

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 2137

By: McCarter

COMMITTEE SUBSTITUTE

An Act relating to environment; amending Section 3, Chapter 145, O.S.L. 1993, as amended by Section 1, Chapter 413, O.S.L. 1999 (27A O.S. Supp. 1999, Section 1-1-201), which relates to the Oklahoma Environmental Code; modifying term; amending Section 56, Chapter 145, O.S.L. 1993, as last amended by Section 5, Chapter 413, O.S.L. 1999 (27A O.S. Supp. 1999, Section 2-6-101), which relates to the Oklahoma Environmental Code; modifying term; creating the Oklahoma Watershed Restoration Act; providing legislative intent and findings; requiring certain submissions; providing for content; prohibiting certain uses; providing for public comment; providing for applicability; requiring promulgation of certain rules; requiring total maximum daily load assessments; requiring coordination; requiring review and use of certain background information; providing for contents of certain rules; prohibiting certain criteria for basis of certain determinations of impairment; requiring certain identification; requiring certain basis for certain lists for certain calculations; providing for certain updated lists; requiring development of certain calculations; requiring coordinations; providing when no total maximum daily loads are required; providing use and purpose of certain calculations; specifying certain base considerations; requiring certain reports; providing for content; requiring certain meetings; specifying notice; making the Department of Environmental Quality lead agency for implementation of total maximum daily load allocation; providing for content of certain programs; authorizing interim measures; requiring certain rules; specifying certain practices must be verified; authorizing the Department of Agriculture and Board of Agriculture to implement certain interim measures for pollution reduction; requiring certain verification; requiring cooperation; requiring certain reevaluation; providing for effect of statute; prohibiting certain conflict; authorizing certain rules; providing for content; prohibiting certain rule implementation; providing for purpose of act; providing for construction of act; prohibiting implementation of certain regulatory authority; requiring evaluation of effectiveness of total maximum daily loads; providing for codification; and providing an effective date.

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

2 SECTION 1. AMENDATORY Section 3, Chapter 145, O.S.L.  
3 1993, as amended by Section 1, Chapter 413, O.S.L. 1999 (27A O.S.  
4 Supp. 1999, Section 1-1-201), is amended to read as follows:

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

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

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

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

14 4. "Federal Safe Drinking Water Act" means the federal law at  
15 42 U.S.C., Section 300 et seq., as amended;

16 5. "Groundwater protection agencies" include the:

- 17 a. Oklahoma Water Resources Board,
- 18 b. Oklahoma Corporation Commission,
- 19 c. State Department of Agriculture,
- 20 d. Department of Environmental Quality,
- 21 e. Conservation Commission, and
- 22 f. Department of Mines;

23 6. "Nonpoint source" means the contamination of the environment  
24 with a pollutant for which the specific point of origin may not be  
25 well defined and includes but is not limited to agricultural storm  
26 water runoff and return flows from irrigated agriculture;

27 7. "N.P.D.E.S." or "National Pollutant Discharge Elimination  
28 System" means the system for the issuance of permits under the  
29 ~~Federal~~ federal Water Pollution Control Act, 33 U.S.C., Section 1251  
30 et seq., as amended;

31 8. "Point source" means any discernible, confined and discrete  
32 conveyance or outlet including but not limited to any pipe, ditch,

1 channel, tunnel, conduit, well, discrete fissure container, rolling  
2 stock or vessel or other floating craft from which pollutants are or  
3 may be discharged into waters of the state. The term "point source"  
4 shall not include agricultural storm water runoff and return flows  
5 from irrigated agriculture;

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

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

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

24 12. "State agencies with limited environmental  
25 responsibilities" means:

- 26 a. the Department of Public Safety,
- 27 b. the Department of Labor, and
- 28 c. the Department of Civil Emergency Management;

29 13. "State environmental agency" includes the:

- 30 a. Oklahoma Water Resources Board,
- 31 b. Oklahoma Corporation Commission,
- 32 c. State Department of Agriculture,

- d. Oklahoma Conservation Commission,
- e. Department of Wildlife Conservation,
- f. Department of Mines, and
- g. Department of Environmental Quality;

