STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1744 By: Leist

COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; amending Section 3, Chapter 145, O.S.L. 1993, Section 4, Chapter 145, O.S.L. 1993, as amended by Section 1, Chapter 324, O.S.L. 1993, and Section 6, Chapter 398, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 217, O.S.L. 1997 (27A O.S. Supp. 1998, Sections 1-1-201, 1-1-202 and 1-3-101), which relate to jurisdictional areas of responsibilities of state environmental agencies; adding to judicial responsibilities; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1998, Section 1-1-201), is amended to read as follows:

Section 1-1-201. As used in the Oklahoma Environmental Quality Act:

1. "Clean Water Act" means the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;

2. "Discharge" includes but is not limited to a discharge of a pollutant, and means any addition of any pollutant to waters of the state from any point source;

3. "Environment" includes the air, land, wildlife, and waters of the state;

4. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined;

5. "N.P.D.E.S." or "National Pollutant Discharge Elimination System" means the system for the issuance of permits under the

Federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;

6. "Point source" means any discernible, confined and discrete conveyance or outlet including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure container, rolling stock or vessel or other floating craft from which pollutants are or may be discharged into waters of the state. The term "point source" shall not include agricultural storm water discharge and return flows from irrigated agriculture;

7. "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste;

8. "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

9. "Source" means any and all points of origin of any wastes, pollutants or contaminants whether publicly or privately owned or operated;

10. "State environmental agency" includes the:

a. Oklahoma Water Resources Board,

b. Oklahoma Corporation Commission,

c. State Department of Agriculture,

d. Oklahoma Conservation Commission,

e. Department of Wildlife Conservation,

f. Department of Mines,

g. ~~Department of Public Safety,~~

~~h. Department of Labor,~~

~~i.~~ Department of Environmental Quality, and

~~j.~~ h. Department of Civil Emergency Management;

11. "Storm water" means rain water runoff, snow melt runoff, and surface runoff and drainage;

12. "Waste" means any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate or tend to pollute or contaminate, any air, land or waters of the state;

13. "Wastewater" includes any substance, including sewage, that contains any discharge from the bodies of human beings or animals, or pollutants or contaminating chemicals or other contaminating wastes from domestic, municipal, commercial, industrial, agricultural, manufacturing or other forms of industry; and

14. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof.

SECTION 2. AMENDATORY Section 4, Chapter 145, O.S.L. 1993, as amended by Section 1, Chapter 324, O.S.L. 1993 (27A O.S. Supp. 1998, Section 1-1-202), is amended to read as follows:

Section 1-1-202. Each state environmental agency shall:

1. Be responsible for fully implementing and enforcing the laws and rules within its jurisdictional areas of responsibility;

2. Utilize and enforce the Oklahoma Water Quality Standards established by the Oklahoma Water Resources Board;

3. Seek to strengthen relationships between state, regional, local and federal environmental planning, development and management programs;

4. Specifically facilitate cooperation across jurisdictional lines of authority with other state environmental agencies regarding programs and to resolve environmental ~~problems~~ concerns;

5. Cooperate with all state environmental agencies, other state agencies and local or federal governmental entities to protect, foster, and promote the general welfare, and the environment and natural resources of this state;

6. Have the authority to engage in environmental and natural resource information dissemination and education activities within their respective areas of environmental jurisdiction; and

7. Participate in every hearing conducted by the Oklahoma Water Resources Board for the consideration, adoption or amendment of the classification of waters of the state and standards of purity and quality thereof, and shall have the opportunity to present written comment to the members of the Oklahoma Water Resources Board at the same time staff recommendations are submitted to those members for Board review and consideration.

SECTION 3. AMENDATORY Section 6, Chapter 398, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 1, Chapter 217, O.S.L. 1997 (27A O.S. Supp. 1998, Section 1-3-101), is amended to read as follows:

Section 1-3-101. A. The provisions of this section specify the jurisdictional areas of responsibility for each state environmental agency. The jurisdictional areas of responsibility specified in this section shall be in addition to those otherwise provided by law

and assigned to the specific state environmental agency; provided that any rule, interagency agreement or executive order enacted or entered into prior to the effective date of this section which conflicts with the assignment of jurisdictional responsibilities specified by this section is hereby superceded. The provisions of this subsection shall not nullify any financial obligation arising from services rendered pursuant to any interagency agreement or executive order entered into prior to July 1, 1993, nor nullify any obligations or agreements with private persons or parties entered into with any state environmental agency before July 1, 1993.

