

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2972

By: Roach of the House

and

Williams (Penny) of the
Senate

AS INTRODUCED

An Act relating to environment and natural resources;
adding new article and part of the Oklahoma
Environmental Quality Act relating to programs of
environmental agencies; creating the Oklahoma
Voluntary Remediation and Redevelopment Act;
providing purpose and legislative intent; defining
terms; providing for process; providing voluntary
remediation and redevelopment; providing exception;
providing procedures; providing specification;
making certain actions unlawful; providing for
application and filing fees and review charges;
providing for collection and deposit of funds;
authorizing access; providing for voluntary
remediation plan; providing for contents; providing
for remediation alternatives; requiring certain
notifications; providing for approvals and denials;
requiring compliance; providing for lapse of
approval; providing for no action petitions;
specifying actions rendering approvals void;
requiring use of certain qualified environmental
professional; requiring environmental assessments;
providing for contents; providing for construction

of act; requiring certain legal approvals;
providing for enforcement; specifying conditions;
providing for liability of certain persons who hold
certain interests in the contaminated property;
providing exceptions; providing for codification;
and providing an effective date.

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

ARTICLE IV

General Programs of State Environmental Agencies

Part 1. Oklahoma Voluntary Remediation and Redevelopment 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
Voluntary Remediation and Redevelopment 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:

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

1. Provide for the protection of public health, safety and
welfare and of the environment;
2. Foster the transfer, redevelopment, and reuse of property
that has been previously contaminated with dangerous substances;
3. Permit and encourage remediation, reuse and redevelopment of
property contaminated with a dangerous substance by establishing a
voluntary remediation and reusing or redevelopment program to assist
persons interested in reusing or redeveloping property contaminated
with a dangerous substance; and

4. Provide incentive to remediate property by removing liability of lenders and future landowners. The program does not replace other voluntary actions and is restricted to voluntary actions.

B. It is the intent of the Oklahoma Legislature that the program is operated in such a manner so as to:

1. Eliminate impediments to the sale, reuse or redevelopment of property previously contaminated with a dangerous substance;

2. Encourage and facilitate prompt remediation activities;

3. Minimize administrative processes and costs for remediation of property contaminated with a dangerous substance pursuant to the Oklahoma Voluntary Remediation and Redevelopment Act; and

4. Protect the public health, safety and welfare and the environment.

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 Voluntary Remediation and Redevelopment Act:

1. "Dangerous substance" means hazardous waste or substances, deleterious substances, oil, or any other substance or material in a quantity or form capable of posing an unreasonable risk to the public health, safety and welfare, to property or to the environment;

2. "Lender-owner" means any person or entity which 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 or personal property and the foreclosure, deed in lieu, or assignment is not primarily for the purposes of avoiding third-party liability;

3. "Program" means the Voluntary Remediation and Redevelopment Program established by a state environmental agency pursuant to the Oklahoma Voluntary Remediation and Redevelopment Act;

4. "Third parties" means persons or entities other than governmental entities seeking to enforce federal, state, or local environmental statutes, ordinances, regulations, permits, or orders;

5. "Qualified environmental professional" means a person with education, training, and experience in preparing environmental studies and assessments;

6. "Third-party liability" means liability to third parties for any claims arising out of or resulting from contamination or pollution, including, without limitation, claims for personal injury, consequential damages, lost profits, exemplary damages, or property damages, but does not include liability for the cost of cleaning up contamination or pollution; and

7. "Responsible state environmental agency" means the state environmental agency having the jurisdictional area of environmental responsibility, pursuant to Section 1-3-101 of Title 27A of the Oklahoma Statutes, over the property contaminated with a dangerous substance or 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. 1. A voluntary remediation and redevelopment program established pursuant to the Oklahoma Voluntary Remediation and Redevelopment 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 a voluntary remediation pursuant to an approved plan has failed to fully and properly implement that plan. In such case, the responsible state

environmental agency may require further action if the action is authorized by other laws or rules of this state.

3. Information provided by a property owner to support a voluntary remediation plan or a petition for a no action determination shall not provide the responsible state environmental agency with an independent basis to seek penalties from the property owner pursuant to state environmental statutes or rules. If, pursuant to other state statutes or rules, 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 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 enforcing authority to reduce or eliminate any penalties assessed to the property owner.

B. No state governmental entity regulating any person or institution financing a real estate transaction shall require evidence of participation in this program to be a component of standard real estate loan documentation.

C. The provisions of the Oklahoma Voluntary Remediation and Redevelopment Act shall not apply to:

1. Property that is listed or proposed for listing on the national priorities list of superfund sites established under the federal act;

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

3. 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 person who is the legal owner of real property contaminated with a dangerous substance may submit an application for the approval of a voluntary remediation plan to the responsible state environmental agency.

B. A voluntary remediation plan shall include:

1. An environmental assessment of the real property prepared by a qualified environmental professional which meets the requirements of Section 9 of this act;

2. A proposal to remediate any contamination or condition considering the present and any differing proposed future use of the property;

3. 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 contaminants present at the site for which state standards do not exist, a description of proposed remediation levels and any current risk to public health, safety or welfare or the environment shall be based upon the current or proposed use of the property.

