STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 242 By: Easley of the Senate

and

Rice of the House

COMMITTEE SUBSTITUTE

An Act relating to underground injection control wells and environmental regulation; amending 17 O.S. 1991, Section 503, which relates to the Oklahoma Brine Development Act; amending 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, and 63 O.S. 1991, Section 1-902, as amended by Section 81, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1998, Sections 1-3-101 and 2-6-701), which relates to state environmental agency jurisdiction over certain underground injection wells; updating statutory language; prohibiting Corporation Commission jurisdiction over certain injection wells; modifying Department of Environmental Quality jurisdiction over certain underground injection wells; modifying Corporation Commission jurisdiction over certain underground injection wells; modifying Corporation Commission jurisdiction over underground and aboveground storage tanks; authorizing Corporation Commission jurisdiction over certain funds; requiring permit for certain injection wells regulated by Corporation Commission; amending 63 O.S. 1991, Section 1-2010, as last amended by Section 108, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1998, Section 2-7-125), which relates to hazardous waste; modifying requirements for acceptance of manifest; amending 47 O.S. 1991, Section 162, as amended by Section 14, Chapter 143, O.S.L. 1995 (47 O.S. Supp. 1998, Section 162), which relates to regulation of motor carriers; requiring Corporation Commission to promulgate rules and implement certain hazardous waste transportation program.

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 503, is amended to read as follows:

Section 503. A. The Corporation Commission is hereby vested with jurisdiction over the drilling for and production and disposal of brine for commercial purposes. The Commission is hereby authorized to ~~enact~~ promulgate such rules ~~and regulations~~ as are reasonably necessary to effectuate the purposes of ~~this act~~ the Oklahoma Brine Development Act, including rules ~~and regulations~~ governing the drilling of production, injection or disposal wells and the injection of effluent into underground formations. The Commission shall also have jurisdiction to ~~enact~~ ~~regulations~~ promulgate rules to ensure that the drilling, casing and plugging of wells is done in such a manner as to prevent the escape of brine and effluent from one formation to another and to prevent the pollution of fresh water supplies throughout the state. The Commission shall also have jurisdiction to regulate the return of brine or effluent to the same formation from which it was produced or to other formations in such a manner as is proper to prevent damage to the formation.

B. ~~This act~~ The Oklahoma Brine Development Act shall not apply to nor shall the Corporation Commission have jurisdiction over ~~the solution mining of brine from depths of less than three hundred (300) feet below the surface of the ground and being done pursuant to a mining permit issued by the Department of Mines~~ Class III wells regulated by the Oklahoma Department of Environmental Quality pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148.

SECTION 2. 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 pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148 except for ~~brine recovery, saltwater disposal or secondary or tertiary oil recovery~~

Class II injection wells, Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission, and those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act regulated by the Corporation Commission;

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. 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 water quality standards.

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.

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~~ underground injection control pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, of Class II injection wells, Class V injection wells utilized in the remediation of groundwater associated with underground or aboveground storage tanks regulated by the Corporation Commission, and those wells used for the recovery, injection or disposal of mineral brines as defined in the Oklahoma Brine Development Act. 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.

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,~~ tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; 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,~~ that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at the upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below; 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

c. the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund and Program and the Leaking Underground Storage Tank Trust Fund.

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,

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.

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.

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 3. AMENDATORY 63 O.S. 1991, Section 1-902, as amended by Section 81, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1998, Section 2-6-701), is amended to read as follows:

Section 2-6-701. A. A permit ~~issued by the Executive Director~~ shall be required for ~~the underground injection of hazardous and nonhazardous liquids except for the injection purposes of brine recovery, saltwater disposal or secondary or tertiary oil recovery~~

Class I, III, IV and V injection wells pursuant to the federal Safe Drinking Water Act and 40 CFR Parts 144 through 148, except Class V injection wells utilized in the remediation of groundwater associated with underground and aboveground storage tanks regulated by the Corporation Commission.

B. All water wells, monitoring wells, unused water test wells and water test holes used or capable of being used as sources of domestic or public water supply shall be constructed, sealed or plugged as required by the Department in a manner to avoid pollution of water-bearing strata.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-2010, as last amended by Section 108, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1998, Section 2-7-125), is amended to read as follows:

Section 2-7-125. A. Persons generating hazardous waste shall provide a manifest to the operator of any mode of any offsite transportation carrying hazardous waste. Such manifest shall be in a form which has been prescribed by the Department and shall indicate a disposal plan number assigned by the Department which shows that the Department has approved the plans of the person generating such waste. The manifest shall also set forth the type, amount, approximate content, origin and destination of the waste. Such operator shall have the manifest in his possession while transporting or handling the hazardous waste. Upon delivery of the hazardous waste to a facility duly authorized to accept such waste, the operator shall submit such manifest to the receiving person for processing pursuant to rules promulgated by the Board.

B. No ~~person~~ off-site treatment, storage, recycling, or disposal facility shall accept the manifest unless such manifest has a properly assigned disposal plan number indicating that the Department has approved the plans of the person generating the hazardous waste.

C. No person shall transport, receive, treat or dispose of hazardous waste without having the manifest in his possession.

SECTION 5. AMENDATORY 47 O.S. 1991, Section 162, as amended by Section 14, Chapter 143, O.S.L. 1995 (47 O.S. Supp. 1998, Section 162), is amended to read as follows:

Section 162. A. The Corporation Commission is hereby vested with power and authority, and it shall be its duty:

1. To supervise and regulate every motor carrier of household goods or used emigrant movables and not operating exclusively within the limits of an incorporated city or town in this state;

2. To fix or approve the maximum or minimum, or maximum and minimum rates, fares, charges, classifications and rules pertaining thereto, of each such motor carrier;

3. To regulate and supervise the accounts, schedules and service of each such motor carrier; and for the conservation of the public highways;

4. To prescribe a uniform system and classification of accounts to be used, which among other things shall set up adequate depreciation charges, and after such accounting system shall have been promulgated, such motor carriers shall use no other;

5. To require the filing of annual reports, and other data as required from time to time by the Commission; and

6. To supervise and regulate such motor carriers in all other matters affecting the relationship between such carriers and the traveling and shipping public.

B. The Commission shall have the power and authority by general order or otherwise to prescribe rules ~~and regulations~~ applicable to any or all motor carriers of household goods or used emigrant movables.

<u>C. The Corporation Commission is hereby authorized to administer a hazardous waste transportation registration and permitting program for motor carriers engaged in transporting</u>

hazardous waste upon or over the public highways and within the borders of the state.

The Corporation Commission shall promulgate rules implementing the hazardous waste transportation registration and permitting program for operators of motor vehicles transporting hazardous waste upon or over the public highways and within the borders of this state. Rules promulgated pursuant to this section shall be consistent with, and equivalent in scope, coverage, and content to requirements applicable to operators of vehicles transporting hazardous materials contained in the report submitted to the Secretary of the United States Department of Transportation, pursuant to 49 U.S.C. 5119(b), by the Alliance for Uniform Hazardous Material Transportation Procedures.

47-1-6772 NLM 6/11/15