

ENGROSSED SENATE  
BILL NO. 28

BY: GILES of the SENATE

and

VAUGHN (George) of the  
HOUSE

[ PUBLIC HEALTH AND SAFETY - AMENDING 63 O.S.,  
SECTIONS 1-2002, 1-2003, 1-2004, 1-2009.1,  
1-2011, 1-2012, 1-2012.1 AND 1-2014.2 -  
OKLAHOMA INDUSTRIAL WASTE DISPOSAL ACT -  
CODIFICATION -

EMERGENCY ]

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

SECTION 1. AMENDATORY 63 O.S. 1981, Section 1-2002, as last amended by Section 1, Chapter 296, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2002), is amended to read as follows:

Section 1-2002. As used in this act, unless the context otherwise requires:

1. "Controlled industrial waste" is defined as waste materials and by products, either solid or liquid, which are to be discarded by the generator or recycled and which are toxic to human, animal, aquatic or plant life and which are generated in such quantity that they cannot be safely disposed of in properly operated, state-approved sanitary land fills, waste or sewage treatment facilities. Controlled industrial waste may include but is not limited to explosives, flammable liquids, spent acids, caustic solutions, poisons, containerized gases, sludge, tank bottoms

containing heavy metallic ions, toxic organic chemicals, infectious materials, and materials such as paper, metal, cloth or wood which are contaminated with controlled industrial waste, and excludes domestic sewage;

2. "Disposal" means the final disposition of controlled industrial waste;

3. "Department" means the State Department of Health;

4. "Disposal site" means the location where any final disposition of controlled industrial waste occurs. Disposal sites include but are not limited to injection wells and surface disposal sites;

5. "Division" means the Controlled Industrial Waste Management Division;

6. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized;

7. "Treatment" means the detoxification, neutralization, incineration or biodegradation of controlled industrial waste in order to remove or reduce its harmful properties or characteristics;

8. "Treatment facility" means any location where treating or recycling of controlled industrial waste occurs;

9. "Recycling" means the reuse, processing, treating, neutralizing or rerefining of controlled industrial waste into a product which is being reused or which has been sold for beneficial use. Controlled industrial waste which is intended for fuel is not deemed to be recycled until it is actually burned;

10. "Storage facility" means any location where the temporary holding of controlled industrial waste occurs, including any tank, pit, lagoon, pond, or other specific place or area;

11. "Controlled industrial waste facility" as used herein shall mean and include storage and treatment facilities and disposal sites;

12. "Board" means the State Board of Health;

13. "Council" means the Controlled Industrial Waste Management Council;

14. "Site" or "proposed site" means the surface area of a disposal site, or other controlled industrial waste facility, as applied for in the application for a permit for the facility;

15. "On-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a controlled industrial waste facility of controlled industrial waste generated by the owner of the facility

16. "Off-site treatment, storage, recycling or disposal" means the treatment, storage, recycling or disposal at a controlled industrial waste facility of controlled industrial waste not generated by the owner of the facility; and

17. "Multi-user on-site treatment facility" means a treatment facility for controlled industrial waste generated by the co-owners of the facility and which meets the criteria specified by Section 1-2008.1 of this title.

SECTION 2. AMENDATORY 63 O.S. 1981, Section 1-2003, is amended to read as follows:

Section 1-2003. ~~There is hereby created a Controlled Industrial Waste Management Division~~ A division responsible for the regulation and management of controlled industrial waste shall be maintained within the State Department of Health. The ~~Division~~ division shall consist of a ~~Director~~ director, who shall be hired by the Commissioner of Health, and additional employees to be hired by the Commissioner as he deems are necessary and duly qualified to carry out the provisions of this act. As a prerequisite for employment as a ~~Director~~ director, the ~~Director~~ director shall have expertise and

at least two (2) years' experience in waste management, ~~and shall have a degree in chemistry or engineering.~~ The ~~Director~~ director and all employees of the division shall be subject to the Merit System of Personnel Administration, ~~and all employees hired by the Commissioner shall be subject to the Merit System.~~

