

ENGROSSED HOUSE
BILL NO. 2972

By: Roach of the House

and

Williams (Penny) of the
Senate

(environment and natural resources - Oklahoma Brownfields
Voluntary Remediation Act - codification - effective
date)

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

ARTICLE IV

General Programs of State Environmental Agencies

Part 1. Oklahoma Brownfields Voluntary Remediation Act

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-4-101 of Title 27A, unless
there is created a duplication in numbering, reads as follows:

This part shall be known and may be cited as the "Oklahoma
Brownfields Voluntary Remediation Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-4-102 of Title 27A, unless
there is created a duplication in numbering, reads as follows:

The Oklahoma Legislature hereby declares that the purpose of
this part is to:

1. Provide for the protection of the public health and safety
and of the environment;

2. Encourage voluntary remediation of contaminated sites by limiting the liability of property owners from sanctions, administrative penalties and civil actions associated with the remediation that may be assessed by responsible state environmental agencies for such contamination;

3. Foster the transfer, redevelopment, and reuse of property that has been previously contaminated with dangerous substances; and

4. Establish a voluntary site remediation program to assist property owners interested in reusing or redeveloping property contaminated with a dangerous substance.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-103 of Title 27A, unless there is created a duplication in numbering, reads as follows:

For purposes of the Oklahoma Brownfields Voluntary Remediation Act:

1. "Brownfields" means abandoned, idled or underused real property or industrial or commercial facilities withan active potential for redevelopment or reuse, where expansion or redevelopment is complicated by real or perceived environmental contamination;

2. "Dangerous substance" means hazardous waste or substances, deleterious substances, oil, solid waste or any other pollution as such term is defined by the Oklahoma Environmental Quality Act;

3. "Program" means the brownfields voluntary remediation program established by a state environmental agency pursuant to the Oklahoma Brownfields Voluntary Remediation Act;

4. "Property owner" means any person who or entity which:
a. has a bona fide security interest in or mortgage or lien on, and which forecloses on or receives an

assignment or deed in lieu of foreclosure and becomes the owner of real property,

- b. possesses an expression of an interest to purchase real property and the written approval of the property owner to initiate a remediation proposal, or
- c. is the legal owner in fee simple of the property;

5. "Qualified environmental professional" means a person uniquely qualified by education in the sciences, specialized training, and documented field experience as determined by the responsible state environmental agency to effectively plan, organize, manage, execute, evaluate and prepare environmental studies and assessments; and

6. "Responsible state environmental agency" means the Corporation Commission, the Department of Environmental Quality and the State Department of Agriculture with respect to the jurisdictional area of responsibility pursuant to Section 1-3-101 of Title 27A of the Oklahoma Statutes over the real property contaminated with a dangerous substance or over the activity which caused the contamination.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-104 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the Oklahoma Brownfields Voluntary Remediation Act, there is hereby created within each responsible state environmental agency a voluntary remediation program for brownfields.

B. 1. The brownfields voluntary remediation program established pursuant to the Oklahoma Brownfields Voluntary Remediation Act shall be a voluntary program.

2. Voluntary remediation plans are not enforceable against a property owner unless the responsible state environmental agency can demonstrate that a property owner who initiated the voluntary

remediation pursuant to an approved voluntary remediation plan has failed to fully and properly implement the plan.

3. Information provided by a property owner to support a voluntary site remediation plan or a petition for a no action determination shall not provide the responsible state environmental agency with an independent basis to seek sanctions, administrative penalties or civil actions against the property owner pursuant to any state environmental statutes or rules promulgated thereto. If, pursuant to other state statutes or rules promulgated thereto, the responsible state environmental agency initiates an enforcement action against the property owner subsequent to the submission of an application for approval of a voluntary site remediation plan or a petition for a no action determination regarding the contamination addressed in the plan or petition, the voluntary disclosure of the information in the plan or petition shall be considered by the responsible state environmental agency to reduce or eliminate any sanctions, administrative penalties or civil actions assessed against the property owner.

C. No state governmental entity regulating any person or institution financing a real estate transaction shall require evidence of participation in the Oklahoma Brownfields Voluntary Remediation Act to be a component of standard real estate loan documentation.