C. The remediation proposal shall be based on the actual risk to public health, safety and welfare and to the environment currently posed by the contaminants 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 and the economic and technical feasibility and reliability of such proposal.

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. After receipt of the application, 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 the owner of record in the office of the county assessor or records of the county treasurer of any real property adjoining or adjacent to the remediation site. If the 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 of any real property adjoining or adjacent to the remediation site, 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 owner of the property and the legal description.

B. The notice shall 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 notice, the responsible state environmental agency shall hold a public hearing and allow opportunity for presentation of written and oral views. The notice shall also 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. Failure of any party to participate in a requested administrative hearing with good faith and diligence may result in a default judgment with regard to that party.

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. The responsible state environmental agency shall review the materials submitted by the applicant and any documents or other information requested by the responsible state environmental agency. The responsible state environmental agency shall provide formal written notification that a voluntary remediation plan has been approved or disapproved to the applicant and to any parties. A copy of the official written notice of approval shall be filed by the responsible state environmental agency in the real property records of the county in which the property is located.

2. 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 shall 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 environmental agency fails to act on the application within the time limits specified by rule, the voluntary remediation plan shall be deemed approved.

3. 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 to public health, safety or welfare or to the environment based upon the property's current use and any future uses proposed.

B. In the event that 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.

C. 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.

D. 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 Voluntary Remediation and Redevelopment 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.

E. 1. If a voluntary remediation plan is not initiated within twelve (12) months and completed within twenty-four (24) months after approval by the responsible state environmental agency, 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 Voluntary Remediation and Redevelopment Act.

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

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. 1. A person who is the legal owner of real property contaminated with a dangerous substance may file with the responsible state environmental agency a written petition to request a no action determination pursuant to this section.

2. 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 activity to the owner of record in the office of the county assessor or records of the county treasurer of any real property adjoining or adjacent to the site. If the 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 of any real property adjoining or adjacent to the site, 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 owner of the property and the legal description.

3. The notice shall 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 notice, the responsible state environmental agency shall hold a public hearing and allow opportunity for presentation of written and oral views. The notice shall also 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. Failure of any party to participate in a requested administrative hearing with good faith and diligence may result in a default judgment with regard to that party.

4. The responsible state environmental agency shall review the materials submitted by the applicant as required by the responsible state environmental agency and such 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. A copy of the official written notice of approval shall be filed by the responsible state environmental agency in the real property records of the county in which the property is located.

5. 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 shall 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 and Redevelopment Act indicates the existence of contamination which does not exceed applicable standards or contamination which does not pose an unacceptable risk to public health, safety and welfare 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. 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.

D. 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.

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

B. The environmental assessment shall include 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 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 including any 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 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-110 of Title 27A, unless there is created a duplication in numbering, reads as follows:

Nothing in the Oklahoma Voluntary Remediation and Redevelopment Act shall release any person from any requirements under any law or rule including any requirement to obtain permits or approvals for work performed pursuant to a voluntary remediation plan.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-4-111 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. Except as preempted by federal law, no person or entity shall be deemed to be an owner of real or personal property who, without participating in the management of the subject real or personal property, holds indicia of ownership primarily to protect a security or lienhold interest in the real property contaminated with a dangerous substance.

B. No lender-owner or representative shall, by virtue of becoming the owner of real or personal property, be liable for any third-party liability arising from pollution emanating from said

property prior to the date that title vests in the lender-owner or representative.

C. No lender-owner or representative shall, by virtue of becoming the owner of real property contaminated with a dangerous substance, be liable for any third-party liability arising from pollution emanating from the property during the period of ownership if the lender-owner:

1. Does not knowingly or recklessly cause new pollution;

2. Does not knowingly or recklessly allow others to cause pollution;

3. Caused an environmental professional to conduct a visual inspection of the property and a record search of the recorded chain of title documents regarding the real property for the prior fifty (50) years in order to determine the presence and condition of dangerous substances, and any obvious pollution; and

4. Has taken steps to assure compliance with applicable laws if found by a responsible state environmental agency to be in noncompliance with federal or state laws. This subsection shall apply to the lender-owner as long as it makes reasonable efforts to resell the property.

D. 1. Except as otherwise provided by this subsection, the owner of real property contaminated with a dangerous substance shall be released from any third-party liability incurred because of ownership of such real property if:

a. such owner is not responsible for the contamination of the property,

b. a remediation plan or a petition for a no action determination for the property has been approved by the responsible state environmental agency, and

c. the owner complies with the remediation plan, all applicable laws and rules and any other directives of the responsible state environmental agency.

2. The release from third-party liability provided by this subsection does not apply to releases and consequences thereof that the owner causes as a result of the remediation or as a result of any subsequent reuse or redevelopment of the property.

3. The provisions of this subsection shall not affect any liability expressly created under federal or state statutes, rules, permits or orders.

SECTION 12. This act shall become effective November 1, 1996.

45-2-7779

KSM