

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 992

By: Shurden

COMMITTEE SUBSTITUTE

(Department of Environmental Quality; amending Section 28,
Chapter 145, O.S.L. 1993 - violations of the Oklahoma
Environmental Quality Code and the Oklahoma Hazardous
Waste Management Act -

effective date)

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

SECTION 1. AMENDATORY Section 28, Chapter 145, O.S.L.
1993 (27A O.S. Supp. 1997, Section 2-3-504), is amended to read as
follows:

Section 2-3-504. A. Except as otherwise specifically provided
by law, any person who violates any of the provisions of, or who
fails to perform any duty imposed by, ~~this~~ the Oklahoma
Environmental Quality Code or who violates any order, permit or
license issued by the Department of Environmental Quality or rule
promulgated by the Environmental Quality Board pursuant to this
Code:

1. Shall be guilty of a misdemeanor and upon conviction thereof
may be punished by a fine of not less than Two Hundred Dollars
(\$200.00) for each violation and not more than Ten Thousand Dollars
(\$10,000.00) for each violation or by imprisonment in the county

jail for not more than six (6) months or by both such fine and imprisonment;

2. May be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation;

3. May be assessed an administrative penalty pursuant to Section ~~26~~ 2-3-502 of this ~~act~~ title not to exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance; or

4. May be subject to injunctive relief granted by a district court. A district court may grant injunctive relief to prevent a violation of, or to compel a compliance with, any of the provisions of this Code or any rule promulgated thereunder or order, license or permit issued pursuant to this Code.

B. Nothing in this part shall preclude the Department from seeking penalties in District Court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of this Code.

C. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.

D. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

E. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this Code or any rule promulgated thereunder, or order, license or permit issued pursuant thereto.

F. 1. Any action for injunctive relief to redress or restrain a violation by any person of this Code or ~~for~~ of any rule promulgated thereunder, or order, license, or permit issued pursuant thereto or for recovery of any administrative or civil penalty assessed pursuant to this Code may be brought by:

- a. the district attorney of the appropriate district court of the State of Oklahoma,
- b. the Attorney General on behalf of the State of Oklahoma, or
- c. the Department on behalf of the State of Oklahoma.

2. The court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

3. In any judicial action in which the Department seeks injunctive relief and alleges by verified petition that:

- a. the defendant's actions or omissions constitute a violation of the Code or a rule, order, license or permit, and
- b. the actions or omissions are causing or are likely to cause either pollution of the property of another or an adverse impact on public health if allowed to continue during the pendency of the action,

the Department shall be entitled to obtain a temporary order without notice to prohibit such acts or omissions to the extent they pollute or are likely to pollute the property of another or adversely affect public health. Such temporary order shall remain in effect during the pendency of the judicial action or until such time as the Court finds evidence that the criteria of subparagraphs a and b above, no longer exist.

4. It shall be the duty of the Attorney General and district attorney ~~if requested by the Executive Director~~ to bring such actions, if requested by the Executive Director of the Department.

G. Except as otherwise provided by law, administrative and civil penalties shall be paid into the Department of Environmental Quality Revolving Fund.

H. In determining the amount of a civil penalty the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.

I. In addition to or in lieu of any administrative enforcement proceedings available to the Department, the Department may take or request civil action or request criminal prosecution, or both, as provided by law for any violation of this Code, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-2012.1, as last amended by Section 109, Chapter 145, O.S.L. 1993 and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Section 2-7-126), is amended to read as follows:

Section 2-7-126. In addition to any other remedies provided in the Oklahoma Hazardous Waste Management Act, the Department of Environmental Quality may issue a written order to any person whom the Department has reason to believe has violated or is presently in violation of the Oklahoma Hazardous Waste Management Act, or any rule promulgated thereunder.

1. Such order may require compliance with the Oklahoma Hazardous Waste Management Act or such rule immediately or within a

specified time period or both. Such order may also assess an administrative penalty for any past or current violation of the Oklahoma Hazardous Waste Management Act or the rules and for each day or part of a day that such person fails to comply with such order.

- a. Any order issued pursuant to this section shall state with specificity the nature of the violation or violations.
- b. Any penalty assessed in the order shall not exceed Twenty-five Thousand Dollars (\$25,000.00) per day of noncompliance for each violation of the Oklahoma Hazardous Waste Management Act, the rules or the order. In assessing such penalties, the Executive Director shall consider the seriousness of the violation or violations and any good faith efforts to comply with applicable requirements.

2. Any order issued pursuant to this section shall become a final order unless, no later than fifteen (15) days after the order is served, the person or persons named therein request an administrative enforcement hearing. Upon such request the Department shall promptly provide for the hearing. The Department shall dismiss such proceedings where past and current compliance with the Oklahoma Hazardous Waste Management Act, the rules and the order is demonstrated.

- a. Orders and hearings are subject to the Administrative Procedures Act.
- b. A final order following an enforcement hearing may assess an administrative penalty of an amount based upon consideration of the evidence but not exceeding the amount stated in the written order.

c. The Department may adopt procedural rules as necessary and appropriate to implement the provisions of this section.

3. Any order issued pursuant to ~~this section~~ the Oklahoma Hazardous Waste Management Act may require that corrective action be taken beyond the hazardous waste facility boundary where necessary to protect human health and the environment, unless the owner or operator of the facility demonstrates that, despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake such action.

4. If a hazardous waste treatment, storage, disposal or recycling facility does not remit to the Department any administrative penalty assessed pursuant to this section within the time period established by the final order or consent order, the permit for such facility shall be summarily suspended by order and the Department shall initiate the process of revoking the permit. Additionally, such penalty amounts due shall be a special lien in favor of the Department upon all the real and personal property associated with the facility. These remedies do not preclude other actions and remedies authorized by law to further address such nonpayment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-7-134 of Title 27A, unless there is created a duplication in numbering, reads as follows:

If a hazardous waste treatment, storage, disposal or recycling facility does not remit to the Department of Environmental Quality any fee authorized by this article which is payable on a quarterly, annual or other periodic basis within sixty (60) days after such fee is invoiced, the permit for such facility shall be summarily suspended by order and the Department shall initiate the process of revoking the permit. This does not preclude other actions and remedies authorized by law to further address such nonpayment.

SECTION 4. This act shall become effective November 1, 1998.

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