D. The provisions of the Oklahoma Brownfields Voluntary Remediation Act shall not apply to:

1. Property that is listed or proposed for listing on the National Priorities List of superfund sites established pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A., Section 9601 et seq.;

2. Property that is the subject of corrective action pursuant to orders or agreements issued by the federal Environmental Protection Agency;

3. Property for which any state environmental agency or the responsible state environmental agency is aware of a current or pending administrative, state or federal enforcement action;

4. A federal grant requires an enforcement action concerning the property; or

5. A facility which has or should have a permit or interim status pursuant to the Oklahoma Hazardous Waste Management Act for the treatment, storage, or disposal of hazardous waste.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-105 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Any owner of real property contaminated with a dangerous substance may submit an application to the responsible state environmental agency for the approval of a voluntary site remediation plan or to request a no action determination.

B. A voluntary remediation plan or request for a no action determination shall include but is not limited to:

1. An environmental assessment of the real property prepared by a qualified environmental professional which meets the requirements of Section 8 of this act;

2. A proposal to remediate any contamination or condition on the property or a proposal that no action is necessary to remediate the property considering the present and any differing proposed future use of the property;

3. For a remediation plan, a timetable for implementing the proposal and for monitoring the property after the proposed remediation is completed; and

4. A description of the concentrations of the contaminants in the soils, surface water, or groundwater at the site for which acceptable levels have been established. For dangerous substances present at the site for which state standards do not exist, a description of proposed levels and any current risk to public health

and safety or the environment shall be based upon the current or proposed use of the property.

C. The remediation proposal and request for a no action determination shall be based on the actual risk to public health and safety or to the environment currently posed by the dangerous substances at the site, considering the following factors:

1. The present or proposed uses of the property;

2. The possibility of movement of the contaminants in a form and manner which would result in exposure to the public and to the surrounding environment at levels which exceed applicable standards or, in the absence of such standards, which represent an unacceptable risk to human health or the environment; and

3. The potential risks associated with the remediation proposal or no action determination and the economic and technical feasibility and reliability of such proposal or request.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-106 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. 1. After receipt of the application for approval of a voluntary site remediation plan, the responsible state environmental agency shall require the property owner to send by certified mail, return receipt requested, written notice of the remediation activity to any real property owner of record adjoining or adjacent to the remediation site as is recorded in the office of the county assessor or records of the county treasurer. If the property owner is unable to ascertain the address of the legal residence of the owner of record as recorded in the office of the county assessor or records of the county treasurer, notice of the remediation activity shall be given by publication. The notice shall be published once in a newspaper of general circulation in the county in which the remediation activity is to occur, specifying the property owner and the legal description of the property.

2. The notice required by this subsection shall, also, provide a description of the remediation activities and shall give a thirty-day opportunity for such adjoining and adjacent property owners to request a public hearing with the responsible state environmental agency. Within thirty (30) days of such request, the responsible state environmental agency shall hold a public hearing and allow opportunity for presentation of written and oral views. The notice required by this subsection shall offer an opportunity during the public comment period for persons to request in writing an administrative hearing to participate as a party. The administrative hearing shall be a quasi-judicial proceeding conducted in accordance with the Administrative Procedures Act.

3. The responsible state environmental agency shall review the materials submitted by the applicant or by any adjoining and adjacent property owner or any other person and any documents or other information requested by the responsible state environmental agency. The responsible state environmental agency shall provide formal written notification to the applicant and to any parties that a voluntary site remediation plan has been approved or disapproved pursuant to this section.

4. Each responsible state environmental agency shall promulgate, by rule, time periods for approval or disapproval of proposed voluntary remediation plans. The rule shall provide that such time periods only be extended by agreement with the property owner or when circumstances outside the agency's control prevent the responsible state environmental agency from meeting its time period. Except in circumstances when a public hearing or administrative hearing has been requested, if the responsible state environmental agency fails to act on the application within the time limits specified by rule, the voluntary remediation plan shall be deemed approved.

