

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE FOR  
HOUSE BILL NO. 2647

By: Crocker of the House

and

Muegge of the Senate

COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; amending Section 13, Chapter 145, O.S.L. 1993, as amended by Section 4, Chapter 324, O.S.L. 1993, Section 9, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 9), as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 5, Chapter 324, O.S.L. 1993, Section 4, Chapter 201, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-2053), as amended by Section 183, Chapter 145, O.S.L. 1993 and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-1-102, 2-3-101 and 2-11-204), which relate to the Oklahoma Environmental Quality Code; modifying and adding to definitions; modifying structure of the Department of Environmental Quality; creating the Office of Pollution Prevention and Technical Assistance; specifying powers and duties of the Office; prohibiting availability of certain information; providing exceptions; prohibiting certain regulatory or enforcement actions in certain instances; providing for administration of certain program; expanding certain reductions of fees; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 13, Chapter 145, O.S.L. 1993, as amended by Section 4, Chapter 324, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-1-102), is amended to read as follows:

Section 2-1-102. As used in the Oklahoma Environmental Quality Code:

1. "Administrative hearing" means an individual proceeding, held by the Department when authorized by the provisions of this Code and conducted pursuant to the Administrative Procedures Act, this Code and rules promulgated thereunder, for a purpose

specified by this Code. "Administrative hearing" includes "administrative permit hearing", "enforcement hearing" and "administrative enforcement hearing" within the context of this Code. An "administrative hearing" shall be a quasi-judicial proceeding;

2. "Administrative Procedures Act" means the Oklahoma Administrative Procedures Act;

3. "Board" means the Environmental Quality Board;

4. "Code" means Chapter 2 of this title;

5. "Department" means the Department of Environmental Quality;

6. "Enforcement hearing" means an individual proceeding conducted pursuant to the Administrative Procedures Act, this Code and rules promulgated thereunder, for the purpose of enforcing the provisions of this Code, rules promulgated thereunder and orders, permits or licenses issued pursuant thereto. The term "administrative hearing" shall mean the same as "enforcement hearing" when held for enforcement purposes. An "enforcement hearing" shall be a quasi-judicial proceeding;

7. "Environment" includes the air, land, wildlife, and waters of the state;

8. "Executive Director" means the Executive Director of the Department of Environmental Quality;

9. "Industrial wastewater treatment permit" shall mean permits issued by the Department after July 1, 1993, under Section 2-6-501 of Title 27A of the Oklahoma Statutes, and waste disposal permits issued on or before June 30, 1993, by the Oklahoma Water Resources Board for land application of industrial waste or surface impoundments or disposal systems for industrial waste or wastewater;

10. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined;

11. "Person" means an individual, association, partnership, firm, company, public trust, corporation, joint-stock company, trust, estate, municipality, state or federal agency, other

governmental entity, any other legal entity or an agent, employee, representative, assignee or successor thereof;

12. "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment 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, or to property;

13. "Pollution prevention" means any practice which reduces the use of any hazardous substance or amount of any pollutant or contaminant prior to recycling, treatment or disposal, and reduces the hazards to public health and the environment associated with the use or release or both of such substances, pollutants or contaminants. The term "pollution prevention" shall not include or in any way be construed to promote or require substitution of one hazardous substance for another, treatment, increased pollution control, off-site recycling, or incineration.

14. "Public meeting" means a formal public forum, held by the Department when authorized by the provisions of this Code, and conducted by a presiding officer pursuant to the requirements of this Code and rules promulgated thereunder, at which an opportunity is provided for the presentation of oral and written views within reasonable time limits as determined by the presiding officer. Views expressed at a "public meeting" shall be limited to the topic or topics specified by this Code for such meeting. "Public meeting" shall mean a "public hearing" when held pursuant to requirements of the Code of Federal Regulations or the Oklahoma Pollutant Discharge Elimination System Act, and shall be synonymous with "formal public meeting" and "informal public meeting" as used within the context of this Code and rules

promulgated thereunder. A "public meeting" shall not be a quasi-judicial proceeding;

~~14.~~ 15. "State environmental agency" includes the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Oklahoma Conservation Commission,
- e. Department of Wildlife Conservation,
- f. Department of Mines,
- g. Department of Public Safety,
- h. Department of Labor,
- i. Department of Environmental Quality, and
- j. Department of Civil Emergency Management; ~~and~~

~~15.~~ 16. "Toxics use reduction" means any in-plant changes in production processes or raw materials that reduce, avoid or eliminate the use of toxic or hazardous substances or generation of hazardous by-products per unit of product, so as to reduce risks to the health of workers, consumers or the environment, without shifting risks between workers, consumers or parts of the environment. Toxics use reduction shall be achieved through any of the following techniques:

- a. input substitution, which refers to replacing a toxic or hazardous substance or raw material used in a production unit with a nontoxic or less toxic substance,
- b. product reformulation, which refers to substituting for an existing end-product an end-product which is nontoxic or less toxic upon use, release or disposal,
- c. production unit redesign or modification, which refers to developing and using production units of a different design than those currently used,
- d. production unit modernization, which refers to upgrading or replacing existing production unit equipment and methods with other equipment and methods based on the same production unit,

- e. improved operation and maintenance of production unit equipment and methods, which refers to modifying or adding to existing equipment or methods including, but not limited to, such techniques as improved housekeeping practices, system adjustments, product and process inspections or production unit control equipment or methods, or
- f. recycling, reuse or extended use of toxics by using equipment or methods which become an integral part of the production unit of concern, including but not limited to filtration and other closed loop methods.

The term "toxics use reduction" shall not include or in any way be inferred to promote or require incineration, transfer from one medium of release or discharge to other media, off-site or out-of-production unit waste recycling, or methods of end-of-pipe treatment of toxics as waste; and

17. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof.

SECTION 2. AMENDATORY Section 9, Chapter 398, O.S.L. 1992 (27A O.S. Supp. 1992, Section 9), as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 5, Chapter 324, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-3-101), is amended to read as follows:

Section 2-3-101. A. 1. There is hereby created the Department of Environmental Quality.

B. Within its jurisdictional areas of environmental responsibility, the Department of Environmental Quality, through its duly designated employees or representatives, shall have the power and duty to:

1. Perform such duties as required by law; and

2. Be the official agency of the State of Oklahoma, as designated by law, to cooperate with federal agencies for point source pollution, solid waste, hazardous materials, pollution, Superfund, water quality, hazardous waste, radioactive waste, air quality, drinking water supplies, wastewater treatment and any other program authorized by law or executive order.

C. Any employee of the Department in a technical, supervisory or administrative position relating to the review, issuance or enforcement of permits pursuant to this Code who is an owner, stockholder, employee or officer of, or who receives compensation from, any corporation, partnership, or other business or entity which is subject to regulation by the Department of Environmental Quality shall disclose such interest to the Executive Director. Such disclosure shall be submitted for Board review and shall be made a part of the Board minutes available to the public. This subsection shall not apply to financial interests occurring by reason of an employee's participation in the Oklahoma State Employees Deferred Compensation Plan or publicly traded mutual funds.

D. The Executive Director, Deputy Director, and all other positions and employees of the Department at the Division Director level or higher shall be in the unclassified service.

E. The following programs are hereby established within the Department of Environmental Quality:

1. An air quality program which shall be responsible for air quality;

2. Water programs which shall be responsible for water quality, including, but not limited to point source and nonpoint source pollution within the jurisdiction of the Department, public and private water supplies, public and private wastewater treatment, water protection and discharges to waters of the state;

3. Waste management programs which shall be responsible for hazardous waste, solid waste, radiation, and municipal, industrial, commercial and other waste; and

4. Special projects and services programs which shall be responsible for duties related to planning, interagency coordination, technical assistance programs, laboratory services and laboratory certification, recycling, education and dissemination of information.

F. Within the Department there are hereby created:

1. The Office of Complaints, Investigation and Mediation which shall be responsible for intake processing, investigation, mediation and conciliation of inquiries and complaints received by the Department and which shall provide for the expedient resolution of complaints within the jurisdiction of the Department;

2. The Office of Business Assistance which shall be responsible for advising and providing to licensees, permittees and those persons desiring to obtain a license or permit, the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Code. The Office of Business Assistance shall intercede with other divisions or offices of the Department to assist businesses and other state agencies in complying with state statutes and rules governing environmental areas;

3. The Office of Local Government Assistance which shall be responsible for advising and providing to licensees, permittees and those persons associated with and representing local political subdivisions desiring a license or permit, the necessary forms and the information necessary to comply with the Oklahoma Environmental Quality Code. The Office of Local Government Assistance shall intercede with other divisions or offices of the Department to assist municipalities in complying with state statutes and rules governing environmental areas;

4. The Office of Citizen Assistance which shall be responsible for advising and providing assistance to persons desiring information concerning the Department's rules, laws, procedures, licenses or permits, and forms used to comply with the Oklahoma Environmental Quality Code; ~~and~~

5. The Office of Administrative Hearings which shall have primary responsibility for conducting individual proceedings including, but not limited to, maintenance of records, giving required notices, docketing and scheduling, and for conducting, upon request, administrative rulemaking hearings. The Office of Administrative Hearings shall be maintained separate and apart from any legal division or office of General Counsel of the Department; and

6. The Office of Pollution Prevention and Technical Assistance which shall be responsible for implementing a comprehensive pollution prevention system integrating water pollution, air pollution and waste management programs.