SECTION 3. AMENDATORY 63 O.S. 1981, Section 1-2004, as last amended by Section 2, Chapter 296, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2004), is amended to read as follows:

Section 1-2004. The Department shall have the following powers and duties:

1. Issue permits for the construction and operation of controlled industrial waste facilities;
2. Provide the owner or operator of a controlled industrial waste facility a list of all materials which the Department deems acceptable for treatment, recycling, storage, and disposal at the facility;
3. Make periodic inspections of controlled industrial waste facilities and recycling, transporting, and generating facilities to determine the extent of compliance with the Department's rules and regulations and the Oklahoma Controlled Industrial Waste Disposal Act;
4. Develop, maintain, and monitor public records of the source and amount of controlled industrial waste generated in Oklahoma and the methods used to dispose of, recycle, or treat said waste or material;
5. Require and prescribe manifest forms to all persons generating and transporting controlled industrial waste off-site for storage, recycling, treatment, or disposal;
6. Require and approve or disapprove disposal plans from all persons generating controlled industrial waste or shipping controlled industrial waste within, from, or into Oklahoma indicating the amount of controlled industrial waste generated, the

handling, storage, treatment, and disposal methods, and the controlled industrial waste facilities used. The disposal plans shall be kept current by the persons generating or shipping controlled industrial waste and the Department shall be advised within five (5) working days of any changes in the disposal plans;

7. Require reports from all persons generating controlled industrial waste, indicating the amount generated, the treatment and disposal methods, and the treatment, disposal, and recycling sites used. Such reports are to be made on at least a quarterly basis;

8. Require periodic reports or manifest certifications regarding such programs and efforts to reduce the volume or quantity and toxicity of such controlled industrial waste as may be required by or pursuant to authority of the Oklahoma Controlled Industrial Waste Disposal Act;

9. Require reports from all operators of controlled industrial waste facilities who receive controlled industrial waste for treatment or storage or disposal, listing the amount, transporter, and generator of all controlled industrial waste received. Such reports are to be made on at least a monthly basis;

10. Approve or disapprove methods of disposal of controlled industrial waste, and may prohibit certain specific disposal practices including, but not limited to, any type of land disposal of any form of such waste. Land disposal includes, but is not limited to, landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves;

11. Inform persons generating controlled industrial waste of available, alternative methods of disposal of such waste and assist the persons in developing satisfactory disposal plans;

12. Develop a system to provide information on recyclable wastes to potential users of such materials. Such information shall

not include any information which the Department deems confidential or private in nature;

13. Cooperate and share information with the U.S. Environmental Protection Agency;

14. Prepare an emergency response plan for spills of controlled industrial waste and for spills of hazardous materials;

15. Make information obtained by the Department regarding controlled industrial waste facilities and sites available to the public in substantially the same manner, and to the same degree, as would be the case if the controlled industrial waste program in this state were being carried out by the U.S. Environmental Protection Agency;

16. With respect to any existing surface impoundment or landfill or class of surface impoundments or landfills from which the Department determines controlled industrial waste ~~is likely to~~ may migrate into groundwater, impose such requirements, including double liners and leachate detection and collection systems, as may be necessary to protect human health and the environment;

17. Prohibit or restrict the use of any specific disposal methods or practices for specific controlled industrial waste material, substances or classes, as may be necessary to protect human health and the environment;

18. Identify areas within the state which are unsuitable for specific controlled industrial waste disposal methods, and deny permits for such disposal methods in such areas;

19. Issue a one-year research development and demonstration permit for any treatment facility which proposes an innovative and experimental controlled industrial waste treatment technology or process not yet regulated. Permits may be renewed no more than three times. No renewal may exceed one (1) year;

20. Waive or modify general permit application and issuance requirements for research and development permits, except for financial responsibility and public participation requirements;

21. Terminate experimental activity if necessary to protect human health and the environment;

22. Require oil recycling facilities using controlled industrial waste to have a controlled industrial waste facility permit;

