

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)

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

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. The term includes any "pollutant" as defined by the federal Clean Water Act.

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.

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.

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, for the discharge 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 specified under any existing permit;

3. The construction, installation or operation of any industrial or commercial establishment subject to the permitting authority of the Board or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes 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 for the discharge of any industrial 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 926.10, 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 of this title or who violates any order or determination of the Board promulgated pursuant to this act 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 in civil proceedings by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) 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) for each violation or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment. Each day upon which such violation occurs shall constitute a separate violation.

B. It shall be the duty of the Attorney General and district attorney at their discretion on the request of 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 violating any order or determination of the Board. 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.

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 5. 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, storm sewers, and all bodies of surface water, whether natural or artificially impounded, within the boundaries of the State of Oklahoma.

(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 "regulated system" means all publicly owned treatment works as defined in the federal Clean Water Act, except publicly owned industrial treatment works, all agencies of the State of Oklahoma, and all facilities for which the State Department of Health or State Commissioner of Health have authority to issue licenses or permits pursuant to this Code as of January 1, 1991.

(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 agricultural waste discharged into water.

(g) The term "publicly owned treatment works" shall mean publicly owned treatment works as defined in the federal Clean Water Act.

SECTION 6. AMENDATORY 63 O.S. 1981, Section 1-908, is amended to read as follows:

Section 1-908. (a) No ~~person~~ regulated system as defined in this Code 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 7. 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. No ~~person~~ regulated system as defined by the 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 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 for fixed terms not exceeding five (5) years.

4. The Commissioner may modify or revoke any ~~sewage~~ pollutants discharge permit 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, 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 being discharged to the waters of the state.

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~~ pollutants 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. 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. comply with Oklahoma's Water Quality Standards,
- c. prevent pollution,
- d. protect beneficial uses of the waters of the state, or
- e. 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. The Board shall have the authority to adopt regulations which:

1. Allow the inclusion of technology-based effluent limitations in discharge permits 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~~ regulated systems which are publicly owned treatment works 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;

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, 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 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, 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~~ regulated systems which are publicly owned treatment works 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 discharge permits have been issued, and industrial users of ~~publicly owned sewage treatment facilities~~ regulated systems which are publicly owned treatment works:

- 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, and the regulations of the Board;

11. Ensure that no permit is issued 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 regulated systems for the discharge of storm water into the waters of the state, including into storm sewers.

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 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 receipt of such delegation from the federal government, the Commissioner shall administer that portion of the program included within the term "regulated system" as defined in this Code.

F. Whenever on the basis of any information available the Commissioner finds that any 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 of Ten Thousand Dollars (\$10,000.00) 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.

G. The Department will:

1. Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures for receiving and ensuring proper consideration of information submitted by the public about violations; encourage public effort in reporting violations; and make available information on reporting procedures;
2. Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

3. Publish notice of and provide at least thirty (30) days for public comment on any proposed settlement of an enforcement action brought pursuant to this section.

SECTION 8. 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:

This act shall be known and may be cited as the "Pollutant Discharge Elimination System Act".

SECTION 9. 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.

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 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 agricultural waste discharged into water.

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 a discharge of a waste or wastes, and means any addition of any pollutant or waste 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 publicly owned treatment works as defined in the federal Clean Water Act.

10. "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.

SECTION 10. 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 issued permits applicable to national standards of performance pursuant to Section 306 of the Clean Water Act,
- d. prohibit or control the discharge of wastes into wells except as covered by the Oklahoma Public Health Code,
- e. ensure that the public and any other state, whose waters may be affected, receive notice of each application for a discharge permit, and prescribe circumstances under which an opportunity for a public hearing will be provided prior to making a decision whether to issue a discharge permit,
- f. ensure that any other state, the waters of which may be affected by the activities allowed by a proposed permit, 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 discharge permits have been issued, and users of industrial treatment facilities:
 - (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, and the regulations of the Board,

- h. ensure that the Administrator of the United States Environmental Protection Agency receives a copy of each application for a discharge permit,
- i. ensure that no permit is issued 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 and administrative proceedings, and
- l. adopt site-specific criteria for discharges into privately owned reservoirs used in the process of cooling water for industrial purposes which provide that such discharges are not subject to effluent limitations for the control of the thermal component of such discharges which are more stringent than necessary to assure the protection and propagation of a balanced, indigenous shellfish, fish and wildlife community in and on the body of water into which the discharge is to be made;

2. To require the owner or operator of any disposal system or point source or other permit holder or industrial user of a treatment works 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;

3. Notwithstanding any other provisions of previously enacted law, to take all actions which may be necessary or incidental to implement and maintain a waste pollutant discharge permit program, including the authority to assume and obtain authorization to implement and maintain a portion of a state permit program pursuant to Section 402 of the Clean Water Act for discharges to waters of the state from industrial and commercial activities, including:

- a. publicly or privately owned industrial waste treatment plants and disposal systems,
- b. oil and gas activities, except drilling and production facilities,
- c. agribusiness,
- d. mining,
- e. manufacturing, construction, service, federal facilities, transportation, public utilities, wholesale and retail trade except as specified by regulation by the Oklahoma State Department of Health in the Oklahoma Public Health Code,
- f. storm water discharges from any facility or activity required to be permitted under this act;

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 11. 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, or such other employee of the Oklahoma Water Resources Board as the Executive Director may duly appoint, shall have the sole authority to make decisions and final adjudications regarding discharge permit applications, 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, effluent limitation or other limitation, prohibition, effluent or permit regulation, and other related regulations and provisions of Sections 926.1 through 927.7 of this title. The Director or his appointee 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 and any person appointed under this section 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. Waste disposal 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 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 or his appointee shall have authority to issue individual and general discharge permits for the industrial and commercial activities which are required to be permitted for discharges of pollutants pursuant to 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 disposal system 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 permitted discharges, treatment, or other limitations set by permit, order or duly promulgated rules.

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 or his duly appointed representative 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 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;

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 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, violations of duly promulgated rules of the Board, and violations of Sections 926.1 through 927.7 of this title, 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 issued permits, 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 12. 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 9 of this act to discharge any pollutant into waters of the state or elsewhere without first obtaining a permit from the Executive Director. 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 13. 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 927.7 of this title, 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 wastes 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 Section 926.1 through 927.7 of this title 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 927.7 of this title 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 the Pollution Remedies 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 regulated system has violated any of the provisions of Sections 926.1 through 927.7 of this title, or any permit condition or limitation implementing any of such sections in a permit issued by the Executive Director, the Executive Director may, after providing notice and opportunity for a hearing to the alleged violator, assess an administrative fine of Ten Thousand Dollars (\$10,000.00) 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.

SECTION 14. 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 15. REPEALER 82 O.S. 1981, Section 926.5, and 63 O.S. 1981, Section 1-909, are hereby repealed.

SECTION 16. This act shall become effective July 1, 1991.

SECTION 17. 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 House of Representatives the 14th day of March, 1991.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate