

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1090

By: Leist of the House

and

Easley of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to environment, waste and other materials; amending 63 O.S. 1991, Section 1-2005.3A, as last amended by Section 15, Chapter 403, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-2005.3A), which relates to hazardous waste; clarifying language; providing for certain fees in event of certain determinations; specifying fees; modifying certain expenditures; requiring certain priority; providing certain expenditures; providing for legal counsel; amending 40 O.S. 1991, Sections 451, 452, 453, 454, 455 and 456, which relate to the removal of friable asbestos materials; creating the Oklahoma Asbestos and Lead Paint Control Act; modifying and adding terms; providing authority to perform certain inspection and enter into certain contracts; including lead paint abatement in license requirements; providing for performance evaluations; requiring liability insurance for abatement contractors; modifying and adding powers and duties to Commissioner; modifying certain language; providing Commissioner powers to issue certain orders; providing fines and penalties for violations of act; providing administrative proceedings; providing civil remedies and fines; modifying fines and penalties for violation of act; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-2005.3A, as last amended by Section 15, Chapter 403, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-2005.3A), is amended to read as follows:

Section 1-2005.3A A. Every hazardous waste treatment facility, storage facility, underground injection facility, or other disposal facility, or off-site facility that recycles hazardous waste subject to the provisions of the Oklahoma

Hazardous Waste ~~Disposal~~ Management Act shall pay an annual fee on the amount of hazardous waste managed by such facility to the ~~State~~ Department of ~~Health~~ Environmental Quality for deposit in the ~~Public Health Special~~ Department of Environmental Quality Revolving Fund.

1. Such fees shall be, subject to the qualifications provided in ~~paragraph~~ paragraphs 2 through 6 of this subsection:

- a. For hazardous waste generated within the State of Oklahoma, Nine Dollars (\$9.00) per ton for on-site or off-site storage, treatment or land disposal.
- b. For hazardous waste generated within the State of Oklahoma, or elsewhere in the case of regeneration, Four Dollars (\$4.00) per ton for off-site recycling.
- c. For hazardous waste generated within the State of Oklahoma, three cents (\$0.03) per gallon for on-site or off-site underground injection.
- d. Until May 1, 1993, the fee applicable to waste generated outside the State of Oklahoma shall be Nine Dollars (\$9.00) per ton for onsite or offsite storage, treatment or land disposal.
- e. (1) Effective May 1, 1993, the fee applicable to waste generated outside the State of Oklahoma except as provided in subparagraph b of this paragraph shall be based on the primary purpose for which the waste is imported into the State of Oklahoma, and shall be a reciprocal fee at the rate of and in accordance with the method of imposition of the tax or fee imposed on the storage, treatment, disposal or recycling of such waste in the state, country or territory where the waste was generated, as determined by the ~~State~~ Department of ~~Health~~ Environmental Quality. In no case, however, shall the fee levied on hazardous waste generated outside the State of Oklahoma be less than the rate charged at the time of its storage, treatment, disposal

or recycling for hazardous waste generated and stored, treated, disposed or recycled in the State of Oklahoma.

- (2) Any person storing, treating, disposing, or recycling such hazardous waste in the State of Oklahoma shall file with the ~~State~~ Department of ~~Health~~ Environmental Quality an affidavit showing the applicable tax or fee for any hazardous waste received from another state, country or territory had it been stored, treated, or disposed of in a like manner in that state, country or territory. In preparing the required affidavit, the recipient of the waste is legally entitled to rely upon all information contained in the manifest document accompanying the shipment of waste.

2. There shall be a minimum fee per facility as follows:

- a. Except as provided in subparagraph d of this paragraph, any person owning or operating an off-site hazardous waste treatment facility, storage facility, or disposal facility shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year.
- b. Any person owning or operating an on-site hazardous waste treatment facility, storage facility, or disposal facility shall pay a total fee of not less than Twenty Thousand Dollars (\$20,000.00) each state fiscal year; provided, the annual fee for the on-site disposal of hazardous waste by underground injection shall not exceed Fifty Thousand Dollars (\$50,000.00).
- c. Any person owning or operating an off-site facility for the recycling of hazardous waste shall pay a total fee of not less than Fifty Thousand Dollars (\$50,000.00) each state fiscal year.

d. Any person owning or operating an off-site facility which accepts hazardous waste exclusively for the purpose of conducting research and design tests shall pay a total fee of not less than Ten Thousand Dollars (\$10,000.00) each state fiscal year.

3. Off-site facilities may charge persons contracting for the services of the facility their proportional share of the fees required by the provisions of this section.

4. The facility shall become liable for payment of the fee on each ton or gallon of hazardous waste at the time it is received. The fee shall be payable by the facility to the Department of ~~Health~~ Environmental Quality only as provided for in subsection C of this section.

5. The fee imposed by the provisions of this section shall be payable by the facility only once without regard to any subsequent handling of the hazardous waste. The fee shall be based on the purpose for which the waste was generated by or brought to the facility. In no event shall a facility be required to pay a fee on each step or process involved in the storage, treatment, recycling or disposal of the waste at the facility or a related facility under common control.

6. In computing the amount of the fee specified in subparagraph b of paragraph 1 of this subsection ~~A of this section~~ for the off-site recycling or regeneration of hazardous waste, the assessment for regeneration shall be made on a dry weight basis.

7. In the event that the fee structure set forth in paragraph 1 of this subsection shall be determined invalid by an order or judgment of a state or federal court of competent jurisdiction, then the following fees shall apply in lieu of those set forth in paragraph 1, subject to paragraphs 2 through 6:

- a. Fifty Dollars (\$50.00) per ton for the storage, treatment or disposal of hazardous waste which carries a "P" or "U" hazardous waste code designation under 40 CFR, Part 261, Subpart D,
- b. Thirty-five Dollars (\$35.00) per ton for the storage, treatment or disposal of hazardous waste

which carries a "K" hazardous waste code designation under 40 CFR, Part 261, Subpart D,

c. Nine Dollars (\$9.00) per ton for the storage, treatment or disposal of hazardous waste which carries an "F" hazardous waste code designation under 40 CFR, Part 261, Subpart D or a "D" hazardous waste code designation under 40 CFR, Part 261, Subpart C,

d. Four Dollars (\$4.00) per ton for off-site recycling or regeneration of hazardous waste. The provisions of this subparagraph shall not include cement kilns, boilers, or industrial furnaces burning hazardous waste as fuel, and

e. In the case of the storage, treatment or disposal of a hazardous waste carrying multiple hazardous waste code designations under 40 CFR, Part 261, the highest applicable fee from subparagraphs a through c of this paragraph.

B. The following facilities shall not be required to pay the fee required by the provisions of this section:

1. Facilities engaged only in the on-site recycling of hazardous waste; and

2. Facilities which have not generated or received new hazardous waste within the preceding state fiscal year.

C. Payment of the fees required by this section shall be due quarterly for hazardous waste received by the facility during the prior quarter. Such quarterly payments shall be due on the first day ~~of the month of the~~ following the quarter ~~during the state fiscal year~~ in which the hazardous waste is received. ~~All payments~~ Each payment shall be made within thirty (30) days from the date it becomes due.

D. ~~The~~ For facilities required to pay fees pursuant to this section, the fees required by this section shall be paid in lieu of the monitoring fees imposed in paragraph 2 of subsection A of Section 1-2005.2 of this title. All facilities subject to the provisions of this section shall not be required to pay or collect

any additional fees for waste disposal unless specifically required by the Oklahoma Hazardous Waste ~~Disposal~~ Management Act.

E. All fees and other monies received by the Department pursuant to the provisions of this section shall be expended solely for the purposes specified in this section.

1. Ten percent (10%) of the fees collected from an off-site hazardous waste facility pursuant to the provisions of this section shall be deposited to the credit of the Special Economic Development Trust Funds established pursuant to Section 1-2005.3C of this title. The funds for the Trusts accruing pursuant to the provisions of this section shall be distributed to each Trust established in proportion to the fees generated by the off-site hazardous waste facilities within the Trust area.

2. From the monies remaining after deposits to the credit of any development trust funds required by paragraph 1 of this subsection, not less than ten percent (10%) of the fees collected pursuant to the provisions of this section shall be expended for one or more of the following purposes:

- a. contributions required from the state pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act for remediation or related action upon a site within the state,
- b. response, including but not limited to containment and removal, to emergency situations involving spillage, leakage, emissions or other discharge of hazardous waste or hazardous waste constituents to the environment where a responsible party cannot be timely identified or found or compelled to take appropriate emergency action to adequately protect human health and the environment,
- c. state-funded remediation of sites contaminated by hazardous waste or hazardous waste constituents so as to present a threat to human health or the environment, to the extent that a responsible party cannot be timely identified or found or compelled to

take such action, or is unable to take such action,  
or

- d. costs incurred in pursuing an enforcement action to compel a responsible party to undertake appropriate response or remedial actions, or to recover from a responsible party monies expended by the state, as described in subparagraphs a through c of this paragraph.

3. ~~The State Commissioner of Health~~ Executive Director shall expend remaining monies received pursuant to the provisions of this section for one or more of the following purposes:

- a. the administration of the provisions of the Oklahoma Hazardous Waste ~~Disposal~~ Management Act,
- b. the development of an inventory of hazardous wastes currently produced in Oklahoma and management needs for the identified wastes,
- c. the implementation of information exchange, technical assistance, public information, and educational programs,
- d. the development and encouragement of waste reduction plans for Oklahoma waste generators, or
- e. increased inspection of hazardous waste facilities which may include full time inspectors at off-site hazardous waste facilities.

F. To the extent that fees received pursuant to this section shall exceed the purposes specified in subsection E of this section, the ~~Commissioner shall only~~ Executive Director may expend such funds for ~~one or more of the following purposes:~~

~~1. Contributions required from the state pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act for remediation or related action upon a site within the state;~~

~~2. Response, including but not limited to containment and removal, to emergency situations involving spillage, leakage, emissions or other discharge of hazardous waste or hazardous waste constituents to the environment where a responsible party cannot~~

~~be timely identified or found or compelled to take appropriate emergency action to adequately protect human health and the environment;~~

~~3. State-funded remediation of sites contaminated by hazardous waste or hazardous waste constituents so as to present a threat to human health or the environment, to the extent that a responsible party cannot be timely identified or found or compelled to take such action, or is unable to take such action;~~

~~4. Costs incurred in pursuing an enforcement action to compel a responsible party to undertake appropriate response or remedial actions, or to recover from a responsible party monies expended by the state, as described in paragraphs 1 through 3 of this subsection; or~~

~~5. Financial~~ financial assistance to municipalities or counties for the purposes and under the conditions specified in Section 1-2019 of this title.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-2-102 of Title 27, unless there is created a duplication in numbering, reads as follows:

The Attorney General of this state shall serve as legal counsel for the Environmental Quality Board and shall assist the Board and advisory council of the Board in the performance of their duties pursuant to the Environmental Quality Code.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450 of Title 40, unless there is created a duplication in numbering, reads as follows:

Sections 4 through 10 of this act shall be known and may be cited as the "Oklahoma Asbestos and Lead Paint Control Act".

SECTION 4. AMENDATORY 40 O.S. 1991, Section 451, is amended to read as follows:

Section 451. As used in ~~Sections 451 et seq. of this title~~ the Oklahoma Asbestos and Lead Paint Control Act:

1. "Friable asbestos material" means any material that contains asbestos of one percent (1%) or more that can be crumbled, pulverized or reduced to powder by hand pressure;



2. "Friable asbestos material abatement" means the removal, encapsulation or enclosure of friable asbestos-containing material;

3. "Friable asbestos material encapsulation" means the application of a bonding agent called a sealant, which penetrates and hardens the asbestos material or covers the surface of the material with a protective coating, thus preventing fiber release from the asbestos material;

4. "Friable asbestos material removal" means the actual physical removal of any friable asbestos-containing material from a facility, when the asbestos is either attached to or detached from any device or structure;

5. "Contractor" means any public or private entity that engages in lead paint abatement in any facility in this state, or that engages in friable asbestos-containing material abatement in any facility in this state except private residences or apartment houses of less than six family units;