G. 1. The Department shall prepare and submit an annual report assessing the status of the Department's programs to the Board, the Governor, the President Pro Tempore of the State Senate, and the Speaker of the Oklahoma House of Representatives by January 1 of each year. The annual status report shall include: the number of environmental inspections made within the various regulatory areas under the Department's jurisdiction; the number of permit applications submitted within the various regulatory areas under the Department's jurisdiction; the number of permits issued within the various regulatory areas under the Department's jurisdiction; the number and type of complaints filed with the Department; the number of resolved and unresolved Department complaints; a list of any permits and complaints which failed to be either completed or resolved within the Department's established time frames and an explanation of why the Department was unable to meet said time frames; the number and kinds of services provided corporations, businesses, cities, towns, schools, citizen groups and individuals by the Offices of Business Assistance, Local Government Assistance, and Citizen Assistance; a summary of the Department's environmental education efforts; the number and type of administrative hearings held and their outcomes; a detailed description of any promulgated and pending emergency or permanent rules requested by the Department and the current status of pending rules within the rulemaking process; the

number of notices of violations issued by the Department within the various regulatory areas under its jurisdiction; the amount of penalties collected by the Department within the various regulatory areas under its jurisdiction; and any other information which the Department believes is pertinent.

2. Beginning January 1, 1995, and on or before January 1 of every year thereafter, the Department shall prepare an Oklahoma Environmental Quality Report which outlines the Department's two-year needs for providing environmental services within its jurisdictional areas. The report shall reflect any new federal mandates, such mandates' estimated costs, and any state statutory or constitutional changes recommended by the Department within its jurisdictional areas. The Oklahoma Environmental Quality Report shall be reviewed, amended, and approved by the Board. The Department shall transmit an approved copy of the Oklahoma Environmental Quality Report to the Governor, President Pro Tempore of the State Senate, and Speaker of the House of Representatives.

3. The Executive Director shall establish such divisions and such other programs and offices as the Executive Director may determine necessary to implement and administer programs and functions within the jurisdiction of the Department pursuant to the Oklahoma Environmental Quality Code. In establishing such divisions and offices the Executive Director shall consult with and advise the Environmental Management Oversight Task Force as created by Section 349 of this act.

H. 1. The Department may contract with the other state environmental agencies or the local conservation districts to provide environmental services to the maximum extent possible. Such contracts may include duties related to providing information to the public regarding state environmental services, resources, permitting requirements and procedures based upon the ability, education and training of state environmental agency or local conservation district employees.

2. The Department, in conjunction with the state environmental agencies, may develop a program for the purpose of

training state environmental agency or local conservation district employees to provide any needed environmental services.

3. Environmental services to be provided by other state environmental agencies or by local conservation districts shall not include the investigation of complaints regarding, or inspections of, permitted sites or facilities, unless otherwise authorized by law.

4. In order to promote efficiency in state government and maximize services to rural citizens, the Department of Environmental Quality and the Oklahoma State Department of Health may contract between the agencies to provide services as may be needed. In performing any services pursuant to such a contract, the Oklahoma Department of Health shall be deemed to be a state environmental agency for purposes of fulfilling environmental program and function duties and responsibilities specified by such contracts between the Oklahoma Department of Health and the Department of Environmental Quality.

5. The Department of Environmental Quality may contract as needed with the City-County Health Department of Oklahoma County and the Tulsa City-County Health Department for performance of environmental services within the jurisdictional areas of responsibility of the Department of Environmental Quality.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-3-105 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Office of Pollution Prevention and Technical Assistance, in addition to the responsibilities specified in Section 2-3-101 of Title 27A of the Oklahoma Statutes and assigned to the Office by the Executive Director, may:

1. Create a cooperative partnership among the business community, the environmental community and the Department of Environmental Quality in which technical assistance, outreach and education activities are coordinated and conducted to achieve pollution prevention, waste reduction and source reduction;

2. Implement the Oklahoma Hazardous Waste Reduction Program and the Recycling, Reuse and Source Reduction Incentive Act;

3. Encourage and assist facilities using toxic or hazardous substances to engage in comprehensive planning and to develop measurable performance goals;

4. Offer and provide technical assistance to the users and generators of toxic or hazardous substances;

5. Promote pollution prevention as the preferred means for achieving compliance with environmental laws and regulations;

6. Promote research in toxics use reduction in order to spur public and private investment in pollution prevention;

7. Develop and provide curriculum and training on pollution prevention for users and generators of toxic or hazardous substances;

8. Identify user groups as priority for technical assistance;

9. Sponsor and conduct conferences and workshops on pollution prevention for specific classes of business or industry; and

10. Compile, organize and make information available for distribution on pollution prevention.

B. 1. The Office of Pollution Prevention and Technical Assistance shall not make available to the Department of Environmental Quality information the Office obtains in the course of providing technical assistance to a user or generator of toxic or hazardous waste, unless:

- a. the user or generator agrees that such information may be available to the Department,
- b. the information is public record information,
- c. the information pertains to an imminent threat to public health or safety, or to the environment, or
- d. disclosure to the Department is required by law.

