

ENROLLED SENATE
BILL NO. 417

By: Shurden of the Senate

and

Leist and Glover of the
House

An Act relating to environment and natural resources; amending Section 12, Chapter 215, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 285, O.S.L. 1995 (27A O.S. Supp. 1998, Section 2-5-112), which relates to the Oklahoma Clean Air Act, authorizing burning of wood waste in certain areas; amending 63 O.S. 1991, Sections 1-910, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 16, Chapter 353, O.S.L. 1994, and 1-2009.1, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 20, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1998, Sections 2-6-403 and 2-7-108), which relate to the Oklahoma Environmental Quality Code; updating language relating to certain sewage systems; clarifying contents of certain plats; restricting certain developments within a specified distance of a public water supply source; defining term; removing certain permit requirements from certain remediation activities; specifying restrictions; authorizing waiver of fees for certain hazardous waste received from response actions; amending 19 O.S. 1991, Section 288.2, which relates to filings of certain documents with county clerk; updating language; amending 63 O.S. 1991, Section 1-2413, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 5, Chapter 338, O.S.L. 1994 (27A O.S. Supp. 1998, Section 2-10-1001), which relates to development of plan for county solid waste management; deleting requirement that certain plan be approved by certain date; requiring certain application to be submitted with certain plan; requiring application to be in accordance with certain permitting requirements; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 12, Chapter 215, O.S.L. 1992, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 2, Chapter 285, O.S.L. 1995 (27A O.S. Supp. 1998, Section 2-5-112), is amended to read as follows:

Section 2-5-112. A. Upon the effective date of permitting rules promulgated pursuant to the Oklahoma Clean Air Act, it shall be unlawful for any person to construct any new source, or to modify or operate any new or existing source of emission of air contaminants except in compliance with a permit issued by the Department of Environmental Quality, unless the source has been exempted or deferred or is in compliance with an applicable deadline for submission of an application for such permit.

B. The Department shall have the authority and the responsibility, in accordance with rules of the Environmental Quality Board, to implement a comprehensive permitting program for the state consistent with the requirements of the Oklahoma Clean Air Act. Such authority shall include but shall not be limited to the authority to:

1. Expeditiously issue, reissue, modify and reopen for cause, permits for new and existing sources for the emission of air contaminants, and to grant a reasonable measure of priority to the processing of applications for new construction or modifications. The Department may also revoke, suspend, deny, refuse to issue or to reissue a permit upon a determination that any permittee or applicant is in violation of any substantive provisions of the Oklahoma Clean Air Act, or any rule promulgated thereunder or any permit issued pursuant thereto;

2. Refrain from issuing a permit when issuance has been objected to by the Environmental Protection Agency in accordance with Title V of the Federal Clean Air Act;

3. Revise any permit for cause or automatically reopen it to incorporate newly applicable rules or requirements if the remaining permit term is greater than three (3) years; or incorporate insignificant changes into a permit without requiring a revision;

4. Establish and enforce reasonable permit conditions which may include, but not be limited to:

- a. emission limitations for regulated air contaminants,
- b. operating procedures when related to emissions,
- c. performance standards,
- d. provisions relating to entry and inspections, and
- e. compliance plans and schedules;

5. Require, if necessary, at the expense of the permittee or applicant:

- a. installation and utilization of continuous monitoring devices,
- b. sampling, testing and monitoring of emissions as needed to determine compliance,

- c. submission of reports and test results, and
- d. ambient air modeling and monitoring;

6. Issue:

- a. general permits covering similar sources, and
- b. permits to sources in violation, when compliance plans, which shall be enforceable by the Department, are incorporated into the permit;

7. Require, at a minimum, that emission control devices on stationary sources be reasonably maintained and properly operated;

8. Require that a permittee certify, no less frequently than annually, that the facility is in compliance with all applicable requirements of the permit and to promptly report any deviations therefrom to the Department;

9. Issue permits for a term not to exceed five (5) years, except that solid waste incinerators may be allowed a term of up to twelve (12) years provided that the permit shall be reviewed no less frequently than every five (5) years;

10. Specify requirements and conditions applicable to the content and submittal of permit applications; set by rule, a reasonable time in which the Department must determine the completeness of such applications; and

11. Determine the form and content of emission inventories and require their submittal by any source or potential source of air contaminant emissions.

C. Rules of the Board may set de minimis limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee, or be subject to public review. Any source so exempted, however, shall remain under jurisdiction of the Department and shall be subject to any applicable rules or general permit requirements. Such rules shall not prohibit sawmill facilities from open burning any wood waste resulting from the milling of untreated cottonwood lumber in areas that have always attained ambient air quality standards.

