STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED HOUSE
BILL NO. 2445

BY: LEIST, VAUGHN (George), DUNLAP and HOWARD of the HOUSE

and

GILES of the SENATE

COMMITTEE SUBSTITUTE

(PUBLIC HEALTH AND SAFETY - CONTROLLED INDUSTRIAL WASTE FACILITIES - AMENDING 63 O.S. 1991, SECTIONS 1-1701 AND 1-1702 - EMERGENCY)

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2004.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In order to protect the public health and safety and the environment of this state, the State Department of Health, pursuant to the Oklahoma Controlled Industrial Waste Disposal Act, shall not issue, renew, or transfer a permit for the construction or operation of a controlled industrial waste facility for treatment, storage, recycling or disposal to any person who:

1. Is not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any

state or federal agency relating to the generation, storage, transportation, treatment, recycling or disposal of "controlled industrial waste", as such term is defined by the Oklahoma Controlled Industrial Waste Disposal Act, or "hazardous waste", as such term is defined by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act, or "solid waste", as such term is defined by the Oklahoma Solid Waste Management Act, Section 2251 et seq. of Title 63 of the Oklahoma Statutes;

2. Has evidenced a reckless disregard for the protection of the public and the environment as demonstrated by a history of noncompliance with environmental laws and regulations resulting in endangerment of human health or the environment; or

3. Has as an affiliated person any person who is described by paragraph 1 or 2 of this subsection.

B. For the purposes of this section:

1. "Affiliated person" means:

a. any officer, director or partner of the applicant,

b. any person employed by the applicant as a general or key manager who directs the operations of the site or facility which is the subject of the application, and

c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity;

2. "Disclosure statement" means a written statement by the applicant which contains:

a. the full name, business address, and social security number of the applicant, and all affiliated persons,

b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant, and a description of

the on-going organizational relationships as they may impact operations within the state,

c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental facility regulation,

d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any affiliated person which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal in the ten (10) years immediately preceding the filing of the application relating to the generation, transportation, storage, treatment, recycling or disposal of "controlled industrial waste" as defined by the Oklahoma Controlled Industrial Waste Disposal Act or "hazardous waste" as defined by the United States Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act, or "solid waste" as defined by the Oklahoma Solid Waste Management Act. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the United States Environmental Protection Agency, and

e. a listing of any federal environmental agency and any state environmental agency outside this state that has or has had regulatory responsibility over the applicant;

3. "History of noncompliance" means any past operations by an applicant or affiliated persons which clearly demonstrate a pattern of prohibited conduct which could reasonably be expected to result

in adverse environmental impact if a permit were issued, as evidenced by findings, conclusions and rulings of any final agency order or final order or judgment of a court of record; and

4. "Department" means the Oklahoma State Department of Health.

C. 1. Except as provided in paragraph 2 of this subsection, all applicants for the issuance, renewal or transfer of any controlled industrial waste permit, license, certification or operational authority issued by the Department shall file a disclosure statement with their applications.

2. If the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other relevant information as the Commissioner may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

D. The Department is authorized to revoke, or to refuse to issue, to renew, or to transfer a permit for the construction or operation of a controlled industrial waste facility for treatment, storage, recycling or disposal to any person who:

1. Is not, due solely to the actions or inactions of the applicant or affiliated person, in substantial compliance with any final agency order or final order or judgment of a court of record secured by the Department issued pursuant to the provisions of the Oklahoma Controlled Industrial Waste Disposal Act or the Oklahoma Solid Waste Management Act;

2. Is not, due solely to the actions or inactions of the applicant or affiliated person, in substantial compliance with any

final agency order or final order or judgment of a court of record secured by any state or federal agency, as determined by that agency, relating to the generation, storage, transportation, treatment, recycling or disposal of any "controlled industrial waste", as such term is defined by the Oklahoma Controlled Industrial Waste Disposal Act, or "hazardous waste", as such term is defined by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act, or "solid waste" as such term is defined by the Oklahoma Solid Waste Management Act;