B. 1. The responsible state environmental agency shall approve a voluntary remediation plan if the responsible state environmental agency concludes that the plan will:

- a. attain a degree of remediation and control of dangerous substances that complies with all promulgated rules of the responsible state environmental agency and the Oklahoma Water Quality Standards, and
- b. for constituents not governed by subparagraph (a) of this paragraph, reduce concentrations such that the property does not present an unacceptable risk, as determined by the responsible state environmental agency, to public health and safety and to the environment based upon the property's current use and any future uses proposed.

2. The approval of a voluntary remediation plan by the responsible state environmental agency applies only to conditions on the property, the rules and the Oklahoma Water Quality Standards that exist as of the time of submission of the application.

C. If a voluntary remediation plan is not approved by the responsible state environmental agency, the responsible state environmental agency shall promptly provide the property owner with a written statement of the reasons for such denial.

D. 1. Within forty-five (45) days after the completion of the voluntary remediation described in the voluntary site remediation plan approved by the responsible state environmental agency, the property owner shall provide to the responsible state environmental agency a certification from a qualified environmental professional that the plan has been fully implemented.

2. If the responsible environmental state agency determines that the property owner who voluntarily remediated a contaminated property under an agreed order of the responsible state

environmental agency has successfully completed an approved voluntary site remediation plan, the responsible environmental state agency shall certify that the plan has been completed by issuing to the applicant a Certificate of Completion. The certificate shall include a provision that the responsible environmental state agency shall not pursue any sanctions, administrative penalties or civil actions associated with the contamination which is the subject of the plan. A copy of the official Certificate of Completion shall be filed by the responsible state environmental agency in the real property records of the county in which the property is located.

E. 1. Failure of a property owner to materially comply with the voluntary remediation plan approved by the responsible state environmental agency pursuant to the Oklahoma Brownfields Voluntary Remediation Act shall render the approval void.

2. Submission of any materially misleading information by the applicant requesting the remediation shall render the approval of the responsible state environmental agency void.

F. 1. If a voluntary remediation plan is not initiated within twelve (12) months and completed within the time period established by the approved plan, such approval shall lapse; provided, the responsible state environmental agency may grant an extension of the time limit for completion of the voluntary remediation plan.

2. A property owner desiring to implement a voluntary remediation plan after the lapse of any approval shall submit a written petition for reapplication accompanied by written certification of a qualified environmental professional that the conditions on the subject real property are substantially similar to those that existed at the time of the original approval.

3. Reapplications pursuant to paragraph 2 of this subsection shall be subject to limited review by the responsible state environmental agency. The agency shall complete such review within thirty (30) days of receipt of a petition for reapplication. Any

reapplication that involves real property, the condition of which has substantially changed since approval of the original voluntary remediation plan, shall be treated as a new application and shall be subject to all the requirements of the Oklahoma Brownfields Voluntary Remediation Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-107 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. 1. After receipt of the application for a petition for a no action determination, the responsible state environmental agency shall require the property owner to send by certified mail, return receipt requested, written notice of the petition for a no action determination to any real property owner of record adjoining or adjacent to the subject property as is recorded in the office of the county assessor or records of the county treasurer. If the property owner is unable to ascertain the address of the legal residence of the owner of record as recorded in the office of the county assessor or records of the county treasurer, notice of the application shall be given by publication. The notice shall be published once in a newspaper of general circulation in the county in which the application is to occur, specifying the property owner and the legal description of the property.

2. The notice required by this subsection shall, also, provide a description of the property and reasons why a petition for a no action determination is being requested rather than an application for remediation, and shall give a thirty-day opportunity for such adjoining and adjacent property owners to request a public hearing with the responsible state environmental agency. Within thirty (30) days of such request, the responsible state environmental agency shall hold a public hearing and allow opportunity for presentation of written and oral views. The notice required by this subsection shall offer an opportunity during the public comment period for

persons to request in writing an administrative hearing to participate as a party. The administrative hearing shall be a quasi-judicial proceeding conducted in accordance with the Administrative Procedures Act or as otherwise specifically required by law.

3. The responsible state environmental agency shall review the materials submitted by the applicant submitted by any adjacent or adjoining property owner or any other person and any documents or other information requested by the responsible state environmental agency. The responsible state environmental agency shall provide written notification to the applicant and to any parties that the petition has been approved or denied pursuant to this section.

