

ENGROSSED HOUSE AMENDMENT  
TO  
ENGROSSED SENATE BILL NO. 777

By: Easley, Muegge and Long  
(Ed) of the Senate

and

Rice of the House

An Act relating to environment and natural resources;  
providing reimbursement for certain persons to  
voluntarily clean up sites or facilities  
contaminated with hazardous substances; \* \* \*  
providing for codification; and providing an  
effective date.

AUTHOR: Add the following House Coauthor: Staggs

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill  
and insert

"( environment and natural resources - hazardous substances  
- Oklahoma Hazardous Waste Remediation Reimbursement  
Fund - amending 27A O.S., Section 2-7-121 -  
codification - effective date )

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 2-17-401 of Title 27A, unless  
there is created a duplication in numbering, reads as follows:

A. On and after November 1, 1996, any person who voluntarily  
and solely upon such person's own initiative, initiates and  
completes a program to remediate any site or facility in this state  
contaminated with one or more hazardous substances as defined in the

federal Comprehensive Environmental Response, Compensation and Liability Act, and if a significant portion of the contamination of the site or facility occurred prior to December 11, 1980, shall be eligible for partial reimbursement for the remediation pursuant to the provisions of this section.

B. 1. To qualify for partial reimbursement provided for in subsection A of this section, the person shall initiate and complete the site or facility remediation pursuant to a plan approved in writing by the Department of Environmental Quality.

2. The Department may assess reasonable costs for plan review and the oversight of implementation of the plan.

3. Upon completion of the remediation program, the person shall certify to the Department that the remediation program has been completed in accordance with the plan approved by the Department. In addition, the person shall submit the information required by the Department regarding total costs of remediation, and any record, receipt or other documentation to verify such costs.

4. Upon verifying the proper completion of the remediation, the Department shall provide reimbursement for authorized expenses of the remediation from the Oklahoma Hazardous Waste Remediation Reimbursement Fund in the amount of twenty percent (20%) of the total cost of the remediation program, but not to exceed Fifty Thousand Dollars (\$50,000.00).

C. No person shall be eligible for reimbursement pursuant to this section:

1. For payments made to the United States or to the State of Oklahoma as a result of any cost recovery action pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act or any comparable state statute; or

2. If the person has any criminal convictions or administrative penalty in this state, any other state or the federal courts arising from hazardous substance contamination.

D. The Department shall promulgate rules pursuant to Article I of the Administrative Procedures Act to implement the provisions of this section. Such rules shall include but not be limited to categories of specific expenses approved for reimbursement, eligibility criteria, payment process, and remediation plan requirements.

E. For purposes of this section, "person" means any individual, firm, corporation or other legal entity.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-17-402 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Department of Environmental Quality, the "Oklahoma Hazardous Waste Remediation Reimbursement Fund". The Fund shall be administered by the Department for the benefit of those persons determined to be eligible by the Department to receive reimbursement. Costs eligible for the reimbursement shall be limited to those costs incurred in actually implementing the approved remediation plan.

B. The Fund shall consist of:

1. Money received by the Department in the form of gifts, grants, matching funds, reimbursements, or from any other source intended and allowed by law to be used for such purposes as specified in Section 1 of this act or collected by law pursuant to the provisions of Section 1 of this act; and

2. Interest attributable to investment of money in the Fund.

C. 1. The monies deposited in the Fund shall at no time become monies of the state and shall not become part of the general budget of the Department of Environmental Quality or any other state agency. Except as otherwise authorized by this subsection, no monies from the Fund shall be transferred for any purpose to any other state agency or any account of the Department or be used for

the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

2. Monies in the Fund shall only be expended for:

- a. partial reimbursements to persons initiating and completing remediation activities pursuant to an approved remediation plan, and
- b. costs incurred by the Fund for the administration of the Fund and costs incurred for the sole purpose of evaluating claims and determining whether specific claims qualify for reimbursement from the Fund.

3. Any costs incurred by the Department pursuant to the provisions of Section 1 of this act shall not exceed the actual expenditures made by the Department to implement the provisions of Section 1 of this act.

4. Reimbursement of authorized expenditures from the Fund shall not become or be construed to be an obligation of this state. No claims submitted for reimbursement from the Fund and no future state tax benefits shall be paid with state monies.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-2005.3A, as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 24, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1995, Section 2-7-121), is amended to read as follows:

Section 2-7-121. A. Every hazardous waste treatment facility, storage facility, underground injection facility, disposal facility, or off-site facility that recycles hazardous waste subject to the provisions of the Oklahoma Hazardous Waste Management Act shall pay to the Department of Environmental Quality an annual fee on the amount of hazardous waste managed by such facility.

1. Except as otherwise provided by this subsection, such fees shall be, subject to the qualifications provided in paragraph 2 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. (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 Department. 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 Department 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. Except as otherwise provided by this subsection, 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 storage or recycling of hazardous waste shall pay a total fee of not less than ~~Fifty Thousand Dollars (\$50,000.00)~~ Twenty Thousand Dollars (\$20,000.00) each state fiscal year; provided, any such off-site recycling facility which consistently recycles fewer than ten (10) tons of hazardous waste per calendar month shall not be subject to this minimum annual fee. For the purpose of this subparagraph, storage includes physical separation or

combining of wastes solely to facilitate efficient storage at the facility and/or efficient transportation.

- 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 only as provided for in subsection C of this section.

5. The fee imposed by the provisions of this section shall be payable 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, 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 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. If a generator of characteristic hazardous waste or listed hazardous waste treats the waste on-site to meet Best Demonstrated Available Technology Standards and disposes of the waste on-site, the waste shall be subject to a reduced treatment or on-site disposal fee of one-half (1/2) the rate required by subparagraph a of paragraph 1 of this subsection; provided, such rate reduction

shall not exceed Twenty-two Thousand Dollars (\$22,000.00) per calendar year.

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 quarter during the state fiscal year in which the hazardous waste is received. All payments shall be made within thirty (30) days from the date it becomes due.

D. The fees required by this section shall be paid in lieu of the monitoring fees imposed in subsection B of Section 2-7-119 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 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. 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. The Department shall expend 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 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 Department shall only 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 assistance to municipalities or counties for the purposes and under the conditions specified in Section 2-7-305 of this title.

SECTION 4. This act shall become effective November 1, 1996."

Passed the House of Representatives the 18th day of April, 1996.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1996.

President of the Senate