B. Department of Environmental Quality. The Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. All point source discharges of pollutants and storm water to waters of the state which originate from municipal, industrial, commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration, manufacturing and other sources, facilities and activities, except as provided in subsections D and E of this section;

2. All nonpoint source discharges and pollution except as provided in subsections D, E and F of this section;

3. Surface water and groundwater quality and protection and water quality certifications;

4. Waterworks and wastewater works operator certification;

5. Public and private water supplies;

6. Underground injection control except for brine recovery, saltwater disposal or secondary or tertiary oil recovery;

7. Air quality under the Federal Clean Air Act and applicable state law, except for indoor air quality and asbestos as regulated for worker safety by the federal Occupational Safety and Health Act and by Chapter 11 of Title 40 of the Oklahoma Statutes;

8. Hazardous waste and solid waste, including industrial, commercial and municipal waste;

9. Superfund responsibilities of the state under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and amendments thereto, except the planning requirements of Title III of the Superfund Amendment and Reauthorization Act of 1986;

10. Radioactive waste and all regulatory activities for the use of atomic energy and sources of radiation except for the use of sources of radiation by diagnostic x-ray facilities;

11. Water, waste, and wastewater treatment systems including, but not limited to, septic tanks or other public or private waste disposal systems;

12. Emergency response as specified by law;

13. Environmental laboratory services and laboratory certification;

14. Hazardous substances other than branding, package and labeling requirements;

15. Freshwater wellhead protection; ~~and~~

16. Groundwater protection and regulation; and

17. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency.

C. Oklahoma Water Resources Board. The Oklahoma Water Resources Board shall have the following jurisdictional areas of environmental responsibility:

1. Water quantity including, but not limited to, water rights, surface water and underground water, planning, and interstate stream compacts;

2. Weather modification;

3. Dam safety;

4. Flood plain management;

5. State water/wastewater loans and grants revolving fund and other related financial aid programs;

6. Administration of the federal State Revolving Fund Program including, but not limited to, making application for and receiving capitalization grant awards, wastewater prioritization for funding, technical project reviews, environmental review process, and financial review and administration;

7. Water well drillers/pump installers licensing;

8. Technical lead agency for clean lakes eligible for funding under Section 314 of the Federal Clean Water Act or other applicable sections of the Federal Clean Water Act or other subsequent state and federal clean lakes programs; administration of a state program for assessing, monitoring, studying and restoring Oklahoma lakes with administration to include, but not be limited to, receipt and expenditure of funds from federal, state and private sources for clean lakes and implementation of a volunteer monitoring program to assess and monitor state water resources, provided such funds from Federal Clean Water Act sources are administered and disbursed by the Office of the Secretary of Environment; ~~and~~

9. Statewide surface water and groundwater quality standards;

10. Statewide comprehensive groundwater protection program and implementation guidelines; and

11. Groundwater protection.

D. State Department of Agriculture. 1. The State Department of Agriculture shall have the following jurisdictional areas of environmental responsibility except as provided in subsection B of this section and paragraphs 2 and 3 of this subsection:

a. point and nonpoint source discharges from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste,

b. pesticide control,

c. forestry and nurseries,

d. fertilizer,

e. facilities which store grain, feed, seed, fertilizer and agricultural chemicals, ~~and~~

f. dairy waste and wastewater associated with milk production facilities, and

g. groundwater protection and regulation.

2. In addition to the areas of jurisdictional responsibility specified in subsection B of this section, the Department of Environmental Quality shall have environmental jurisdiction over:

a. (1) commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products,

(2) slaughterhouses, but not including feedlots at such facilities, and

(3) animal agriculture and fish hatcheries, including, but not limited to, discharges of pollutants and storm water to waters of the state, surface impoundments and land application of wastes and sludge, and other pollution originating at such facilities, and

b. facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges shall only be subject to the jurisdiction of the Department of Environmental Quality with respect to such storm water discharges.

