

ENROLLED SENATE
BILL NO. 261

By: Easley and Taylor of the
Senate

and

Rice of the House

An Act relating to environment and natural resources; authorizing certain actions relating to water discharge system; stating legislative findings; defining term; authorizing certain trusts to elect to become publicly owned treatment works; requiring certain notice; stating powers of certain trusts; providing for cessation of powers; limiting effect of election; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1011 of Title 27A, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the "State Beneficiary Public Trusts - Publicly Owned Treatment Works Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1012 of Title 27A, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby finds that there are one or more public trusts having the State of Oklahoma as beneficiary which hold permits issued under the National Pollution Discharge Elimination System (NPDES), pursuant to the Federal Water Pollution Control Act, as amended by the Federal Clean Water Act, 33 U.S.C., Section 1251 et seq. In some instances, the state beneficiary public trust holding the NPDES permit receives waste water streams from third parties into a central waste water treatment system owned and operated by the public trust, and treats the commingled waste streams in the central waste water treatment system before discharging the resulting effluent pursuant to an NPDES permit into navigable waters of the United States of America located in this state. A state beneficiary public trust such as described in the preceding sentence hereof shall be referred to in this act as a "Central Treatment Trust", or a "CTT". The Legislature finds that there is uncertainty as to whether treatment facilities owned and operated by a CTT constitute "treatment works" that are publicly owned within the meaning of 33 U.S.C., Sections 1292 and 1317(b). The Legislature declares that there is a need to provide a mechanism for resolving this uncertainty. The Legislature further declares that a CTT should have the authority to make the election provided for in Section 3 of this act, whereupon for purposes of owning and operating its waste water treatment facilities only, such a CTT shall have the powers granted to it by Section 4 of this act, and in conjunction therewith, the Department of Environmental Quality,

subsequently referred to in this act as "Department", shall exercise the powers granted to it pursuant to Sections 4 and 5 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1013 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A Central Treatment Trust, as defined in Section 2 of this act, is hereby granted the authority, exercisable by a duly enacted resolution of its Board of Trustees, to elect that its waste water treatment facilities shall be deemed to constitute "treatment works" that are publicly owned within the meaning of 33 U.S.C., Sections 1292 and 1317(b). A CTT making such an election shall also be deemed to own a "publicly owned treatment works", or "POTW", within the meaning of 40 CFR, Section 403.3(o). Upon the adoption of a resolution exercising such election, the CTT shall promptly give notice of such official action and furnish a certified copy of the Board resolution to the United States Environmental Protection Agency, the Department and the Oklahoma Secretary of State.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1014 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A Central Treatment Trust that makes the election provided for in Section 3 of this act shall have the following powers (terms used, but not defined, in this section, but defined in 40 CFR, Section 403.3, shall have the same meanings ascribed to them in 40 CFR, Section 403.3):

1. To develop a publicly owned treatment works pretreatment program consistent with and meeting the requirements of 40 CFR, Sections 403.8 and 403.9, and submit such POTW pretreatment program for approval to the appropriate approval authority specified in 40 CFR, Section 403.3(c);

2. To enter into a coordinating agreement with the Department pursuant to which the Department shall exercise the enforcement powers specified in Section 5 of this act with respect to the POTW owned and operated by such CTT. The coordinating agreement shall make provision for the CTT to gather data and information and report such data and information to the Department so as to aid and assist the Department in exercising said enforcement powers.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1015 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Once a Central Treatment Trust has made the election and given the notice specified in Section 3 of this act, and entered into the coordinating agreement with the Department as specified in paragraph 2 of Section 4 of this act, the Department, in addition to all of its other authority under state or federal law, shall have and shall exercise the enforcement powers specified in this section with respect to the POTW owned and operated by such CTT (terms used, but not defined, in this section, but defined in 40 CFR, Section 403.3, shall have the same meanings ascribed to them in 40 CFR, Section 403.3):

1. To issue permits to industrial users of the POTW, designed to:

- a. limit and control their contributions of pollutants and allocate waste loads to the POTW so that the requirements of the CTT's NPDES permit and Oklahoma law will be met, and
- b. require compliance by the industrial users with applicable pretreatment standards and requirements;

2. To require compliance by industrial users of the POTW with applicable pretreatment standards and requirements;

3. To deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, by industrial users to the POTW where such contributions would not meet applicable pretreatment standards or requirements or where such contributions would cause a violation of the CTT's NPDES Permit;

4. To require industrial users of the POTW to develop a compliance schedule for the installation of technology required to meet applicable pretreatment standards and requirements;

5. To require industrial users of the POTW to submit all notices and self-monitoring reports as are necessary to assess and assure compliance with pretreatment standards and requirements and with conditions and requirements of permits issued by the Department pursuant to paragraph 1 of this subsection;