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

15. "Total maximum daily load" means the sum of individual wasteload allocations (W.L.A.) for point sources, safety, reserves, and loads from nonpoint sources and natural backgrounds. Prior to determining individual wasteload allocations and load allocations, the maximum amount of a pollutant that a water body or segment can assimilate from all sources without exceeding water quality standards must first be calculated;

16. "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;

17. "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;

18. "Wastewater treatment" means any method, technique or process used to remove pollutants from wastewater or sludge to the extent that the wastewater or sludge may be reused, discharged into waters of the state or otherwise disposed and includes, but is not limited to, the utilization of mechanized works, surface impoundments and lagoons, aeration, evaporation, best management practices (BMPs), buffer strips, crop removal or trapping, constructed wetlands, digesters or other devices or methods.

1 "Treatment" also means any method, technique or process used in the  
2 purification of drinking water;

3 19. "Wastewater treatment system" means treatment works and all  
4 related pipelines or conduits, pumping stations and force mains, and  
5 all other appurtenances and devices used for collecting, treating,  
6 conducting or discharging wastewater;

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

16 21. "Wellhead protection area" means the surface and subsurface  
17 area surrounding a water well or wellfield supplying a public water  
18 system that defines the extent of the area from which water is  
19 supplied to such water well or wellfield.

20 SECTION 2. AMENDATORY Section 56, Chapter 145, O.S.L.  
21 1993, as last amended by Section 5, Chapter 413, O.S.L. 1999 (27A  
22 O.S. Supp. 1999, Section 2-6-101), is amended to read as follows:

23 Section 2-6-101. For purposes of this article:

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

26 2. "Disposal system" means pipelines or conduits, pumping  
27 stations and force mains and all other devices, construction,  
28 appurtenances and facilities used for collecting, conducting or  
29 disposing of wastewater, including treatment systems;

30 3. "Drainage basin" means all of the water collection area  
31 adjacent to the highest water line of a reservoir which may be  
32 considered by the Department to be necessary to protect adequately

1 the waters of the reservoir. The area may extend upstream on any  
2 watercourse to any point within six hundred (600) feet of the  
3 highest water line of the reservoir;

4 4. "Federal Safe Drinking Water Act" means the federal law at  
5 42 U.S.C., Section 300F et seq., as amended;

6 5. "Indirect discharge" means the introduction of pollutants to  
7 a publicly owned treatment works from a nondomestic source;

8 6. "N.P.D.E.S." or "National Pollutant Discharge Elimination  
9 System" means the system for the issuance of permits under the  
10 federal Water Pollution Control Act, 33 U.S.C., Section 1251 et  
11 seq., as amended;

12 7. "Nonpoint source" means the contamination of the environment  
13 with a pollutant for which the specific point of origin may not be  
14 well defined and includes but is not limited to agricultural storm  
15 water runoff and return flows from irrigated agriculture;

16 8. "Pollutant" means dredged spoil, solid waste, incinerator  
17 residue, sewage, garbage, sewage sludge, munitions, chemical wastes,  
18 biological materials, radioactive materials, heat, wrecked or  
19 discarded equipment, rock, sand, cellar dirt and industrial,  
20 municipal, and agribusiness waste discharged into waters of the  
21 state;

22 9. "Public water supply" means water supplied to the public for  
23 domestic or drinking purposes;

24 10. "Reservoir" means any reservoir, whether completed or in  
25 the process of construction, whether or not used as a water supply,  
26 and whether or not constructed by any recipient of water therefrom;

27 11. "Sludge" means nonhazardous solid, semi-solid, or liquid  
28 residue generated by the treatment of domestic sewage or wastewater  
29 by a treatment works, or water by a water supply system, or manure,  
30 or such residue, treated or untreated, which results from  
31 industrial, nonindustrial, commercial, or agribusiness activities or  
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1 industrial or manufacturing processes and which is within the  
2 jurisdiction of the Department;

3 12. "Small public sewage system" shall mean a disposal or  
4 collection system which serves less than ten (10) residential units  
5 or a public or commercial sewage system which has an average flow of  
6 less than five thousand (5,000) gallons per day;