D. To ensure against unreasonable delay on the part of the Department, the failure of the Department to act in either the issuance, denial or renewal of a permit in a reasonable time, as determined by rule, shall be deemed to be a final permit action solely for purpose of judicial review under the Administrative Procedures Act, with regard to the applicant or any person who participated in the public review process. The Supreme Court or the district court, as the case may be, may require that action be taken by the Department on the application without additional delay. No permit, however, may be issued by default.

E. The Department shall notify, or require that any applicant notify, all states whose air quality may be affected and that are

contiguous to the State of Oklahoma, or are within fifty (50) miles of the source of each permit application or proposed permit for those sources requiring permits under Title V of the Federal Clean Air Act, and shall provide an opportunity for such states to submit written recommendations respecting the issuance of the permit and its terms and conditions.

F. A change in ownership of any facility or source subject to permitting requirements under this section shall not necessitate any action by the Department not otherwise required by the Oklahoma Clean Air Act. Any permit applicable to such source at the time of transfer shall be enforceable in its entirety against the transferee in the same manner as it would have been against the transferor, as shall any requirement contained in any rule, or compliance schedule set forth in any variance or order regarding or applicable to such source. Provided, however, no transferee in good faith shall be held liable for penalties for violations of the transferor unless the transferee assumes all assets and liabilities through contract or other means. For the purposes of this subsection, good faith shall be construed to mean neither having actual knowledge of a previous violation or constructive knowledge which would lead a reasonable person to know of the violation. It shall be the responsibility of the transferor to notify the Department in writing within ten (10) days of the change in ownership.

G. Operating permits for new sources.

Operating permits may be issued to new sources without public review upon a proper determination by the Department that:

1. The construction permit was issued pursuant to the public review requirements of the Code and rules promulgated thereunder; and

2. The operating permit, as issued, does not differ from the construction permit in any manner which would otherwise subject the permit to public review.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-910, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 16, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1998, Section 2-6-403), is amended to read as follows:

Section 2-6-403. A. No small public sewage system or private individual sewage disposal system shall be constructed or operated unless such system, when constructed, complies with requirements prescribed by the Environmental Quality Board as determined by an inspection performed by the Department of Environmental Quality or a person authorized by the Department. ~~Provided, that upon~~ Upon reinspection of an approved system, performed at the request of the lot owner, the Department or a person authorized by the Department shall not require that the system be uncovered unless there is evidence that the system has not functioned properly.

B. Any person, corporation or other legal entity which creates or intends to create a residential development outside the corporate limits of a city or town shall file a ~~plan~~ plat describing the

methods of sewage disposal for such residential development with the Department. Approval of the ~~plan~~ plat shall be obtained prior to recording ~~any the plat or certificate~~, offering a lot or lots for sale or beginning construction within such residential development.

1. The ~~plan plat~~ shall ~~be in a form required by the Board and shall~~ include a plan of the residential development and:

- a. a description of the methods for providing water supply and sewage disposal. If a public water supply or public sewage is to be used, then verification of the preliminary approval from the Department shall be submitted along with the plat,
- b. the actual lot size of each lot in square feet, acres or fractions of acres, and
- c. the location of any public water supply source, including wells and surface water supplies, within three hundred (300) feet of the residential development.

2. ~~If individual wells or sewage disposal systems are to be used, the plan shall be drawn to show streets, building lines, lot dimensions, lot numbers, contours, percolation tests, core tests, and the locations where water wells and sewage disposal systems may be properly installed.~~

3. Upon approval ~~the plan and either~~ by the Department, the plat ~~or the certificate provided for in subsection E of this section,~~ of the residential development shall be imprinted with the stamp of the Department bearing the word "approved", restrictions, if any, signature of the Department or the Department's local representative and the date. Approval of the plat ~~or certificate~~ shall be made effective thirty (30) days after the ~~same~~ plat is filed with the Department unless specifically rejected prior to the expiration of the said thirty-day period of time.

4. ~~3.~~ The office of county clerk shall not record a plat containing any lot of less than two and one-half (2 1/2) acres situated outside the corporate limits of a municipality unless said instrument bears the "approved" stamp of the Department. The Department shall have no authority to disapprove and shall approve plats of tracts that are being developed for individual residence in which no single tract is less than two and one-half (2 1/2) acres, provided that none of the lots are within three hundred (300) feet of a public water supply source.

