

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1404

By: Rice

COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; authorizing the issuance of general permits; making certain rulemaking process not applicable to general permits; limiting certain activities; providing for issuance; amending Sections 2, 3, 4, 5 and 6, Chapter 217, O.S.L. 1993 (27A O.S. Supp. 1996, Sections 1012, 1013, 1014, 1015 and 1016), which relate to the State Beneficiary Public Trusts - Publicly Owned Treatment Works Act; modifying agency with responsibility and jurisdiction to exercise certain powers; modifying power and duties of the Department of Environmental Quality; adding to duties of certain district attorneys; clarifying and updating language; providing for when and if certain changes are implemented; providing for codification; providing for noncodification; 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 2-14-305 of Title 27A, unless there is created a duplication in numbering, reads as follows:

For common and routine permit applications, the Department of Environmental Quality may expedite the permitting process by issuing permits of general applicability, hereafter identified as "general permits". General permits shall be subject to all the Tier II administrative procedures including the public participation requirements. The administrative process for rulemaking shall not be applicable to the issuance of general permits. Individual applicants may obtain authorization through the Tier I process to conduct an activity covered by a general permit. General permits are limited to activities under the Tier I and Tier II classifications.

SECTION 2. AMENDATORY Section 2, Chapter 217, O.S.L. 1993 (27A O.S. Supp. 1996, Section 1012), is amended to read as follows:

Section 1012. A. 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~~ Pollutant 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.

B. A state beneficiary public trust such as described in the preceding sentence hereof shall be referred to in ~~this act~~ the State Beneficiary Public Trusts - Publicly Owned Treatment Works Act as a "Central Treatment Trust", or a "CTT".

C. 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~~ 1013 of this ~~act~~ title, 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~~ 1014 of this ~~act~~ title, and in conjunction therewith, the Department of Environmental Quality, subsequently referred to ~~in this act~~ as "Department" and the office of the district attorney in the county where the CTT is located, herein referred to as the district attorney, shall exercise the powers granted to ~~it~~ them pursuant to Sections ~~4~~ 1014 and ~~5~~ 1015 of this ~~act~~ title.

SECTION 3. AMENDATORY Section 3, Chapter 217, O.S.L. 1993 (27A O.S. Supp. 1996, Section 1013), is amended to read as follows:

Section 1013. A. A Central Treatment Trust, as defined in Section ~~2~~ 1012 of this ~~act~~ title, 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). B. 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 of Environmental Quality, the district attorney and the Oklahoma Secretary of State.

SECTION 4. AMENDATORY Section 4, Chapter 217, O.S.L. 1993 (27A O.S. Supp. 1996, Section 1014), is amended to read as follows:

Section 1014. A. A Central Treatment Trust that makes the election provided for in Section ~~3~~ 1013 of this ~~act~~ title 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)~~ power to:

1. ~~To develop~~ 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~~ Enter into a coordinating agreement with the Department of Environmental Quality and the district attorney pursuant to which the Department and the district attorney shall exercise the ~~enforcement~~ powers specified in Section ~~5~~ 1015 of this ~~act~~ title 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 and the district attorney so as to aid and assist the Department in exercising said ~~enforcement~~ powers.

B. Terms used that are 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.

SECTION 5. AMENDATORY Section 5, Chapter 217, O.S.L. 1993 (27A O.S. Supp. 1996, Section 1015), is amended to read as follows:

Section 1015. A. Once a Central Treatment Trust has made the election and given the notice specified in Section ~~3~~ 1013 of this ~~act title~~, and entered into the coordinating agreement with the Department of Environmental Quality and the district attorney as specified in paragraph 2 of Section ~~4~~ 1014 of this ~~act title~~, the Department and the district attorney, in addition to all of ~~its~~ their 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~~):.

B. The Department shall have the authority to:

1. ~~To issue~~ 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~~ 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; and

~~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~~ 3. 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~~ 4. Promulgate rules reasonably required to implement paragraphs 1 through 7 3 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.~~ C. The district attorney shall have the power to:

1. Require compliance by industrial users of the POTW with applicable pretreatment standards and requirements;

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

3. 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 subsection B of this section;

4. 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;

5. 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 district attorney or of the CTT are hereby authorized, in order to carry out the purposes specified by this paragraph, 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;

6. 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 Sections 1012 through 1016 of this title or of any rule, permit or order of the district attorney issued pursuant to this section. In any such suit, the court shall have jurisdiction to grant to the district attorney, 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;

7. Sue for both civil penalties and injunctive relief, as authorized by this section, in the same proceeding; and

8. Conduct individual proceedings and to enter orders to enforce such rules and to enforce paragraphs 1 through 7 of this subsection.

D. For purposes of promulgating rules, conducting individual proceedings and issuing orders as provided in this section, the Department and the district attorney 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 and the district attorney 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~~ district court of the county where the CTT maintains its administrative offices and the POTW is located; and provided further, that such judicial review shall be limited to review of the administrative record compiled before the Department and the district attorney, and shall be conducted by the court without a jury.

~~E.~~ E. An industrial user of the POTW who violates any provision of this act or of any rule, permit or order of the Department or the district attorney 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~~ district attorney, the ~~Department~~ district attorney shall bring suit in district court to recover such penalties. Penalties shall be paid to the ~~Department~~ district attorney 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~~ district attorney pursuant to ~~subsections C and D~~ of this section shall be either the ~~District Court of Oklahoma County, or the district court~~ 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~~ district attorney 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~~ district attorney shall have the following additional remedy: The ~~Department~~ district attorney 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~~ district attorney 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.

K. Terms used that are 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.

SECTION 6. AMENDATORY Section 6, Chapter 217, O.S.L. 1993 (27A O.S. Supp. 1996, Section 1016), is amended to read as follows:

Section 1016. 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~~ 1013 of this ~~act~~ title, whereupon all powers granted to the CTT ~~and~~, the Department ~~under this act~~ of Environmental Quality and the district attorney pursuant to the State Beneficiary Public Trusts - Publicly Owned Treatment Works Act shall prospectively cease.

SECTION 7. Amendments to the provisions of Sections 2 through 6 of this act shall not take effect as to any CTT until authority over the NPDES permit issued by the United States Environmental Protection Agency (EPA) to such CTT is delegated by the EPA to the Department of Environmental Quality.

SECTION 8. NONCODIFICATION Section 7 of this act shall not be codified in the Oklahoma Statutes.

SECTION 9. This act shall become effective July 1, 1997.

SECTION 10. 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.

46-1-6672

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