

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2317

By: Leist of the House

and

Shurden of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; amending Section 239, Chapter 145, O.S.L. 1993 and Section 240, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Sections 4-1-102 and 4-1-103), which relate to the Oklahoma Emergency Response Act; adding terms; requiring certain responsible parties to provide emergency response measures as directed by certain agencies and entities; stating penalties for failure to respond; authorizing issuance of certain orders; requiring responsible parties to provide certain action plans for proposed cleanup operations and initiate such operations; requiring certain time periods; authorizing district attorneys and other entities to apply for certain injunctive relief to compel responsible parties to provide plans and cleanup; authorizing issuance of certain orders; providing for construction of act; providing for liability; authorizing certain agencies to enter private or public property for certain purposes; providing for maintenance of certain records; authorizing certain reviews; authorizing issuance of administrative warrants and orders; stating certain penalty; authorizing Attorney General or district attorney to bring certain court action for prosecution of violations; authorizing certain actions; providing for applications; stating jurisdiction of court to grant certain relief; providing penalties; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 239, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Section 4-1-102), is amended to read as follows:

Section 4-1-102. For purposes of the Oklahoma Emergency Response Act:

1. "State environmental agency" includes:

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

2. "Lead official" means the person designated by the contact agency to be the official in charge of the on-site management of the emergency;

3. "Emergency" means a sudden and unforeseeable occurrence or condition either as to its onset or as to its extent, of such severity or magnitude that immediate emergency response or action is necessary to preserve the health and safety of the public or environment or to preserve property;

4. "Dangerous substance" means explosives, gases, flammable liquids and solids, poisons, radioactive materials, hazardous materials, deleterious substances, oil, or other substance or material in a quantity or form capable of posing an unreasonable risk to public health and safety, property or to the environment;

5. "Release" means a leakage, seepage, discharge, emission or escaping of a dangerous substance into the environment of the state;

6. "Extreme emergency" means any emergency which requires immediate protective actions;

7. "Protective actions" are those steps deemed necessary by first responders to an extreme emergency to preserve the health and safety of the emergency responders, the public and the protection of the environment and property during an incident involving the release of a dangerous substance. Protective actions include but are not limited to area isolation, evacuation, dilution, cooling, encapsulation, chemical treatment and diking;

8. "First responder" means the first person to arrive at the scene of an incident involving the release of a dangerous substance who has the authority by virtue of ~~his~~ that person's position as a local law enforcement officer, peace officer, fire protection officer or Oklahoma Highway Patrol Officer or other law enforcement officer; ~~and~~

9. "Contact agency" means a municipality, fire department or the Oklahoma Highway Patrol as determined by the location of an incident as follows:

	<u>Location</u>	<u>Contact Agency</u>
a.	Inside corporate municipal limits	Municipal Fire Department
b.	Outside corporate limits on private property	Closest Municipal Fire Department
c.	Outside corporate limits on federal/state highway, public property, county road, or a railroad;	Oklahoma Highway Patrol;

10. "Responsible party" means any person who owned, operated, or otherwise controlled activities at the facility at the time the incident or event involving releases of dangerous substances requiring protective actions occurred; and

11. "Facility" means:

- a. any building, structure, installation, equipment, pipe or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or
- b. any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise came to be located, or
- c. any vessel, including every description of watercraft or other artificial conveyance used, or capable of being used, as a means of transportation on water.

SECTION 2. AMENDATORY Section 240, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Section 4-1-103), is amended to read as follows:

Section 4-1-103. A. For incidents or events involving releases of dangerous substances requiring protective actions, the first responder shall be responsible for initial evaluation of the incident and implementation of protective action measures.

B. As soon as reasonably possible after arriving at the scene of the incident, the first responder shall notify the lead official to respond to such an incident pursuant to subsection C of this section. The first responder shall maintain such authority to implement protective action measures until the lead official arrives or until the incident is stabilized.

C. Each contact agency specified to respond to a dangerous substance incident requiring emergency response shall designate lead officials who shall be capable of responding on a twenty-four-hour basis to such an incident.

D. Upon arrival at the incident scene, the lead official will immediately assume responsibility for management of the incident. All other responding emergency persons are to assist the lead official in the discharge of ~~his~~ such official's duties.

E. If the first responder or the lead official believes the incident to be of a significant nature to threaten the public health, safety or the environment, the first responder or lead official shall contact the Department of Environmental Quality as soon as is reasonably possible. The Department of Environmental Quality shall maintain a twenty-four-hour toll free statewide telephone number to report emergencies.

F. The Department of Environmental Quality shall, as necessary:

1. Provide technical information or advice to the lead official;

2. Provide for personnel for assistance in completing material identification;

3. Provide technical assistance on or initiate procedures for containment or suppression of the release;

4. Provide sampling, analysis and monitoring;
5. Notify the responsible party of the release; and
6. Oversee the planning of final containment, cleanup and recovery of dangerous materials.

G. The Department of Environmental Quality is authorized when determined to be necessary to protect the public health, safety and welfare of the environment to initiate cleanup operations of the release based upon seriousness of the release, location of the release, threat of the release to the public health and safety or the environment, responsiveness of the responsible party, or authorization of the responsible party. The responsible party shall be liable for any expenses incurred in any cleanup operation.

H. 1. Upon the release of dangerous substances requiring protective actions, the responsible party shall take immediate emergency response measures as directed by the lead official assuming responsibilities for management of the incident or the Department of Environmental Quality if contacted by the first responder or lead official pursuant to subsection E of this section.

2. If the responsible party fails to take immediate emergency response measures as required pursuant to paragraph 1 of this subsection, the contact agency, the district attorney of the county where the release occurred or the Department of Environmental Quality, as applicable, is authorized to apply for a temporary order to compel the responsible party to take such immediate emergency response measures.

I. 1. In not less than four (4) hours nor more than seven (7) days, as determined by the contact agency or the Department of Environmental Quality, as applicable, the responsible party shall provide a written action plan for the proposed cleanup operations to the contact agency and shall initiate cleanup operations.

2. The contact agency, the district attorney of the county where the release occurred or the Department of Environmental Quality, as applicable, is authorized to apply for a temporary and permanent court order to compel the responsible party to provide

the written action plan and to abate the release and restore the release site.

J. The Department of Environmental Quality shall maintain a list of persons qualified to provide the services necessary to take corrective actions to abate and restore release sites.

~~I.~~ K. The lead official may request the Department of Civil Emergency Management to provide state resources in managing an emergency or extreme emergency. If the lead official does not request that the Department of Civil Emergency Management provide state resources in managing an emergency or extreme emergency, the lead official shall notify the Department of Civil Emergency Management after the emergency or extreme emergency no longer poses an immediate threat to the public's health or safety or the environment of the release of dangerous substances.

~~J.~~ L. The Department of Civil Emergency Management shall keep a record of each emergency or extreme emergency which includes but is not limited to the location, first responder, lead official, type of emergency or extreme emergency, and actions taken to address said emergency or extreme emergency.

~~K.~~ M. At the request of the contact agency, the Department of Civil Emergency Management shall provide assistance to the contact agency, in either reviewing the emergency procedure or emergency management plan used in managing the completed emergency or extreme emergency within the contact agency's jurisdiction.

~~L. By January 1, 1994, the state environmental agencies shall develop and submit a plan to the Speaker of the House of Representatives and the President Pro Tempore of the Senate detailing the organizational system and jurisdiction for state emergency response by state environmental agencies and jurisdiction of oversight of and responsibilities for cleanup and restoration of release sites.~~

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-1-104 of Title 27A, unless there is created a duplication in numbering, reads as follows:

The provisions of the Oklahoma Emergency Response Act shall not be construed to effect or remove the liability of the person

who owns the dangerous substance for injury or damages incurred as a result of the release of the dangerous substance.

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

A. During or after a release of a dangerous substance and as part of any required cleanup operations or remediation requirements, any duly authorized representative of the first responder, the contact agency, the Department of Civil Emergency Management or the Department of Environmental Quality shall have the authority to enter upon any private or public property for the purpose of responding to and stabilizing an incident or event involving a release of dangerous substances requiring protective action measures.

B. 1. The contact agency or the Department of Environmental Quality, as applicable, may require the establishment and maintenance of records and reports relating to the incident or event.

2. Copies of such records or reports shall be submitted to the requesting agency.

3. Any authorized representative of the contact agency or the Department of Environmental Quality, as applicable, shall be allowed access and may examine such records or reports.

C. 1. A contact agency or the Department of Environmental Quality may apply to and obtain from a judge of the district court, an order authorizing an administrative warrant or other warrant to enforce access to premises for the purpose of responding to and stabilizing an incident or event involving releases of dangerous substances requiring protective action measures or for the purpose of examining records or reports relating thereto.

2. Failure to obey an administrative warrant or other warrant of the district court may be punished by the district court as a contempt of court.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4-1-106 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General or the district attorney of the county where the release occurs may bring an action in a court of competent jurisdiction for the prosecution of a violation of the Oklahoma Emergency Response Act by the responsible party.

B. 1. Any action for injunctive relief to redress or restrain a violation of the Oklahoma Emergency Response Act by such responsible party may be brought by the district attorney of the county where the release occurred, as applicable, the contact agency, or the Attorney General or the Department of Environmental Quality on behalf of the State of Oklahoma.

2. It shall be the duty of the Attorney General or district attorney, if so requested, to bring such actions.

C. The court shall have jurisdiction to determine such action and to grant the necessary or appropriate relief including, but not limited to, mandatory or prohibitive injunctive relief and interim equitable relief, and for inhibiting emergency response to an incident, punitive damages.

D. A responsible party who violates any of the provisions of, or who fails to perform any duty imposed by, the Oklahoma Emergency Response Act shall, upon conviction, be guilty of a misdemeanor and may be punished by a fine of not less than Two Hundred Dollars (\$200.00) and not more than Ten Thousand Dollars (\$10,000.00) per day for each violation. Each day or part of a day upon which such violation occurs shall constitute a separate offense.

SECTION 6. This act shall become effective November 1, 1998.

46-2-11488 KSM