3. Has evidenced a history of a reckless disregard for the protection of the public health and safety or the environment through a history of noncompliance with state or federal environmental laws, including without limitation the rules and regulations of the Oklahoma State Department of Health or the United States Environmental Protection Agency regarding the generation, storage, transportation, treatment, recycling or disposal of any "controlled industrial waste", as such term is defined by the Oklahoma Controlled Industrial Waste Disposal Act, or "hazardous waste", as such term is defined by the United States Environmental Protection Agency pursuant to the federal Resource Conservation and Recovery Act, or "solid waste" as such term is defined by the Oklahoma Solid Waste Management Act; or

4. Has as an affiliated person any person who is described by paragraphs 1, 2 or 3 of this subsection.

E. 1. An application for a permit for the construction or operation of a controlled industrial waste facility for treatment, storage, recycling or disposal or a renewal thereof shall be signed under oath by the applicant.

2. The Department may refuse to renew, or may suspend or revoke, a permit issued pursuant to the Oklahoma Controlled Industrial Waste Disposal Act for the construction or operation of a

controlled industrial waste facility for treatment, storage, recycling or disposal to any person who has failed to disclose or states falsely any information required pursuant to the provisions of this section. Any person who willfully fails to disclose or states falsely any such information, upon conviction, shall be guilty of a felony and may be punished by imprisonment for not more than five (5) years or fined not more than One Hundred Thousand Dollars ($100,000.00) or both such fine and imprisonment.

F. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

G. The State Board of Health shall promulgate rules pursuant to the Administrative Procedures Act as may be necessary and appropriate to implement the provisions of this section.

H. The provisions of this section shall apply to:

1. Any pending or future application for a construction permit for land disposal or treatment of controlled industrial waste, except treatment at a facility accepting controlled industrial waste exclusively for the purpose of conducting research and design tests; and

2. Any application for a construction or operations permit for controlled industrial waste treatment, storage, recycling or disposal which is initially submitted to the Department after July 31, 1992, or which has not been determined by the Department to be technically complete by December 31, 1993, regardless of the initial submittal date.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2053 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. It is the policy of the State of Oklahoma to reduce or eliminate the production of hazardous waste at the source whenever

possible; to recycle generated hazardous waste whenever feasible; to treat in an environmentally safe manner the hazardous waste that cannot be reduced or recycled; and that disposal should be employed only as a last resort and must be conducted in an environmentally safe manner.

B. The goal is by January 1, 1996, to reduce at least twenty-five percent (25%) of the amount and toxicity of hazardous waste generated in Oklahoma after the effective date of this act.

C. As used in this section:

1. "Department" means the Oklahoma State Department of Health;

2. "Facility" means the land and appurtenances on the land associated with a business that generates hazardous waste;

3. "Generator" means an owner or operator of a facility that generates hazardous waste;

4. "Hazardous waste" means any waste materials regulated as controlled industrial wastes under the Oklahoma Controlled Industrial Waste Disposal Act;

5. "Hazardous waste reduction" means the source reduction or the waste minimization of hazardous waste;

6. "Source reduction" means changes in processes that diminish the initial amount of hazardous waste generated; and

7. "Waste minimization" means any practice that reduces the volume or toxicity of hazardous waste that has been generated.

D. The Department shall administer the Oklahoma Hazardous Waste Reduction Program and is authorized to:

1. Compile and distribute information on hazardous waste reduction technologies and procedures;

2. Conduct conferences and workshops on hazardous waste reduction;

3. Promote the transfer of hazardous waste reduction technologies and procedures among business, industry, academic institutions, and governmental entities;

4. Provide funds as may be appropriated or otherwise made available to Oklahoma business, industry, academic institutions, private organizations and governmental entities to conduct demonstration or pilot programs using innovative hazardous waste reduction technologies and procedures and to defray costs of basic and applied research on hazardous waste reduction; and

5. Study hazardous waste exchange programs.

E. The Department shall evaluate hazardous waste reduction activities in Oklahoma, including:

1. Types and quantities of hazardous wastes generated, the existing hazardous waste management system, and historical hazardous waste reduction efforts;

2. Feasibility and potential impact of required hazardous waste reduction;

3. Identification of key businesses, academic institutions and governmental entities that should receive technical assistance priorities; and

4. Establishment of the program priorities and goals.

F. 1. The State Board of Health may, according to the Oklahoma Administrative Procedures Act, promulgate rules to provide economic incentives to encourage hazardous waste reduction.

2. Such rules shall provide incentives for a proportional reduction of up to one-half of the in-state hazardous waste treatment or disposal fee specified in Section 1-2005.3A of this title for any Oklahoma hazardous waste-generating business or industry which expands its full-time equivalent employment, up to a doubling of employees, while generating proportionally less hazardous waste than in the previous state fiscal year.

3. Such rules shall also provide incentives for a reduction of up to one-half of the in-state hazardous waste treatment or disposal fee specified in Section 1-2005.3A of this title for any Oklahoma hazardous waste-generating business or industry which significantly

reduces the toxicity of all or part of the hazardous waste which it generates, as demonstrated by a health-based risk analysis submitted by the applicant, which shall take into account concentrations of hazardous waste constituents and likely means of exposure to employees and to the public.

G. In order to qualify for the fee reductions described in this section, each large quantity hazardous waste generator shall, not later than January 1, 1993, prepare a hazardous waste reduction plan for each facility. Any hazardous waste generator electing not to seek fee reductions according to this section is excluded from the requirements of subsections H, J and K of this section. The plan is not a public record but shall be available to the Department for inspection.

H. Hazardous waste reduction plans shall include at least:

1. A written policy describing ownership or management support for hazardous waste reduction and plan implementation;

2. Scope and objectives, including the evaluation of technology, procedures and personnel training programs to assure hazardous waste reduction;

3. Explanation and documentation of hazardous waste reduction efforts completed or in progress;

4. Analysis of hazardous waste streams, and identification of opportunities for source reduction;

5. Itemized hazardous waste management and hazardous waste reduction costs; and

6. Numeric goals for hazardous waste reduction.

I. The Department shall develop appropriate but lesser requirements for small quantity generator hazardous waste reduction plans.

J. Hazardous waste reduction plans shall be updated every two (2) years to include progress made for each performance goal and

amendments, if any, to the hazardous waste reduction plan with an explanation of the need for the amendments.

K. 1. Within sixty (60) days after the preparation of the initial hazardous waste reduction plan and within that same period after each biennial update, each generator shall submit to the Department a certified report of the types and quantities of hazardous wastes generated and reduced based on the hazardous waste reduction plan and the biennial updates.

2. The certified report shall include a narrative summary explaining the hazardous waste generation and reduction data, a description of goals and progress made in reducing hazardous wastes and a description of any impediments to reduction.

3. The narrative summary and the biennial report shall be public records. On request, the generator shall make available to the public a copy of the summary or biennial report at cost.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-1701, is amended to read as follows:

Section 1-1701. ~~(a)~~ A. Unless otherwise provided in the Oklahoma Public Health Code:

~~(1)~~ 1. Any person who willfully fails or refuses to comply with, or violates, a lawful order of the State Board of Health or the State Commissioner of Health, or his duly authorized representative, or of a local health officer, or who violates the terms and conditions of a quarantine or embargo, shall, upon conviction, be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not to exceed One Hundred Dollars ($100.00), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment~~.~~;

~~(2)~~ 2. Any person who fails or refuses to make or file a report, or to file a certificate, or to keep a record, that is required by the provisions of this Code, or by rules ~~and regulations~~ of the State Board of Health, or the State Commissioner of Health,

or who gives false information in or for such report, certificate or record, shall, upon conviction, be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than Two Hundred Dollars ($200.00)~~.~~;

~~(3)~~ 3. Any person who gives false information in an application for a license or permit, or to the Commissioner or a local health officer, shall, upon conviction, be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than Two Hundred Dollars ($200.00)~~.~~;