6. To require industrial users of the POTW to meet any provisions of Oklahoma law applicable to the discharge of pollutants by an industrial user to a POTW;

7. To carry out all inspection, surveillance, sampling and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance by industrial users of the POTW with applicable pretreatment standards and requirements. Authorized representatives of the Department or of the CTT are hereby authorized in order to carry out the purposes specified above to enter any premises of any industrial user of the POTW which is contributing pollutants to the POTW, and in which a discharge source or treatment system is located or records are required by 40 CFR, Section 403.12 to be kept. The authority to enter upon the premises of any industrial user of the POTW granted in this paragraph is intended to, and shall, be as extensive as the authority provided under Section 308 of the Federal Clean Water Act; and

8. To promulgate rules reasonably required to implement paragraphs 1 through 7 of this subsection, and to conduct individual proceedings and to enter orders to enforce such rules and to enforce paragraphs 1 through 7 of this subsection.

B. For purposes of promulgating rules, conducting individual proceedings and issuing orders as provided in this section, the Department shall be subject to the provisions of the Oklahoma Administrative Procedures Act, Section 301 et seq. of Title 75 of the Oklahoma Statutes; provided, that any person adversely affected by issuance of a rule, permit or order of the Department may, within thirty (30) days after such rule, permit or order becomes final, seek judicial review thereof; provided further, that the exclusive venue for such judicial review shall be the District Court of Oklahoma County; and provided further, that such judicial review shall be limited to review of the administrative record compiled before the Department, and shall be conducted by the court without a jury.

C. An industrial user of the POTW who violates any provision of this act or of any rule, permit or order of the Department issued pursuant to this section shall be subject to a civil penalty of not more than One Thousand Dollars (\$1,000.00) per violation. Any violation which continues for more than one (1) day shall constitute a separate violation for each day of violation. If any such penalties are not paid within thirty (30) days after administratively assessed by the Department, the Department shall bring suit in district court to recover such penalties. Penalties shall be paid to the Department for the benefit of the CTT.

D. The Department may sue an industrial user of the POTW for injunctive relief in any instance where an industrial user of the POTW violates or threatens to violate any provision of this act or

of any rule, permit or order of the Department issued pursuant to this section. In any such suit, the court shall have jurisdiction to grant to the Department, without bond or other undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including temporary restraining orders, after notice and hearing, temporary injunctions or permanent injunctions.

E. The Department may sue for both civil penalties and injunctive relief, as authorized by subsections C and D of this section, in the same proceeding.

F. The venue of any suit brought by the Department pursuant to subsections C and D of this section shall be either the District Court of Oklahoma County, or the district court of the county where the CTT maintains its administrative offices and the POTW is located, at the Department's election.

G. In any proceeding by the Department to recover civil penalties, injunctive relief or both, the prevailing party shall be allowed to recover reasonable attorney fees, to be set by the court and taxed and collected as costs.

H. In addition to the remedies provided for in subsections C and D of this section, the Department shall have the following additional remedy: The Department shall have the authority (after informal notice to the affected industrial user) to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment of the health or welfare of persons. The Department shall also have the authority (which shall include notice to the affected industrial user and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW.

I. Nothing in this act shall directly or indirectly limit or supersede any jurisdiction of the Department or the United States Environmental Protection Agency under the Oklahoma Pollutant Discharge Elimination Act, the Oklahoma Environmental Quality Code, or any other federal or state statute or regulation.

J. The term "NPDES Permits" as used in this act shall include any permit, or interim, successor, renewal or substitute permit issued by the United States Environmental Protection Agency, or by the State of Oklahoma or an agency thereof in the event the State of Oklahoma at some future date is authorized to administer the NPDES program in Oklahoma, pursuant to 33 U.S.C.A., Section 1342.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1016 of Title 27A, unless there is created a duplication in numbering, reads as follows:

At such time as the Central Treatment Trust's National Pollution Discharge Elimination System permit terminates, and any application for issuance of an interim, successor, renewal or substitute permit has been finally rejected or abandoned, or the CTT's waste treatment system is sold or leased to a for-profit entity, the CTT shall so certify to the agencies designated in Section 3 of this act, whereupon all powers granted to the CTT and the Department under this act shall prospectively cease.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1017 of Title 27A, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall directly or indirectly increase, decrease, limit or in any other manner affect the legal status, capacity, rights, powers or duties of any CTT in any area separate from its NPDES permit and the ownership and operation of its POTW.

SECTION 8. This act shall become effective July 1, 1993.

SECTION 9. 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 17th day of May, 1993.

President of the Senate

Passed the House of Representatives the 20th day of May, 1993.

Speaker of the House of Representatives