

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 241

By: Easley and Price of the
Senate

and

Rice, Adkins and
Thornbrugh of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to environment and natural resources; amending Section 4, Chapter 356, O.S.L. 1996 (27A O.S. Supp. 1998, Section 2-15-104), which relates to brownfields; authorizing the Department to develop and implement rules for obtaining certain federal funds; and amending 82 O.S. 1991, Section 1085.54, as amended by Section 326, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1998, Section 1085.54), which relates to use of certain funds; authorizing use of certain funds for urban storm water activities; amending Section 61, Chapter 145, O.S.L. 1993, as amended by Section 10, Chapter 353, O.S.L. 1994, and as renumbered by Section 45, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1998, Section 2-3-302), which relates to Department of Environmental Quality permits; prohibiting Department from considering certain municipal and local government compliance when reviewing permit or authorization applications; amending Section 26, Chapter 145, O.S.L. 1993, as amended by Section 6, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1998, Section 2-3-502), which relates to code violations; prohibiting certain administrative actions from delaying certain judicial proceedings; authorizing the Department of Environmental Quality to issue certain emergency, temporary or interim permits to certain waste disposal facilities for waste disposal from tornado and natural disasters for certain time period; providing for noncodification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 4, Chapter 356, O.S.L. 1996 (27A O.S. Supp. 1998, Section 2-15-104), is amended to read as follows:

Section 2-15-104. A. The Department of Environmental Quality may establish and implement a voluntary redevelopment program for brownfields. In administering the Oklahoma Brownfields Voluntary Redevelopment Act, the Department shall:

- a. approve site-specific remediation plans for each site as necessary, using a risk-based system,
- b. review and inspect site assessment and remediation activities and reports, ~~and~~
- c. use risk-based remediation procedures as determined by the agency to establish cleanup levels, and
- d. develop and implement rules and procedures for obtaining funds allocated to the state from the Nonpoint Source Management Program of the Federal Clean Water Act as administered under paragraph 2 of subsection F of Section 1-3-101 of the Oklahoma Environmental Quality Act and funds allocated to the state from the Federal Clean Water Act as administered under Section 1085.54 of Title 82 of the Oklahoma Statutes.

B. Any brownfields program established pursuant to the Oklahoma Brownfields Voluntary Redevelopment Act shall be a voluntary program.

C. No state governmental entity regulating any person or institution shall require evidence of participation in the Oklahoma Brownfields Voluntary Redevelopment Act.

D. The provisions of the Oklahoma Brownfields Voluntary Redevelopment Act shall not apply to any person who is:

1. Responsible for taking corrective action on the real property pursuant to orders or agreements issued by the federal Environmental Protection Agency;

2. Not in substantial compliance with a final agency order or any final order or judgment of a court of record secured by any

state or federal agency relating to the generation, storage, transportation, treatment, recycling or disposal of regulated substances; or

3. Has a demonstrated pattern of uncorrected noncompliance.

E. 1. The Board of Environmental Quality shall promulgate rules necessary to implement the Oklahoma Brownfields Voluntary Redevelopment Act.

2. The Department is specifically authorized to promulgate emergency rules necessary pursuant to the Administrative Procedures Act to implement the provisions of the Oklahoma Brownfields Voluntary Redevelopment Act.

3. Such rules shall include but not be limited to provision for applications, consent orders, notice and public participation opportunities, brownfield remediation plans and no action necessary determinations issued by the Department.

SECTION 2. AMENDATORY 82 O.S. 1991, Section 1085.54, as amended by Section 326, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1998, Section 1085.54), is amended to read as follows:

Section 1085.54 A. All funds available in the Wastewater Facility Construction Revolving Loan Account shall first be used to assure maintenance of progress towards compliance with enforceable deadlines, goals, and requirements of the Oklahoma Environmental Quality Code, Oklahoma's Water Quality Standards, and Federal Clean Water Act, including urban storm water activities conducted pursuant to Section 2-15-101, et seq. of the Oklahoma Environmental Quality Act that are exempt from funds administered under the Nonpoint Source Management Program of the Federal Clean Water Act.

Upon the determination by the Board that all enforceable requirements have been met by Oklahoma communities and all other eligible wastewater projects have been funded, funds in the account may be used for the implementation of the nonpoint source management program pursuant to Section 1085.65 of this title.

B. The Board shall use the Wastewater Facility Construction Revolving Loan Account only as provided by the federal Water Quality Act of 1987 for the following purposes:

1. To make a loan to an eligible entity if:

- a. the loan application, project and planning documents have been approved by the Board pursuant to Section 1085.58 of this title or the Oklahoma Conservation Commission pursuant to Section 1085.65 of this title,
- b. the loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Water Quality Act of 1987,
- c. principal and interest payments will begin not later than one year after completion of any wastewater project and all loans will be fully amortized consistent with the federal Water Quality Act of 1987,
- d. the Wastewater Facility Construction Revolving Loan Account will be credited with all payments of principal of and interest on all loans,
- e. the applicant demonstrates to the satisfaction of the Board the financial capability to assure sufficient revenues to pay debt service,
- f. the recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan, and
- g. the recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the treatment works, and to submit the audit report to the Board on a scheduled annual basis;

2. To buy or refinance eligible entity obligations at or below market rates if the eligible entity obligations were incurred in construction which began after March 7, 1985;

3. To guarantee or purchase insurance for eligible entities if the guarantee or insurance would improve access to market credit or reduce interest rates;

4. As a source of revenue or security for the payment of principal of and interest on any investment certificate issued by the Board. The proceeds of the sale of such investment certificates shall be deposited in the Wastewater Facility Construction Revolving Loan Account in compliance with applicable bond resolutions or indentures authorizing the sale;

5. To provide loan guarantees to similar revolving loan accounts or funds established by eligible entities;

6. To earn interest on accounts established under the Wastewater Facility Construction Revolving Loan Account;

7. To administer the Wastewater Facility Construction Revolving Loan Account pursuant to the provisions of this act. All funds to be utilized for administrative costs from the Wastewater Facility Construction Revolving Loan Account shall be subject to annual designation by the State Legislature; ~~and~~

8. To provide loan guarantees for urban storm water activities that are administered under the Oklahoma Brownfields Voluntary Redevelopment Act for urban areas issued a draft or final permit pursuant to the National Pollution Discharge Elimination Act or the Oklahoma Pollution Discharge Elimination Act; and

9. For such other purpose or in such other manner, as is determined by the Board to be an appropriate use of the Wastewater Facility Construction Revolving Loan Account and which has been specifically approved by the Environmental Protection Agency pursuant to the federal Water Quality Act of 1987.

SECTION 3. AMENDATORY Section 61, Chapter 145, O.S.L. 1993, as amended by Section 10, Chapter 353, O.S.L. 1994, and as renumbered by Section 45, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1998, Section 2-3-302), is amended to read as follows:

Section 2-3-302. A. For permits or other authorizations required pursuant to the Oklahoma Environmental Quality Code, applicants shall file applications in the form and manner established by the Department of Environmental Quality. The Department shall review such applications as filed and subsequently amended or supplemented. Any permit issued or authorization granted may include conditions.

B. Permits and other authorizations required pursuant to the Oklahoma Environmental Code may contain provisions requiring that operations shall be in compliance with municipal and other local government ordinances, rules and requirements. A determination or certification that the operations under the requested permit or authorization conform or comply with such ordinances, rules or requirements, the enforcement of which are not within the jurisdiction or authority of the Department, shall not be considered by the Department in their review and approval or denial of a permit or authorization.

SECTION 4. AMENDATORY Section 26, Chapter 145, O.S.L. 1993, as amended by Section 6, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1998, Section 2-3-502), is amended to read as follows:

Section 2-3-502. A. If upon inspection or investigation, or whenever the Department determines that there are reasonable grounds to believe that any person is in violation of this Code or any rule promulgated thereunder or of any order, permit or license issued pursuant thereto, the Department may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct such violation immediately or within a set time period or both and that the failure to do so will result in the issuance of a compliance order.

B. In addition to any other remedies provided by law, the Department may, after service of the notice of violation, issue a proposed compliance order to such person. A proposed compliance

order shall become a final order unless, no later than fifteen (15) days after the order is served, any respondent named therein requests an administrative enforcement hearing.

1. The proposed compliance order may, pursuant to subsection K of this section:

- a. assess an administrative penalty for past violations of this Code, rules promulgated thereunder, or the terms and conditions of permits or licenses issued pursuant thereto, and
- b. propose the assessment of an administrative penalty for each day the respondent fails to comply with the compliance order.

2. Such proposed order may specify compliance requirements and schedules, or mandate corrective action, or both.

C. Failure to comply with a final compliance order, in part or in whole, may result in the issuance of an assessment order assessing an administrative penalty as authorized by law, or a supplementary order imposing additional requirements, or both. Any proposed order issued pursuant to this subsection shall become final unless, no later than seven (7) days after its service, any respondent named therein requests an administrative enforcement hearing.

