

ENROLLED SENATE
BILL NO. 992

By: Shurden of the Senate
and
Leist of the House

An Act relating to environment and natural resources; amending Section 28, Chapter 145, O.S.L. 1993, and 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, Sections 2-3-504 and 2-7-126), which relate to the Oklahoma Hazardous Waste Management Act; providing for certain contents of certain petitions; authorizing the Department of Environmental Quality to obtain a temporary order or injunction to prohibit certain acts or omissions; specifying conditions; providing for procedures; providing for time of effect for such orders and injunctions; authorizing suspension of certain permits for certain purposes; providing exceptions; requiring certain hearings; providing for proof; requiring certain processes and procedures for suspension and revocation of permits; providing for promulgation of certain rules; requiring certain proceedings; requiring certain compliance; providing exceptions; authorizing certain continued operations; providing for codification; and providing an 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, 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 2-3-502 of this 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 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 present an imminent and substantial endangerment to health or the environment if allowed to continue during the pendency of the action,

the Department shall be entitled to obtain a temporary order or injunction to prohibit such acts or omissions to the extent they present an imminent and substantial endangerment to health or the environment. Such temporary order or injunction shall remain in effect during the pendency of the judicial action until superseded or until such time as the court finds that the criteria of subparagraphs a and b of this paragraph no longer exist. If a temporary order or injunction has been issued without prior hearing, the court shall schedule a hearing within twenty (20) days after issuance of the temporary order to determine whether the temporary order should be lifted and a preliminary injunction should issue. The Department shall bear the burden of proof at such hearing.

4. It shall be the duty of the Attorney General and district attorney 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 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.

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:

A. Unless otherwise authorized by the Department of Environmental Quality or stayed by a court of review, if a hazardous waste treatment, storage, disposal or recycling facility fails to remit to the Department any administrative penalty assessed against the facility pursuant to the provisions of the Oklahoma Environmental Quality Code, within the time period established by the final or consent order, the Department shall summarily suspend the hazardous waste operating permit of the facility.

B. Unless otherwise authorized by the Department or stayed by a court of review, if a hazardous waste treatment, storage, disposal or recycling facility fails to pay to the Department any fee required to be remitted to the Department on a quarterly, annual or other periodic basis pursuant to the provisions of this article or by rule promulgated pursuant thereto within sixty (60) days after an invoice is mailed by certified mail, return receipt requested, to the facility by the Department, the Department shall summarily suspend the hazardous waste operating permit of the facility.

C. Following suspension of a permit pursuant to the provisions of this section, the Department shall promptly institute proceedings for revocation of the permit pursuant to Section 2-3-502 of Title 27A of the Oklahoma Statutes.

D. Unless otherwise ordered by the Department or a court of review, the suspension or revocation of a hazardous waste operating permit shall not be deemed to relieve the facility from permit requirements for corrective action, closure of hazardous waste units, postclosure maintenance and monitoring, or similar requirements which relate primarily to remediation or closure.

E. The suspension or revocation of a hazardous waste operating permit shall not be deemed to require cessation of any operations at the facility which are unrelated to the treatment, storage, disposal or recycling of waste.

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