3. Any point source and nonpoint source discharges related to agriculture from sources specified in paragraph 1 of this subsection

which require a federal National Pollutant Discharge Elimination Systems permit and which are not specified under paragraph 2 of this subsection as being subject to the jurisdiction of the Department of Environmental Quality shall continue to be subject to the direct jurisdiction of the federal Environmental Protection Agency for issuance and enforcement of such permit and shall not be required to be permitted by the Department of Environmental Quality or the Department of Agriculture.

E. Corporation Commission. 1. The Corporation Commission is hereby vested with exclusive jurisdiction, power and authority, and it shall be its duty to promulgate and enforce rules, and issue and enforce orders governing and regulating:

a. the conservation of oil and gas,

b. field operations for geologic and geophysical exploration for oil, gas and brine, including seismic survey wells, stratigraphic test wells and core test wells,

c. the exploration, drilling, development, producing or processing for oil and gas on the lease site,

d. the exploration, drilling, development, production and operation of wells used in connection with the recovery, injection or disposal of mineral brines produced from geological strata lying below three hundred (300) feet in depth from the surface,

e. reclaiming facilities only for the processing of salt water, crude oil, natural gas condensate and tank bottoms or basic sediment from crude oil tanks, pipelines, pits and equipment associated with the exploration, drilling, development, producing or transportation of oil or gas,

f. injection wells known as Class II wells under the federal Underground Injection Control Program. Any

substance that the United States Environmental Protection Agency allows to be injected into a Class II well may continue to be so injected,

g. tank farms for storage of crude oil and petroleum products which are located outside the boundaries of refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, or other facilities which are subject to the jurisdiction of the Department of Environmental Quality with regard to point source discharges,

h. the construction and operation of pipelines and associated rights-of-way, equipment, facilities or buildings used in the transportation of oil, gas, petroleum, petroleum products, anhydrous ammonia or mineral brine, or in the treatment of oil, gas or mineral brine during the course of transportation but not including line pipes in any:

(1) natural gas liquids extraction plant,

(2) refinery,

(3) reclaiming facility other than for those specified within subparagraph e of this subsection,

(4) mineral brine processing plant, and

(5) petrochemical manufacturing plant,

i. the handling, transportation, storage and disposition of saltwater, mineral brines, waste oil and other deleterious substances produced from or obtained or used in connection with the drilling, development, producing and operating of oil and gas wells, at:

(1) any facility or activity specifically listed in paragraphs 1 and 2 of this subsection as being

subject to the jurisdiction of the Commission, and

(2) other oil and gas extraction facilities and activities,

j. spills of deleterious substances associated with facilities and activities specified in paragraph 1 of this subsection or associated with other oil and gas extraction facilities and activities, ~~and~~

k. subsurface storage of oil, natural gas and liquefied petroleum gas in geologic strata, and

l. groundwater protection and regulation.

2. The exclusive jurisdiction, power and authority of the Corporation Commission shall also extend to the construction, operation, maintenance, site remediation, closure and abandonment of the facilities and activities described in paragraph 1 of this subsection.

3. When a deleterious substance from a Commission regulated facility or activity enters a point source discharge of pollutants or storm water from a facility or activity regulated by the Department of Environmental Quality, the Department shall have sole jurisdiction over the point source discharge of the commingled pollutants and storm water from the two facilities or activities insofar as Department regulated facilities and activities are concerned.

4. For purposes of the Federal Clean Water Act, any facility or activity which is subject to the jurisdiction of the Corporation Commission pursuant to paragraph 1 of this subsection and any other oil and gas extraction facility or activity which requires a permit for the discharge of a pollutant or storm water to waters of the United States shall be subject to the direct jurisdiction of the federal Environmental Protection Agency and shall not be required to

be permitted by the Department of Environmental Quality or the Corporation Commission for such discharge.

5. The Corporation Commission shall have jurisdiction over:

a. underground storage tank regulation assigned to the Commission pursuant to other Oklahoma statutes, including, but not limited to, the Leaking Underground Storage Tank Trust Fund and Indemnity Fund programs, provided that any point source discharge of a pollutant to waters of the United States during site remediation shall be regulated by the Department of Environmental Quality, and

b. aboveground storage tanks used in connection with the retail sale of flammable liquids into fuel tanks, provided that any point source discharge of a pollutant to waters of the United States during site remediation shall be regulated by the Department of Environmental Quality.