6. "Commissioner" means the Commissioner of Labor;

7. "Department" means the Department of Labor;

8. "Lead" means metallic lead, all inorganic lead, and organic lead soaps. Excluded from this definition are all other organic lead compounds;

9. "Lead paint abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by the Commissioner. Such term includes the removal of lead-based paint and lead contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal and covering of lead-contaminated soil; and all preparation, cleanup, disposal, and post-abatement clearance activities associated with such measures;

10. "Lead paint abatement contractor" means any public or private entity that engages in lead paint abatement in any facility in this state; and

11. "Lead-based paint" means paint or other surface coatings, whether or not defective, that contain lead in amounts equal to or greater than one milligram per square centimeter.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 452, is amended to read as follows:

Section 452. A. No contractor shall abate any friable material containing asbestos or lead paint without having first obtained a license to do so from the Commissioner of Labor. The Commissioner shall issue an asbestos or lead paint abatement license to a qualified contractor upon proper application, as determined by the Commissioner. The annual fee for such license shall be Five Hundred Dollars (\$500.00). A nonrefundable initial application fee of One Thousand Dollars (\$1,000.00) shall be charged. The Commissioner may deny a license to applicants whose past abatement performance for abatement of friable asbestos or lead paint does not comply with federal and other states' requirements. A minimum waiting period of one hundred twenty (120) days will be required before issuance of a license to permit the Commissioner to perform a ~~word~~ work performance investigation of the applicant.

The annual fee for examining and certifying workers employed by a contractor for asbestos abatement or lead paint abatement shall be Twenty-five Dollars (\$25.00). Uncertified workers shall not be used on any asbestos or lead paint abatement projects.

B. The state and political subdivisions thereof, counties and political subdivisions thereof and municipalities and political subdivisions thereof, and their supervisors and employees, shall be exempt from any certification fees required by this section when such entities act as a contractor. Any contractor not performing abatement work which falls under the jurisdiction of the Commissioner during the period of the issued license shall be considered a new applicant for purposes of licensing and training.

C. 1. A fee of Six Hundred Dollars (\$600.00) shall be paid by contractors to the Department of Labor, to be deposited in the General Revenue Fund, for each separate containment area of any asbestos abatement project. There shall be a minimum of three (3)

inspections of each containment area. For projects which are not a part of a definite containment area, or are performed with multiple glovebags or miniature containments, a fee of Two Hundred Dollars (\$200.00), plus Five Dollars (\$5.00) per such glovebag or miniature containment, shall be made.

Asbestos abatement projects performed on properties owned by the state or any political subdivision thereof shall be exempt from this fee.

2. A fee shall be paid by contractors to the Department of Labor, to be deposited in the General Revenue Fund, for each lead paint abatement project, such fees to be determined under rule-making authority of the Commissioner and promulgated under the Administrative Procedures Act.

D. Any asbestos abatement contractor transporting asbestos-containing material shall be required to provide to the Commissioner a Certificate of Insurance by a carrier licensed to do business in the State of Oklahoma demonstrating a minimum of One Million Dollars (\$1,000,000.00) of environmental impairment insurance. Any asbestos or lead paint abatement contractor shall be required to provide the Commissioner a Certificate of Insurance by a carrier licensed to do business in the State of Oklahoma demonstrating a minimum of One Million Dollars (\$1,000,000.00) of asbestos or lead paint abatement liability insurance.

E. No state agency or political subdivision thereof, county or political subdivision thereof, or municipalities or political subdivisions thereof shall solicit or receive any estimate or bid for abatement of asbestos from any person or party who is not a licensed asbestos abatement contractor.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 453, is amended to read as follows:

Section 453. A. The Commissioner of Labor shall have the ~~following powers and duties~~ power and duty to:

1. ~~To develop~~ Develop and adopt standards for the abatement of friable asbestos materials and lead paint which shall be consistent with general industry standards;

2. ~~To instruct~~ Instruct and examine contractors, employees and supervisors on the safe abatement of friable asbestos materials and lead paint. The Commissioner may designate a training location which shall be a state vocational educational school;

3. ~~To hire~~ Hire sufficient personnel to carry out the provisions of this act consistent with funds allocated and full-time-equivalent employees authorized;

4. ~~To inspect~~ Inspect all asbestos and lead paint abatement projects, to issue, modify and revoke orders; to issue cease and desist orders; and to require mandamus and seek injunctive relief for enforcement of orders; ~~and~~

5. ~~To exercise~~ Inspect public buildings for the presence of friable asbestos materials or lead paint upon presenting appropriate credentials to the owner, operator, or agent in charge. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Commissioner shall have the power to seek an order compelling such entry or inspection pursuant to the provisions of the Oklahoma Asbestos and Lead Paint Control Act;

6. Collect and analyze samples to determine the presence and condition of friable asbestos materials and lead paint;

7. Recommend appropriate abatement measures for friable asbestos materials and lead paint;

8. Make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under the Oklahoma Asbestos and Lead Paint Control Act including, but not limited to, contracts with the United States, other states, agencies, and political subdivisions of this state;

9. Accept grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary and desirable;

10. Supervise, administer, and enforce the provisions of the Oklahoma Asbestos and Lead Paint Control Act regulations promulgated thereto;

11. Hold hearings;

12. Institute legal proceedings, including suits for injunctions for the enforcement of the Commissioner's orders, regulations, and for the enforcement of penalties;

13. Investigate any violations of the Oklahoma Asbestos and Lead Paint Control Act; and

14. Exercise all incidental powers which are necessary to carry out the provisions of this act.

B. The violations of any rule or standard shall be grounds for the Commissioner to evoke any penalties set forth in Section 456 of this title.

SECTION 7. AMENDATORY 40 O.S. 1991, Section 454, is amended to read as follows:

Section 454. If the Commissioner finds that a contractor has violated any of the provisions of this act or any rule promulgated pursuant to ~~this act~~ the Oklahoma Asbestos and Lead Paint Control Act, the Commissioner may suspend, revoke or refuse to issue the license of the contractor after a hearing held for such purpose. Such hearing shall be held within thirty (30) days after written notice has been sent to the contractor by certified mail. If, after such hearing, the Commissioner finds cause to suspend, revoke or refuse to issue a license, the contractor shall be given written notice of the decision of the Commissioner and the basis therefor. The decision shall become final at the end of thirty (30) days from the date of such notice, unless appealed to the district court. All appeals from the Commissioner's order shall be taken in the manner prescribed by law.

SECTION 8. AMENDATORY 40 O.S. 1991, Section 455, is amended to read as follows:

Section 455. The Commissioner of Labor or an authorized representative shall have the power and authority to enter at reasonable times upon any property for the purpose of inspecting and investigating contractors relating to the abatement of any

lead paint or friable material containing asbestos pursuant to the Oklahoma Asbestos and Lead Paint Control Act.

SECTION 9. AMENDATORY 40 O.S. 1991, Section 456, is amended to read as follows:

Section 456. A. ~~Any~~ In addition to any administrative or civil penalty, any person who violates any of the provisions of Sections 1 through 5 of this act the Oklahoma Asbestos and Lead Paint Control Act or who violates any rule or order promulgated pursuant to Sections 1 through 5 of this act thereto shall be guilty of a misdemeanor and may be enjoined from continuing such action. Upon conviction thereof, said person shall be punished by imprisonment in the county jail for not more than six (6) months and by a fine of not less than One Hundred Dollars (\$100.00). Each day's violations shall constitute a separate violation.

B. The Attorney General shall, upon request of the Commissioner, bring an action for injunction against any person violating any provision of ~~Sections 1 through 5 of this act the Oklahoma Asbestos and Lead Paint Control Act~~ or violating any order or determination of the Commissioner. In any action for injunction, any finding of the Commissioner, after notice, shall be prima facie evidence of the facts found therein.

C. A district attorney, upon request of the Commissioner, shall prosecute any violation of ~~Sections 1 through 5 of this act the Oklahoma Asbestos and Lead Paint Control Act.~~

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.

SECTION 11. This act shall become effective July 1, 1993.

44-1-7191 KSM