23. Issue permits containing any conditions necessary to protect human health and the environment;

24. Issue permits for the storage of controlled industrial waste in underground tanks;

25. Require groundwater monitoring for any landfill, surface impoundment, land treatment site or pile;

26. Determine and enforce penalties for violations of the Oklahoma Controlled Industrial Waste Disposal Act;

27. Evaluate the benefit of rules and regulations governing labeling practices for any containers used for the disposal, storage, or transportation of controlled industrial waste which accurately identify such waste, and govern the use of appropriate containers for such waste not otherwise regulated by the federal government. A report containing the evaluation of the benefit for rules and regulations governing such labeling practices shall be submitted by April 30, 1987, to the Speaker of the House of Representatives and the President Pro Tempore of the Senate;

28. Monitor research and development regarding methods of the handling, storage, use, processing, and disposal of controlled industrial waste;

29. Cooperate with existing technical reference centers on controlled industrial waste disposal, recycling practices, and related information for public and private use;

30. Monitor research in the technical and managerial aspects of management and use of controlled industrial waste and recycling and recovery of resources from controlled industrial wastes;

31. Determine existing rates of production of controlled industrial waste;

32. Promote recycling and recovery of resources from controlled industrial wastes;

33. Encourage the reduction or exchange, or both, of controlled industrial waste; and

34. Cooperate with an existing information clearinghouse, to develop records of recyclable waste. Every generator of controlled industrial waste shall supply the Department with information for the clearinghouse. Each generator shall not be required to supply any more information than is required by the manifests. The Department shall make this information available to persons who desire to recycle the wastes. The information shall be made available in such a way that the trade secrets of the producer are protected.

SECTION 4. AMENDATORY 63 O.S. 1981, Section 1-2009.1, as last amended by Section 3, Chapter 296, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2009.1), is amended to read as follows:

Section 1-2009.1 A. Except as otherwise provided by subsection B of this section or any rules of the State Board of Health with respect to short-term storage, no person shall store, treat or dispose of controlled industrial waste materials or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of controlled industrial waste or storing recyclable materials, who does not possess a valid and appropriate controlled industrial waste facility permit.

B. 1. Any person who owned or operated a controlled industrial waste facility which was operating or under construction on November

19, 1980, and who has submitted notice and permit application to the U.S. Environmental Protection Agency or to the Department, and whose facility complies with the rules of the Board, may continue operation until such time as the permit application is determined.

2. The State Board of Health may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Oklahoma Controlled Industrial Waste Disposal Act.

3. The provisions for the allowance of continued operation on an interim basis under paragraphs 1 and 2 of this subsection shall not apply in the case of a facility for which a permit under this act has been previously denied or for which authority to operate has been terminated.

C. Facilities engaged in recycling which are not required to be permitted pursuant to the provisions of Section ~~6~~ 1-2005 of this ~~act~~ title shall operate in an environmentally acceptable manner and in accordance with the rules and regulations regarding the manifest, transportation and treatment, storage and disposal standards, and generators in the event a controlled industrial waste is generated therefrom.

SECTION 5. AMENDATORY 63 O.S. 1981, Section 1-2011, is amended to read as follows:

Section 1-2011. Any person who violates any of the provisions of this act or the rules, regulations or standards promulgated by the Department shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment in the county jail for not more than six (6) months, or a fine of not less than Two Hundred Dollars (\$200.00) nor more than ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment. Each day or part of a day during which such violation

is continued or repeated shall constitute a new and separate offense.

SECTION 6. AMENDATORY 63 O.S. 1981, Section 1-2012, is amended to read as follows:

Section 1-2012. In addition to any other remedies provided in this act, the Department shall, pursuant to rules and regulations adopted under Section ~~6~~ 1-2014.2 of this ~~act~~ title:

1. Temporarily suspend the permit of any operator of a controlled industrial waste facility until such facility conforms to the provisions of this act and the rules, regulations and standards promulgated by the Department;