D. Notwithstanding the provisions of subsection A and B of this section, the Executive Director, after notice and opportunity for an administrative hearing, may revoke, modify or suspend the holder's permit or license in part or in whole for cause, including but not limited to the holder's:

1. Flagrant or consistent violations of this Code, of rules promulgated thereunder or of final orders, permits or licenses issued pursuant thereto;

2. Reckless disregard for the protection of the public and the environment as demonstrated by noncompliance with environmental laws

and rules resulting in endangerment of human health or the environment; or

3. Actions causing, continuing, or contributing to the release or threatened release of pollutants or contaminants to the environment.

E. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or welfare or the environment, the Executive Director may without notice or hearing issue an order, effective upon issuance, reciting the existence of such an emergency and requiring that such action be taken as deemed necessary to meet the emergency. Any person to whom such an order is directed shall comply therewith immediately but may request an administrative enforcement hearing thereon within fifteen (15) days after the order is served. Such hearing shall be held by the Department within ten (10) days after receipt of the request. On the basis of the hearing record, the Executive Director shall sustain or modify such order.

F. Except as otherwise expressly provided by law, any notice of violation, order, or other instrument issued by or pursuant to authority of the Department may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail return-receipt requested directed to such person at his last-known post office address as shown by the files or records of the Department. Proof of service shall be made as in the case of service of a summons or by publication in a civil action. Such proof of service shall be filed in the Office of Administrative Hearings.

G. Every certificate or affidavit of service made and filed shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

H. 1. The administrative hearings provided for in this section shall be conducted as individual proceedings in accordance with, and

a record thereof maintained pursuant to, Article II of the Administrative Procedures Act, this Code and rules promulgated thereunder. When a hearing is timely requested by a respondent pursuant to this section, the Department shall promptly conduct such hearing.

2. Such hearing shall be conducted by an Administrative Law Judge or by the Executive Director. When an Administrative Law Judge holds the hearing, such Judge shall prepare a proposed order and shall:

- a. serve it on the parties, by regular mail, and may offer an opportunity for parties to file exceptions to the proposed order before a final order is entered in the event the Executive Director does not review the record, and
- b. present the proposed order, the exceptions, if any, and the record of the matter to the Executive Director, or
- c. present the proposed order and the record of the matter to the Executive Director for review and entry of a final order for any default, failure to appear at the hearing or if the parties by written stipulation waive compliance with subparagraph a of this paragraph.

3. For administrative proceedings conducted by an Administrative Law Judge pursuant to this section, the Executive Director may adopt, amend or reject any findings or conclusions of the Administrative Law Judge or exceptions of any party and issue a final order accordingly, or may in his discretion remand the proceeding for additional argument or the introduction of additional evidence at a hearing held for the purpose. A final order shall not be issued by the Executive Director until after:

- a. the opportunity for exceptions has lapsed without receiving exceptions, or after exceptions, briefs and oral arguments, if any, are made, or
- b. review of the record by the Executive Director.

4. Any order issued by the Department shall become final upon service.

I. Any party aggrieved by a final order may petition the Department for rehearing, reopening or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order, including the Attorney General on behalf of the state, may, pursuant to the Administrative Procedures Act, petition for a judicial review thereof.

J. If the Attorney General seeks redress on behalf of the state, as provided for in subsection I of this section, the Executive Director is empowered to appoint a special counsel for such proceedings.

K. 1. Unless specified otherwise in this Code, any penalty assessed or proposed in an order shall not exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance.

2. The determination of the amount of an administrative penalty shall include, but not be limited to, the consideration of such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the respondent from the violation, the history of such violations and respondent's degree of culpability and good faith compliance efforts. For purposes of this section, each day, or part of a day, upon which such violation occurs shall constitute a separate violation.

L. Notwithstanding the provisions of subsections A and B of this section, the Department may, within three (3) years of discovery, apply for the assessment of an administrative penalty for

any violation of this Code, or rules promulgated thereunder or permits or licenses issued pursuant thereto.

M. Any order issued pursuant to this section may require that corrective action be taken. If corrective action must be taken on adjoining property, the owner of such adjoining property shall not give up any right to recover damages from the responsible party by allowing corrective action to occur.

N. Inspections, investigations, administrative enforcement hearings and other administrative actions or proceedings pursuant to the Code shall not be the basis for delaying judicial proceedings between private parties involving the same subject matter.

SECTION 5. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

Due to the increased burden and pressure upon existing landfill capacity caused by the recent tornadoes and natural disasters across the state, the Department of Environmental Quality shall immediately issue emergency, temporary or interim permits for facilities that have completed the administrative and technical review process and for which proposed permits have been drafted and prepared in order for such facilities to accept construction and demolition waste. The Department, in its discretion, is hereby authorized to issue such other emergency, temporary or interim permits as it determines are necessary, reasonable and prudent to respond to waste disposal caused by the recent tornadoes and natural disasters. This section shall be effective for a period of six months from and after the effective date of this act.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.