Nothing in this section shall relieve any toxics user of any obligation to provide the Department any notice or information required by any statute.

2. The Office shall notify users or generators requesting technical assistance of these provisions.

3. Any technical assistance or information obtained by the office shall not result in any regulatory inspections or other enforcement actions unless there is a reasonable cause to believe

there exists a clear and imminent threat to the public health or safety or to the environment.

SECTION 4. AMENDATORY Section 4, Chapter 201, O.S.L. 1992 (63 O.S. Supp. 1992, Section 1-2053), as amended by Section 183, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1993, Section 2-11-204), is amended to read as follows:

Section 2-11-204. A. ~~The Department~~ Office of Pollution Prevention and Technical Assistance shall administer the Oklahoma Hazardous Waste Reduction Program and is authorized to:

1. Compile and distribute information on hazardous waste reduction technologies and procedures;
2. Conduct conferences and workshops on hazardous waste reduction;
3. Promote the transfer of hazardous waste reduction technologies and procedures among business, industry, academic institutions, and governmental entities;
4. Provide funds as may be appropriated or otherwise made available to Oklahoma business, industry, academic institutions, private organizations and governmental entities to conduct demonstration or pilot programs using innovative hazardous waste reduction technologies and procedures and to defray costs of applied research on hazardous waste reduction; and
5. Study hazardous waste exchange programs.

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

1. Types and quantities of hazardous wastes generated, the existing hazardous waste management system, and historical hazardous waste reduction efforts;
2. Feasibility and potential impact of required hazardous waste reduction;
3. Identification of key businesses, academic institutions and governmental entities that should receive technical assistance priorities; and
4. Establishment of the program priorities and goals.

C. 1. The Board may, according to the Oklahoma Administrative Procedures Act, promulgate rules to provide economic incentives as provided in this section to encourage hazardous waste reduction.

2. Such rules shall provide incentives for a proportional reduction of up to one-half of the in-state hazardous waste treatment or disposal fee specified in Section ~~104~~ 2-7-121 of this ~~act~~ title for any Oklahoma hazardous-waste-generating business or industry which:

- a. expands its full-time equivalent employment, up to a doubling of employees, while generating proportionally less hazardous waste than in the previous state fiscal year, or
- b. generates proportionally less hazardous waste than in the previous state fiscal year.

3. Such rules shall also provide incentives for a reduction of up to one-half of the in-state hazardous waste treatment or disposal fee specified in Section ~~104~~ 2-7-121 of this ~~act~~ title for any Oklahoma hazardous-waste-generating business or industry which significantly reduces the toxicity of all or part of the hazardous waste which it generates, as demonstrated by a health-based risk analysis submitted by the applicant, which shall take into account concentrations of hazardous waste constituents and likely means of exposure to employees and to the public.

4. For purposes of determining hazardous waste volume or toxicity reduction under paragraphs 2 and 3 of this subsection, for any application for a reduction in fees filed prior to July 1, 1993 only, calendar year 1991 may be used as the baseline in lieu of the previous state fiscal year.

D. In order to qualify for the fee reductions described in this section, each large quantity hazardous waste generator shall, ~~not later than January 1, 1993,~~ prepare a hazardous waste reduction plan for each facility. Any hazardous waste generator electing not to seek fee reductions according to this section is excluded from the requirements of subsections E, G and H of this

section. The plan is not a public record but shall be available to the Department for inspection.

E. Hazardous waste reduction plans shall include at least:

1. A written policy describing ownership or management support for hazardous waste reduction and plan implementation;
2. Scope and objectives, including the evaluation of technology, procedures and personnel training programs to assure hazardous waste reduction;
3. Explanation and documentation of hazardous waste reduction efforts completed or in progress;
4. Analysis of hazardous waste streams, and identification of opportunities for source reduction;
5. Itemized hazardous waste management and hazardous waste reduction costs; and
6. Numeric goals for hazardous waste reduction.

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

G. Hazardous waste reduction plans shall be updated every two (2) years to include progress made for each performance goal and amendments, if any, to the hazardous waste reduction plan with an explanation of the need for the amendments.

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

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

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

SECTION 5. This act shall become effective September 1, 1994.

44-2-8802

KSM