2. Revoke the operating permit or license of any person who flagrantly and/or consistently violates the provisions of this act or the rules and regulations promulgated thereto, or which operates in such a manner as to cause or to continue in existence an environmentally unsafe condition. Such revocation may only take place following proper hearing, and will conform to provisions of the Administrative Procedures Act. Such person shall not be eligible for reissuance of a license when finally adjudicated as guilty of flagrant and consistent violations of this act;

3. Cause proceedings to be instituted in the district court having jurisdiction in the area where the alleged violation occurs seeking an injunction to restrain a violation of this act or the rules, regulations or standards adopted hereunder and to restrain the maintenance of a public nuisance; and

4. Cause proceedings to be instituted in the district court having jurisdiction in the area where the alleged violation of this act or the rules and regulations of the State Board of Health occurs seeking a civil penalty of not more than ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) per day or part of a day such violation occurs.

SECTION 7. AMENDATORY Section 3, Chapter 113, O.S.L.

1985, as last amended by Section 7, Chapter 196, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2012.1), is amended to read as follows:

Section 1-2012.1 In addition to any other remedies provided in the Oklahoma Controlled Industrial Waste Disposal Act, the Department, ~~pursuant to rules and regulations,~~ may issue a written order to any person whom the Department has reason to believe has violated or is presently in violation of the Oklahoma Controlled Industrial Waste Disposal Act, Section 1-2001 et seq. of this title, or any rule or rules promulgated by the Board pursuant to the Oklahoma Controlled Industrial Waste Disposal Act and to whom the Department has served, no less than fifteen (15) days previously, a written notice of violation of such rule or rules this act.

1. Such order may require compliance with this act or such rule or rules immediately or within a specified time period or both. Such order may also assess an administrative fine for any past or current violation of this act or the rules and for each day or part of a day that such person fails to comply with such order.

- a. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations.
- b. Any penalty assessed in the order shall not exceed ~~Ten Thousand Dollars (\$10,000.00)~~ Twenty-five Thousand Dollars (\$25,000.00) per day of noncompliance ~~with for~~ each violation of the act, the rules or the order. In assessing such a ~~penalty penalties,~~ the Department shall consider the seriousness of the violation or violations and any good faith efforts to comply with applicable requirements.

2. Any order issued pursuant to this section shall become a final order unless, no later than fifteen (15) days after the order is served, the person or persons named therein request an

administrative hearing. Upon such request the Department shall promptly conduct the hearing. The Department shall dismiss such proceedings where past and current compliance with the act, the rules and the order is demonstrated.

- a. Orders and hearings are subject to the Administrative Procedures Act.
- b. A final order following a hearing may assess an administrative fine of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.
- c. The Department may adopt procedural rules as necessary and appropriate to implement the provisions of this section.

3. Any order issued pursuant to this section may require that corrective action be taken beyond the controlled industrial waste facility boundary where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that, despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake such action.

SECTION 8. AMENDATORY Section 6, Chapter 296, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-2014.2), is amended to read as follows:

Section 1-2014.2 Facilities that recycle controlled industrial wastes are exempt from construction permit requirements specified by the provisions of the Oklahoma Controlled Industrial Waste Disposal Act for those units exclusively used in the recycling process. ~~Controlled~~ Off-site controlled industrial waste recycling facilities are subject to the requirements specified by the Oklahoma Controlled Industrial Waste Disposal Act for an operations permit, and shall also meet design standards as promulgated by the State Board of Health. ~~Recycling~~ Such recycling facilities which are in existence

on the effective date of this act may but shall not be required to file an operations permit application pursuant to the provisions of the Oklahoma Controlled Industrial Waste Disposal Act. A permit modification is not required for a permitted recycling facility to use new, improved, or better methods of recycling if the Department has approved the plans as being environmentally acceptable.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-2014.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

No permit shall be issued for a new off-site controlled industrial waste treatment or disposal facility located within six (6) miles of any incorporated city limits. For the purpose of this section, the city limits will be defined as those in effect on the date the permit application was made to the Department of Health. This section shall not apply to any facility which was operational prior to January 1, 1991.

SECTION 10. 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 4th day of March, 1991.

President of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_, 1991.

Speaker of the House of Representatives