7 13. "Total maximum daily load" means the sum of individual  
8 wasteload allocations (W.L.A.) for point sources, safety, reserves,  
9 and loads from nonpoint sources and natural backgrounds. Prior to  
10 determining individual wasteload allocations and load allocations,  
11 the maximum amount of a pollutant that a water body or segment can  
12 assimilate from all sources without exceeding water quality  
13 standards must first be calculated;

14 14. "Treatment works" means any facility used for the purpose  
15 of treating or stabilizing wastes or wastewater. "Treatment works"  
16 shall be synonymous with "wastewater works";

17 15. "Waste" means any liquid, gaseous or solid or semi-solid  
18 substance, or thermal component, whether domestic, municipal,  
19 commercial, agricultural or industrial in origin, which may pollute  
20 or contaminate, or tend to pollute or contaminate, any air, land or  
21 waters of the state and which is within the jurisdiction of the  
22 Department;

23 16. "Wastewater" includes any substance, including sewage, that  
24 contains any discharge from the bodies of human beings or animals,  
25 or contaminating chemicals or other waste or pollutants from  
26 domestic, municipal, commercial, agricultural, industrial or  
27 manufacturing activities or facilities and which is within the  
28 jurisdiction of the Department;

29 17. "Wastewater treatment" means any method, technique or  
30 process used to remove waste, pollutants from wastewater or sludge  
31 to the extent that the wastewater or sludge may be reused,  
32 discharged into waters of the state or otherwise disposed and

1 includes, but is not limited to, the utilization of mechanized  
2 works, surface impoundments and lagoons, aeration, evaporation, best  
3 management practices (BMPs), buffer strips, crop removal or  
4 trapping, constructed wetlands, digesters or other devices or  
5 methods. "Treatment" also means any method, technique or process  
6 used in the purification of drinking water;

7 18. "Wastewater treatment system" means treatment works and all  
8 related pipelines or conduits, pumping stations and force mains, and  
9 all other appurtenances and devices used for collecting, treating,  
10 conducting or discharging wastewater;

11 19. "Water supply system" means a water treatment plant, water  
12 wells, and all related pipelines or conduits, pumping stations and  
13 mains and all other appurtenances and devices used for distributing  
14 drinking water to the public and, as such, shall be synonymous with  
15 waterworks;

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

25 21. "Wellhead protection area" means the surface and subsurface  
26 area surrounding a water well or wellfield, supplying a public water  
27 system, that defines the real extent from which water is supplied to  
28 such water well or wellfield.

29 SECTION 3. NEW LAW A new section of law to be codified  
30 in the Oklahoma Statutes as Section 1-5-101 of Title 27A, unless  
31 there is created a duplication in numbering, reads as follows:

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1 Sections 4 and 5 of this act shall be known and may be cited as  
2 the "Oklahoma Watershed Restoration Act".

3 SECTION 4. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1-5-102 of Title 27A, unless  
5 there is created a duplication in numbering, reads as follows:

6 A. In furtherance of public policy, the Legislature declares  
7 that the waters of the state are among its most basic resources and  
8 that the development of a total maximum daily load program for state  
9 waters as required by Section 303(d) of the federal Clean Water Act  
10 will promote improvements in water quality throughout the state  
11 through the coordinated control of point and nonpoint sources of  
12 pollution.

13 B. The Legislature finds that, while point and nonpoint sources  
14 of pollution have been managed through numerous programs, better  
15 coordination among these efforts and additional management measures  
16 may be needed in order to achieve the restoration of impaired bodies  
17 of water. The scientifically based total maximum daily load program  
18 is necessary to fairly and equitably allocate pollution loads to  
19 both nonpoint and point sources. Implementation of the allocation  
20 shall include consideration of a cost-effective approach coordinated  
21 between contributing point and nonpoint sources of pollution for  
22 impaired bodies of water or segments of water bodies and may include  
23 the opportunity to implement the allocation through nonregulatory  
24 and incentive-based programs.

25 C. The Legislature further declares that the Department of  
26 Environmental Quality, in close cooperation with the Office of the  
27 Secretary of the Environment, shall be the lead agency in  
28 administering the Oklahoma Watershed Restoration Act and shall  
29 coordinate with the other state environmental agencies, local  
30 governments, conservation districts, regulated interests, affected  
31 pollution sources, environmental groups, and other appropriate state  
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1 agencies, in developing and implementing the Oklahoma Watershed  
2 Restoration Act.

3 D. 1. In accordance with Section 303(d) of the Clean Water  
4 Act, the Office of the Secretary of the Environment shall submit  
5 periodically to the United States Environmental Protection Agency a  
6 list of surface waters or segments thereof for which total maximum  
7 daily load assessments will be conducted. The assessments shall  
8 evaluate the water quality conditions of the listed waters. If such  
9 waters are determined not to meet water quality standards, total  
10 maximum daily loads shall be established. The Secretary of the  
11 Environment shall establish a priority ranking and schedule for  
12 analyzing waters which have been determined not to meet water  
13 quality standards.

14 2. The list, priority ranking, and schedule shall be used in  
15 the administration or implementation of any regulatory program.  
16 Provided, this restriction shall not prohibit any agency from  
17 employing the data or other information used to establish the list,  
18 priority ranking, or schedule in administering a program.

19 3. The list, priority ranking, and schedule prepared pursuant  
20 to the provisions of this subsection shall be made available to the  
21 public for comment.

22 4. The provisions of this subsection are applicable to all  
23 lists prepared by the Department of Environmental Quality and  
24 submitted to the United States Environmental Protection Agency  
25 pursuant to Section 303(d) of the Clean Water Act, including but not  
26 limited to those submitted prior to the effective date of this act.

27 5. If the Department of Environmental Quality proposes to  
28 implement total maximum daily load calculations or allocations  
29 established prior to the effective date of this act, the  
30 Environmental Quality Board shall promulgate those calculations and  
31 allocations by rule.

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1 E. 1. Based on the priority ranking and schedule for a  
2 particular listed surface water or surface water segment, the  
3 Department of Environmental Quality shall conduct a total maximum  
4 daily load assessment, using a methodology promulgated by rule by  
5 the Department. In conducting this assessment, the Department shall  
6 coordinate with the other state environmental agencies, local  
7 governments, conservation districts, regulated interest groups,  
8 affected pollution sources, environmental groups, and other  
9 appropriate state agencies.

10 2. The Department of Environmental Quality shall use the  
11 Beneficial Use Support Assessment Protocols contained in the  
12 Oklahoma Water Quality Standards for determining the waters which  
13 are impaired. Rules promulgated by the Environmental Quality Board  
14 shall require that any determination that water quality standards  
15 are not being attained, or are being exceeded, be based upon  
16 objective and credible data, studies and reports. The rules also  
17 shall set forth or promulgate by reference:

- 18 a. water quality sample collection and analysis
- 19 requirements, accounting for ambient background
- 20 conditions, seasonal and other natural variations,
- 21 b. approved methodologies,
- 22 c. quality assurance and quality control protocols,
- 23 d. data modeling, and
- 24 e. other appropriate water quality assessment measures,
- 25 including but not limited to an examination of intake
- 26 processes, where applicable.

27 3. If the Oklahoma Water Quality Standards have a numerical  
28 criterion for a particular pollutant, a narrative or biological  
29 criterion shall not be the basis for determining an impairment in  
30 connection with that pollutant unless the Department of  
31 Environmental Quality identifies specific factors as to why the  
32 numerical criterion is not adequate to protect water quality. If

1 water quality nonattainment is based on narrative or biological  
2 criteria, the specific factors concerning particular pollutants  
3 shall be identified prior to the development of a total maximum  
4 daily load for those criteria for that surface water or surface  
5 water segment.

6 F. 1. If the Department of Environmental Quality, based upon  
7 the total maximum daily load assessment, determines that compliance  
8 with water quality standards has not been achieved and that  
9 technology-based effluent limitations and other pollution control  
10 programs pursuant to local, state, or federal authority, which are  
11 designed to restore waters for the pollutant of concern are not  
12 sufficient to result in attainment of applicable water quality  
13 standards, the Department shall confirm such determination by  
14 issuing a subsequent, updated list of those surface waters or  
15 surface water segments for which total maximum daily loads will be  
16 calculated.