4. Each responsible state environmental agency shall promulgate, by rule, time periods for approval or disapproval of petitions for no action determinations. The rule shall provide that such time periods only be extended by agreement with the owner of the property contaminated with a dangerous substance or when circumstances outside the agency's control prevent the responsible state environmental agency from meeting its time period. Except in circumstances when a public hearing or administrative hearing has been requested, if the responsible state governmental agency fails to act on the petition within the time limits specified by rule, the petition shall be deemed approved.

B. 1. The responsible state environmental agency shall issue a written determination approving a no action petition if:

- a. the environmental assessment performed by a qualified environmental professional as required by the Oklahoma Voluntary Remediation Act indicates the existence of contamination which does not exceed applicable standards or contamination which does not pose an unacceptable risk to public health and safety and to the environment, or

b. the state environmental agency finds that contamination or a release or threatened release of a dangerous substance originates from a source on adjoining or adjacent real property if a person or entity responsible for such a source of contamination is or will be taking any corrective action, if required.

2. The approval of a petition for a no action determination by the responsible state environmental agency applies only to conditions on the property, the rules and the Oklahoma Water Quality Standards that exist as of the time of submission of the petition.

C. If a petition for a no action determination is disapproved by the responsible state environmental agency, the responsible state environmental agency shall promptly provide the property owner with a written statement of the reasons for such denial.

D. 1. If the responsible state environmental agency determines that no remediation action is deemed necessary for the property, the responsible state environmental agency shall issue the applicant a Certificate of No Action Taken. The certificate shall include a provision that the responsible state environmental agency shall not pursue any sanctions, administrative penalties or civil actions associated with the contamination which is the subject of the petition.

2. A copy of the official Certificate of No Action Taken shall be filed by the responsible state environmental agency in the real property records of the county in which the property is located.

E. Submission of any materially misleading information by the applicant for a petition for a no action determination shall render the approval of the responsible state environmental agency void.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-108 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The responsible state environmental agency may only accept environmental assessments pursuant to the Oklahoma Voluntary Brownfields Remediation Act that are prepared by a qualified environmental professional.

B. The environmental assessment shall include but not be limited to the following information:

1. The legal description of the site and a map identifying the location and size of the property;

2. The physical characteristics of the site and areas contiguous to the site, including the location of any surface water bodies and ground water aquifers;

3. The location of any wells, whatsoever, located on the site or on areas within a one-half (1/2) mile radius of the site and a description of the use of those wells;

4. The current and proposed use of on-site groundwater;

5. The operational history of the site and the current use of areas contiguous to the site;

6. The present and proposed uses of the site;

7. Information concerning the nature and extent of any contamination and releases of dangerous substances which have occurred at the site and any possible impacts on areas contiguous to the site;

8. Any sampling results or other data which characterizes the soil, groundwater, or surface water on the site; and

9. A description of the human and environmental exposure to contamination at the site based upon the property's current use and any future use proposed by the property owner.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-109 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. A responsible state environmental agency shall not sanction, assess administrative penalties or pursue civil actions associated

with the contamination which is the subject of the application or petition against a property owner if the responsible state environmental agency has issued a Certificate of Completion or a Certificate of No Action Taken unless the state environmental agency determines that the certificates were issued based on materially misleading information or other violations of the Oklahoma Brownfields Voluntary Remediation Act or the property owner fails to materially comply with any conditions of approval.

B. A property owner to whom a Certificate of Completion or a Certificate of No Action Taken has been issued pursuant to the Oklahoma Brownfields Voluntary Remediation Act may not be held liable for the property owner's conduct taken in reliance on and within the scope of the certificate issued by a responsible state environmental agency pursuant to the provisions of the Oklahoma Brownfields Voluntary Remediation Act.

C. The release of liability from sanctions, administrative penalties or civil actions as a result of the issuance of a Certificate of Compliance or a Certificate of No Action Taken shall not apply to releases and consequences thereof that the property owner causes or has caused as a result of the remediation, or as a result of any subsequent reuse or redevelopment of the property.

SECTION 10. This act shall become effective November 1, 1996.

Passed the House of Representatives the 5th day of March, 1996.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate

