

SHORT TITLE: Environment and natural resources; authorizing
Department of Environmental Quality to seek temporary restraining
orders pending certain judicial actions; effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 992

By: Shurden

AS INTRODUCED

An Act relating to the Department of Environmental Quality; amending Section 28, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Section 2-3-504), which relates to violations of the Oklahoma Environmental Quality Code; modifying statutory language; authorizing the Department to seek temporary restraining orders against certain entities for certain acts or omissions causing pollution or adversely affecting public health; stating certain conditions; providing for temporary order to remain in effect pending certain judicial action; 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, ~~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 by clear and convincing 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. This act shall become effective November 1, 1998, 1998.

46-2-1880

MJM