6. The Department of Environmental Quality shall have sole jurisdiction to regulate the transportation, discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities.

7. The Department of Environmental Quality shall have sole environmental jurisdiction for point and nonpoint source discharges of pollutants and storm water to waters of the state from:

a. refineries, petrochemical manufacturing plants and natural gas liquid extraction plants,

b. manufacturing of oil and gas related equipment and products,

c. bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Commission pursuant to this subsection, <u>and</u>

d. other facilities, activities and sources not subject to the jurisdiction of the Corporation Commission or the Department of Agriculture as specified by this section.

8. The Department of Environmental Quality shall have sole environmental jurisdiction to regulate air emissions from all facilities and sources subject to operating permit requirements under Title V of the Federal Clean Air Act as amended.

F. Conservation Commission. The Conservation Commission shall have the following jurisdictional areas of environmental responsibility:

1. Soil conservation and erosion control;

2. Monitoring, evaluation and assessment of waters to determine the condition of streams and rivers being impacted by nonpoint source pollution. In carrying out this area of responsibility, the Conservation Commission shall serve as the technical lead agency for nonpoint source categories as defined in Section 319 of the Federal Clean Water Act or other subsequent federal or state nonpoint source programs, except for activities related to industrial and municipal stormwater or as otherwise provided by state law;

3. Wetlands strategy;

4. Abandoned mine reclamation;

5. Cost-share program for land use activities;

6. Assessment and conservation plan development and implementation in watersheds of clean lakes, as specified by law;

7. Complaint data management;

8. Coordinate environmental and natural resources education; ~~and~~

9. Federal upstream flood control program; and

10. Development and maintenance of a computerized database of geographic data.

G. Department of Mines. The Department of Mines shall have the following jurisdictional areas of environmental responsibility:

1. Mining regulation; ~~and~~

2. Mining reclamation of active mines; and

3. Groundwater protection and regulation.

H. Department of Wildlife Conservation. The Department of Wildlife Conservation shall have the following jurisdictional areas of environmental responsibilities:

1. Investigating wildlife kills; and

2. Wildlife protection and seeking wildlife damage claims.

I. ~~Department of Public Safety. The Department of Public Safety shall have the following jurisdictional areas of environmental responsibilities:~~

~~1. Vehicle inspection for air quality;~~

~~2. Hazardous waste, substances and material transportation inspections as authorized by the Hazardous Materials Transportation Act; and~~

~~3. Inspection and audit activities of hazardous waste and materials carriers and handlers as authorized by the Hazardous Materials Transportation Act.~~

~~J. Department of Labor. The Department of Labor shall have the following jurisdictional areas of environmental responsibility:~~

~~1. Regulation of asbestos in the workplace pursuant to Chapter 11 of Title 40 of the Oklahoma Statutes;~~

~~2. Asbestos monitoring in public and private buildings; and~~

~~3. Indoor air quality as regulated under the authority of the Oklahoma Occupational Health and Safety Standards Act, except for those indoor air quality issues specifically authorized to be regulated by another agency.~~

~~Such programs shall be a function of the Department's occupational safety and health jurisdiction.~~

~~K.~~ Department of Civil Emergency Management. The Department of Civil Emergency Management shall have the following jurisdictional areas of environmental responsibilities:

1. Coordination of all emergency resources and activities relating to threats to citizens' lives and property pursuant to the Oklahoma Civil Defense and Emergency Resources Management Act;

2. Administer and enforce the planning requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 and develop such other emergency operations plans that will enable the state to prepare for, respond to, recover from and mitigate potential environmental emergencies and disasters pursuant to the Oklahoma Hazardous Materials Planning and Notification Act;

3. Administer and conduct periodic exercises of emergency operations plans provided for in this subsection pursuant to the Oklahoma Civil Defense and Emergency Resources Management Act;

4. Administer and facilitate hazardous materials training for state and local emergency planners and first responders pursuant to the Oklahoma Civil Defense and Emergency Resources Management Act; and

5. Maintain a computerized emergency information system allowing state and local access to information regarding hazardous materials' location, quantity and potential threat.

SECTION 4. This act shall become effective November 1, 1999.

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