.

C. Pollutant discharge permits issued by the Executive Director may include schedules of compliance and such conditions as the Director may prescribe to prevent, control or abate pollution, including such water quality-related and technology-based effluent limitations as are necessary to protect beneficial uses of the waters of the state, to set interim compliance dates in permits issued by the Executive Director which are enforceable without otherwise showing a violation of an effluent limitation or harm to water quality, and to comply with the provisions of this act and the requirements of the Clean Water Act, as amended.

D. Notwithstanding any other provisions of previously enacted law, the Executive Director shall have authority to issue individual and general discharge permits for Oklahoma Water Resources Board regulated systems as defined by this act.

E. The Executive Director will not issue a discharge permit in any case where:

1. The permit would authorize the discharge of a radiological, chemical or biological warfare agent or high-level radioactive waste;

2. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any waters of the United States as those waters are defined in the Clean Water Act;

3. The permit is objected to in writing by the Administrator of the United States Environmental Protection Agency or his designee, pursuant to any right to object which is granted to the Administrator under Section 402(d) of the Clean Water Act; or

4. The permit would authorize a discharge from a point source which is in conflict with a plan approved under Section 208(b) of the Clean Water Act.

F. The Executive Director shall issue individual discharge permits for fixed terms not to exceed five (5) years.

G. The Executive Director shall have the authority to require the owner or operator of any Oklahoma Water Resources Board regulated system for the treatment, storage or transportation of pollutants or point source or other permit holder or industrial user of a treatment works subject to regulation by the Board to establish, maintain and submit plans, specifications, records, and other data relative to disposal systems or any part thereof, in connection with the issuance of permits or in connection with any other purposes or requirements of this act, to make reports, to install, calibrate, use and maintain monitoring equipment or methods including biological monitoring methods, take samples of effluents in such manner as may be prescribed, and provide such other information as may be reasonably required.

H. Copies of records, plans, reports or other information required by the Director must be submitted upon his request and

shall be subject to and made available for inspection at reasonable times to any authorized representative of the Director or Board upon showing of proper credentials. Any authorized representative of the Board or Director may examine any records or memoranda pertaining to Executive Director permitted discharges, treatment, or other limitations set by permit, order or duly promulgated rules of the Board.

I. 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 such person, such record, report, or information, or particular portion thereof shall be considered confidential in accordance with the purposes of the Uniform Trade Secrets Act. Nothing in this subsection shall prohibit the Board, the Executive Director, or an authorized representative 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.

J. The Executive Director shall, upon presentation of credentials verifying employment, have authority to:

1. Have a right of entry to, upon, or through any private or public premises upon which an effluent source is or may be located or in which any records are required to be maintained;

2. Have access to and copy any records required to be maintained at reasonable hours;

3. Inspect any monitoring equipment, methods, disposal systems or other facilities or equipment which may be required; and

4. Have access to and sample any effluent streams or any discharge of pollutants to waters of the state or to privately or publicly owned industrial waste treatment works.

K. The Director shall have the authority to require in permits issued by the Director to publicly or privately owned industrial waste treatment works conditions requiring the permittee to give notice to the Director of new introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the Clean Water Act or from a source which would be a point source subject to Section 301 of the Clean Water Act if it were discharging directly to waters of the state, a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit, or such other conditions as may be required under the Clean Water Act or state law.

L. The Director shall have the authority to ensure compliance by industrial users of privately or publicly owned industrial waste treatment works with Sections 204(b), 307, and 308 and other provisions of the Clean Water Act.

M. The Director shall have all necessary and incidental authority to comply with the requirements of the Clean Water Act and requirements of the United States Environmental Protection Agency set forth in duly promulgated regulations, including but not limited to the authority to:

1. Notify the public, affected states, and appropriate governmental agencies of proposed actions concerning the issuance of permits by the Director;

2. Transmit such documents and data to and from the United States Environmental Protection Agency and to other appropriate governmental agencies as may be necessary; and

3. Provide an opportunity for public hearing, with adequate notice thereof, prior to ruling on applications for permits.

N. The Director shall have the authority to terminate or modify permits issued by the Director for cause, including but not limited to the following:

1. Violation of any condition of the permit, including but not limited to conditions related to monitoring requirements, entry and inspections;

2. Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or

3. Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

O. The Director shall have all necessary or incidental authority to abate violations of permits issued by the Director, violations of administrative orders, violations of duly promulgated rules of the Board, and violations of Sections 926.1 through 926.13 of this title and Sections 9 through 15 of this act, and shall have authority to apply sanctions for enforcing violations, including but not limited to violations of requirements to obtain permits, terms and conditions of permits issued by the Director, effluent standards and limitations and water quality standards for entities regulated by the Board pursuant to this act, and requirements for recording, reporting, monitoring, entry, inspection and sampling, through administrative proceedings. Such authority shall extend to and include authority to pursue all sanctions set forth in Section 926.10 of this title, and shall include the authority to assess penalties in administrative proceedings.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 927.5 of Title 82, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any provision of previously enacted law, including but not limited to Section 926.4 of this title, it shall be unlawful for any entity listed in paragraph 3 of Section 11 of this act to discharge any pollutant into waters of the state or

elsewhere without first obtaining a permit from the Executive Director. In addition to any other penalties or liabilities imposed by law, violations of any provisions of this act and violations of rules, permits or orders issued under this act shall be subject to the provisions and sanctions set forth in Section 926.10 of this title.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 927.6 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Whenever there are reasonable grounds to believe that there has been a violation of any of the provisions of Sections 926.1 through 926.13 of this title or Sections 9 through 15 of this act, any permit, any rule, or any order of the Board or the Executive Director, the Director shall have the authority and powers to proceed as specified in the Oklahoma Administrative Procedures Act.

B. Whenever the Director finds that an emergency exists involving discharges of pollutants to the waters of the state or other activity prohibited by this title and requiring immediate action to protect the public health or welfare, an emergency order may be issued without notice or hearing, reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. No emergency order may be issued which allows unpermitted discharges except in the case of a justified bypass as defined by regulations of the Board.

C. The provisions of this section and Section 926.7 of this title for written notice, hearing, administrative orders and emergency orders shall not be conditions precedent for the Board or Executive Director to seek action in the district court as provided by Section 926.10 or 927.3 or any other provision of this title.

D. Nothing in Sections 926.1 through 926.13 of this title or Sections 9 through 15 of this act shall be construed to limit the powers of the Board or the Executive Director to enforce the

provisions of this title or the terms of any permit, license or certification issued hereunder, or to otherwise commence or maintain court proceedings. In any action for an injunction brought pursuant to this title or in any other district court proceeding, any findings of the presiding official after an administrative hearing shall be subject to review as set forth in Section 322 of the Oklahoma Administrative Procedures Act.

E. Nothing in Sections 926.1 through 926.13 of this title or Sections 9 through 15 of this act shall in any way impair or in any way affect a citizen's right to recover damages for pollution in a court of competent jurisdiction. Any citizen having an interest which is or may be adversely affected may intervene in an administrative proceeding before the Board or Director to obtain an order prohibiting any person from any act in violation of Sections 926.1 through 926.13 of Title 82 of the Oklahoma Statutes or this act, which act is endangering or causing damage to public health or the environment.

F. Whenever on the basis of any information available the Executive Director finds that any person regulated by the Board or Executive Director has violated any of the provisions of Sections 9 through 15 of this act, or any permit, rule, order or condition or limitation implementing any of such sections, the Executive Director may, after providing notice and opportunity for a hearing to the alleged violator, assess an administrative fine of Twenty-five Thousand Dollars (\$25,000.00) per day of violation, not exceeding One Hundred Twenty-five Thousand Dollars (\$125,000.00). In determining the amount of any penalty assessed under this subsection, the Executive Director shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit savings, if any, resulting from the violation, and

such 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. In administering the provisions of this subsection, the Executive Director shall provide public notice of any proposed penalty and provide an opportunity for any person to be heard thereon. The Board may adopt procedural regulations to implement the requirements of this subsection. Hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act. All administrative fines collected shall be deposited in the Water Quality Fund under the provisions of Section 1005.7 of this title.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 927.7 of Title 82, unless there is created a duplication in numbering, reads as follows:

Any person aggrieved by a final order or other final determination by the Executive Director may, pursuant to this act, or the Attorney General on behalf of the state may, petition for a judicial review for rehearing, reopening or reconsideration of the matter, as provided for in Article II of the Administrative Procedures Act.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 8000 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. If a category of discharges, activities or facilities not specifically described in subsection (e) of Section 1-901 of Title 63 of the Oklahoma Statutes or paragraph 3 of Section 927.3 of Title 82 of the Oklahoma Statutes, becomes regulated by the federal Clean Water Act, as amended, and regulations thereunder, after the effective date of this act, the Governor shall, by Executive Order, designate the agency which shall be responsible for issuing

discharge permits for such category of discharges, activities or facilities.

B. Continuation of such designation by Executive Order is conditioned upon the Governor's submitting proposed legislation, upon convening of the next Legislature after the Executive Order is issued, to designate which agency shall be responsible for issuing discharge permits for the category of activity or facility subject of the Executive Order.

C. If legislation to designate which agency shall be responsible for issuing discharge permits for the category of discharges, activities or facilities subject of the Executive Order is not enacted, then the designation made by the Executive Order shall control until such time as legislation changing such designation is enacted.

SECTION 17. REPEALER 82 O.S. 1981, Section 926.5 and 63 O.S. 1981, Section 1-909, are hereby repealed.

SECTION 18. This act shall become effective July 1, 1991.

SECTION 19. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 16th day of April, 1991.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1991.

Speaker of the House of Representatives