C. ~~In addition to filing plans of residential developments with the Department or the Department's local representative, persons~~ Persons creating or intending to create a residential development shall ~~obtain a certificate or cause a plat to be made and,~~ after receiving the stamp of approval from the Department or the Department's local representative, shall file such ~~certificate or~~ plat in the land records of the county where the residential development is to be situated.

~~D. A residential development occurs when a platted lot is split or, within any quarter section, unplatted land is subdivided and such subdivision causes there to be at least three parcels of land:~~

~~1. Which, within the preceding five (5) years, had a common grantor; and~~

~~2. Of which at least one of such parcels of land contains less than two and one-half (2 1/2) acres of land; and~~

~~3. Of which at least two of such parcels of land are being used, or are intended to be used, for residential purposes.~~

~~E. A person intending to create a residential development without recording an approved plat, in lieu of a plat or a plan and prior to conveying or offering to convey any tract of land in such residential development, shall obtain from the Department or the Department's local representative and file in the land records of the county wherein the land is situated, a certificate of either approval or disapproval of the tract of land for private sewage disposal systems.~~

~~F. For purposes of this section, "subdivision of land for purposes of a residential development" shall have the same meaning as "subdivision" as defined in Section 863.9 of Title 19 of the Oklahoma Statutes.~~

~~E. Any person who knowingly creates a residential development without receiving the approval of the Department or the Department's local representative of a plan plat or without filing of record either a plat or a certificate in violation of this section, or who installs a private sewage disposal system on a lot for which disapproval of a private sewage disposal system has previously been filed of record shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each violation.~~

~~F. The Department is authorized to use monies other than fees or appropriated funds as such monies may be available to the Department to offer financial assistance to indigent citizens of the State of Oklahoma to reduce the incidence of surfacing sewage in the State of Oklahoma.~~

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-2009.1, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 20, Chapter 353, O.S.L. 1994 (27A O.S. Supp. 1998, Section 2-7-108), is amended to read as follows:

Section 2-7-108. A. Except as otherwise provided by subsection B of this section or any rules of the Environmental Quality Board with respect to short-term storage, no person shall store, treat or dispose of hazardous waste materials or commence construction of or own or operate any premises or facility engaged in the operation of storing, treating or disposing of hazardous waste or storing recyclable materials, who does not possess a valid and appropriate hazardous waste facility permit. The provisions of this subsection

shall not include remediation activities under an order of the Department of Environmental Quality which would not require a federal hazardous waste permit from the Environmental Protection Agency if conducted pursuant to a federal order.

B. 1. Any person who owned or operated a hazardous waste facility which was operating or under construction on November 19, 1980, and who has submitted notice and permit application to the U.S. Environmental Protection Agency or to the Department, and whose facility complies with the rules of the Board, may continue operation until such time as the permit application is determined.

2. The Board may by rule provide for continued operation on an interim basis pending permit determination of a facility in existence on the effective date of any statutory or regulatory amendments that would subject the facility to a permit requirement pursuant to the Oklahoma Hazardous Waste Management Act.

3. The provisions for the allowance of continued operation on an interim basis under paragraphs 1 and 2 of this subsection shall not apply in the case of a facility for which a permit, under the Oklahoma Hazardous Waste Management Act, has been previously denied or for which authority to operate has been terminated.

C. Facilities engaged in recycling which are not required to be permitted pursuant to the provisions of the Oklahoma Hazardous Waste Management Act shall operate in an environmentally acceptable manner and in accordance with the rules regarding the manifest, transportation and treatment, storage and disposal standards, and generators in the event a hazardous waste is generated therefrom.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 27A of Title 2-7-121.1, unless there is created a duplication in numbering, reads as follows:

A. The Department of Environmental Quality may direct a facility to waive the fees described in paragraph 1 of subsection A of Section 2-7-121 of Title 27A of the Oklahoma Statutes for hazardous waste received from certain sites undergoing response actions under the authority of the federal Comprehensive Environmental Response, Compensation and Liability Act. A fee waiver may only be granted for response actions financed through the Superfund Trust Fund that are conducted by the Department or the federal Environmental Protection Agency, when the amount of fee waiver will qualify towards the contributions required of the state for such actions.