~~(4)~~ 4. Any person who does any act for which a license or permit is required by the provisions of this Code, and who is not at the time the holder of such a license or permit, shall, upon conviction, be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment~~.~~; and

~~(5)~~ 5. Any person who does any act that is made unlawful or a misdemeanor by the provisions of this Code, or who violates any of the other provisions of this Code, or any standard, rule or regulation authorized by this Code, shall, upon conviction, be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than Two Hundred Dollars ($200.00), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

~~(b)~~ B. 1. Notwithstanding the penalties ~~hereinbefore~~ provided for in this section, district ~~and superior~~ courts may also grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Code~~; and the district attorney shall file and prosecute appropriate proceedings therefor in the name of the state, on request of the Commissioner~~ or any standard, rule or order issued pursuant to this Code.

2. Any action for injunctive relief to redress or restrain a violation by any person of any provision of this Code, any standard, rule, regulation or order issued pursuant to this Code, or recovery of any administrative or civil penalty assessed pursuant to Sections 1-1701.1A or 1-2012.1 of this title may be filed and prosecuted by:

a. the district attorney in the appropriate district court of the State of Oklahoma, or

b. the Department on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma, or as otherwise authorized by law.

3. As used in this subsection, the term "this Code" includes Section 1-101 et seq. of this title and those statutes codified in Title 59 of the Oklahoma Statutes for the regulation of professions and occupations for which the Department issues a license.

~~(c)(1)~~ C. 1. Any person who violates any of the provisions of the Oklahoma Public Health Code relating to wastewater and pollution control, Sections 1-901 through 1-903, 1-908 and 1-909 of ~~Title 63 of the Oklahoma Statutes~~ this title, and the standards~~,~~ and rules ~~and regulations adopted~~ promulgated by the State Board of Health pursuant to Section 1-904 of ~~Title 63 of the Oklahoma Statutes~~ this title, which relate to sewage and construction and operation of sewage works, industrial sewage discharge into sanitary sewers, and discharge of pollutants into the waters of the state, or who violates these provisions as hereafter amended, shall, upon conviction, be deemed guilty of a misdemeanor, and in addition to other penalties and liabilities imposed by law, may be punished by the assessment of a civil penalty of not more than Ten Thousand Dollars ($10,000.00) for each violation, 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) for each violation, or by imprisonment in the county jail for not more than six (6) months for each violation, or by any of such civil penalties, fines and

imprisonment. For the purposes of this section, each day in violation is considered a separate violation.

~~(2)~~ 2. Notwithstanding the provisions of paragraphs ~~(a)(2)~~ 2 and ~~(a)(3)~~ 3 of subsection A of this section, any person who knowingly makes any false statement, representation or certification in any discharge permit issued by the Commissioner pursuant to Section 1-909 of this title, or in any notice or report required by such permit, or who knowingly renders inaccurate any monitoring device or method required by the Commissioner to be maintained as a condition of the issuance of such permit, shall, upon conviction, be deemed 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.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-1702, is amended to read as follows:

Section 1-1702. The holder of any renewable license or permit issued under the provisions of this Code shall be entitled to thirty (30) days after the expiration date thereof in which to renew the same, without penalty; and if he fails to pay the renewal fee within such thirty-day period, he shall, unless otherwise provided in this Code, be required to pay the renewal fee plus a penalty fee ~~equal to the amount of the renewal fee, which penalty fees shall not exceed Ten Dollars ($10.00) for a violation of the provisions of this Code~~ in an amount as promulgated by the State Board of Health by rule. Such penalty fee shall not exceed the amount of the renewal fee. In the case of any renewal fee which shall exceed Ten Thousand Dollars ($10,000.00), the penalty fee shall be one and one-half percent (1.5%) per month of the outstanding balance of the renewal fee. The Board may adopt rules which prohibit the renewal of a license or permit which has expired by more than ninety (90) days.

SECTION 5. This act shall become effective July 1, 1992.

SECTION 6. 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.

43-2-2073 MJM