B. The Department of Environmental Quality may direct a facility to waive the fees described in paragraph 1 of subsection A of Section 2-7-121 of Title 27A of the Oklahoma Statutes for hazardous waste received from certain sites in Oklahoma undergoing remedial actions that are being conducted as a result of:

1. A consent order approved by the Department;
2. Fulfilling the requirements of a Compliance Schedule issued by the Department as a result of a permit; or

3. A Brownfields action that has been approved by the Department.

Such fee waivers may be granted for remedial actions only when the amount of the fee waiver will qualify toward the contributions required of the state in response actions financed through the Superfund Trust Fund. The Department shall void all waivers for fees as described in paragraph 1 of subsection A of Section 2-7-121 of Title 27A should the requirements of any Consent Order, Compliance Schedule, or Brownfields action not be fulfilled as stipulated.

SECTION 5. AMENDATORY 19 O.S. 1991, Section 288.2, is amended to read as follows:

Section 288.2 The county clerk shall not file of record any plat which contains any lot of less than two and one-half (2 1/2) acres located outside the corporate limits of a city or town unless the plat bears the stamp of approval of the ~~State~~ Department of ~~Health~~ Environmental Quality as provided in Section ~~1-910~~ 2-6-403 of Title ~~63~~ 27A of the Oklahoma Statutes.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-2413, as renumbered by Section 359, Chapter 145, O.S.L. 1993, and as last amended by Section 5, Chapter 338, O.S.L. 1994 (27A O.S. Supp. 1998, Section 2-10-1001), is amended to read as follows:

Section 2-10-1001. A. The board of county commissioners in each county of the state shall develop a plan, subject to the approval of the Department of Environmental Quality, to provide a solid waste management system to handle adequately solid wastes generated or existing within the boundaries of such county. ~~The plan must be submitted to the Department for approval no later than July 1, 1996~~ An application for a solid waste transfer station to be located in a county with a population of less than twenty thousand (20,000) based on the 1990 Federal Decennial Census shall not be submitted to the Department unless it is included in the county plan submitted to the Department. The application shall be made in accordance with the permitting requirements in the Oklahoma Solid Waste Management Act. By agreement or contractual arrangement the board of county commissioners may assume responsibility for solid wastes generated within incorporated cities or towns whether within their counties or other counties. The board of county commissioners of a county may enter into agreements with other counties, one or more towns or cities, governmental agencies, with private persons, trusts or with any combination thereof to provide a solid waste management system for the county or any portion thereof.

B. The county commissioners shall have the authority to levy and collect such fees and charges and require such licenses as may be appropriate to discharge their responsibility for a solid waste management system or any portion thereof. Such fees, charges and licenses shall be based on a fee schedule contained in an official resolution of the board of county commissioners and may be invoiced and collected by other public or private utility services in the normal course of their business.

C. The board of county commissioners may accept and disburse funds derived from federal or state grants or from private sources or from monies that may be appropriated from the General Revenue Fund for the installation and operation of a solid waste management system.

D. The board of county commissioners is authorized to contract for the lease or purchase of land, facilities and vehicles for the operation of a solid waste management system either for the county or as a party to a regional solid waste management district.

E. The board of county commissioners of a county shall have the right to establish written policies in compliance with the plan approved by the Department for the operation of a solid waste management system including hours of operation, amount, character and kind of waste accepted at the solid waste container sites or any disposal site, and such other rules as may be necessary for the safety of the operating personnel, persons using the sites and the general public.

F. The board of county commissioners of a county is authorized to hire such persons, including peace officers, as may be necessary to administer the county solid waste management system, enforce policies established pursuant to the solid waste plan and issue citations for violation of the solid waste laws of the State of Oklahoma.

G. Any person who violates any policy established by the board of county commissioners for the operation of a solid waste management system created pursuant to the provisions of this section, shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00) per day. Each violation shall constitute a separate offense.

H. The provisions of this section requiring approval of the Department for plans providing for a solid waste management system, shall not apply to counties having a solid waste management system plan in effect on July 1, 1992. For any county having a solid waste management system plan in effect on July 1, 1992, the county commissioners may charge and collect reasonable service and disposal fees as necessary for any nonhazardous industrial solid waste collection and disposal system. In determining reasonable fees for any nonhazardous industrial solid waste collection and disposal system, the county may take into account the damage and repair of access roads, litter control, surveillance, civil defense, and such other costs and expenditures deemed necessary by the county. Any person subject to the assessment of such fees who is aggrieved at the action of the commissioners in determining the amount of such fees, may appeal the action of the commissioners to the district court of the county for a review as to the reasonableness of the fees. The decision of the court shall be final and binding upon the commissioners, provided that any such order of the commissioners assessing the fees shall be binding until reversed by the court.

SECTION 7. 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.

Passed the Senate the 19th day of May, 1999.

President of the Senate

Passed the House of Representatives the 20th day of May, 1999.

Speaker of the House of
Representatives