17 2. In association with the updated list, the Department shall  
18 establish priority rankings and schedules for surface waters or  
19 surface water segments which will be subjected to total maximum  
20 daily load calculations. If a surface water or surface water  
21 segment is to be listed pursuant to this subsection, the Department  
22 shall specify the particular pollutants causing the impairment and  
23 the concentration of those pollutants causing the impairment  
24 relative to the water quality standards. This updated list shall be  
25 approved and amended by order of the Department subsequent to  
26 completion of an assessment of each surface water or surface water  
27 segment. The updated list shall be submitted to the United States  
28 Environmental Protection Agency. Each order may be subject to  
29 challenge by the public or interested parties.

30 G. At any time throughout the total maximum daily load process,  
31 surface waters or surface water segments which have been evaluated  
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1 or listed pursuant to this section shall be removed from the list  
2 upon demonstration that water quality standards are being attained.

3 H. 1. Prior to developing a total maximum daily load  
4 calculation for surface waters or surface water segments on the  
5 list, the Department of Environmental Quality shall coordinate with  
6 the other state environmental agencies, local governments,  
7 conservation districts, regulated interest groups, affected  
8 pollution sources, environmental groups, and other appropriate state  
9 agencies, to determine the information required, accepted methods of  
10 data collection and analysis, and quality control/quality assurance  
11 requirements. The analysis may include but shall not be limited to  
12 mathematical water quality modeling using approved procedures and  
13 methods.

14 2. The Department shall develop total maximum daily load  
15 calculations for each surface water or surface water segment on the  
16 list according to the priority ranking and schedule, unless the  
17 impairment of such waters is due solely to activities other than  
18 point and nonpoint sources of pollution. For surface waters or  
19 surface water segments determined to be impaired due solely to  
20 factors other than point and nonpoint sources of pollution, no total  
21 maximum daily load shall be required. A total maximum daily load  
22 may be required for those surface waters or surface water segments  
23 that are impaired predominantly due to activities other than point  
24 and nonpoint sources. The total maximum daily load calculation  
25 shall establish the amount of a pollutant that a surface water or  
26 surface water segment can assimilate without exceeding water quality  
27 standards, and shall account for seasonal variations and include a  
28 margin of safety that takes into account any lack of knowledge  
29 concerning the relationship between effluent limitations and water  
30 quality. The total maximum daily load may be based upon a pollutant  
31 load reduction goal, provided that such pollutant load reduction  
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1 goal is promulgated by the Environmental Quality Board in accordance  
2 with the procedural and substantive requirements of this subsection.

3 3. The total maximum daily loads shall include but not be  
4 limited to the establishment of reasonable and equitable allocations  
5 of the total maximum daily load among point and nonpoint sources  
6 that will alone, or in conjunction with other management and  
7 restoration activities, provide for the attainment of water quality  
8 standards and the restoration of impaired waters. The allocations  
9 shall establish the maximum amount of the water pollutant from a  
10 given source or category of sources that may be discharged or  
11 released into a surface water or surface water segment in  
12 combination with other discharges or releases. Such allocations  
13 shall be designed to attain water quality standards and shall be  
14 based on consideration of the following:

- 15 a. existing treatment levels and management practices,
- 16 b. differing impacts pollutant sources may have on water  
17 quality,
- 18 c. the availability of treatment technologies, management  
19 practices, or other pollutant reduction measures,
- 20 d. environmental, economic, and technological feasibility  
21 of achieving the allocation,
- 22 e. the cost benefit associated with achieving the  
23 allocation,
- 24 f. reasonable time frames for implementation,
- 25 g. potential applicability of any moderating provisions  
26 such as variances, exemptions, and mixing zones, and  
27 h. the extent to which nonattainment of water quality  
28 standards is caused by pollution sources outside of  
29 Oklahoma, discharges that have ceased, or alterations  
30 to surface waters or surface water segments prior to  
31 the date of this act.

1           4. Not later than January 1, 2001, the Department of  
2 Environmental Quality shall submit a report to the Governor, the  
3 Speaker of the House of Representatives, and the President Pro  
4 Tempore of the Senate, containing recommendations, including but not  
5 limited to draft legislation, for any modifications to the process  
6 for allocating total maximum daily loads. Such recommendations  
7 shall be developed by the Department in cooperation with a technical  
8 advisory committee which includes representatives of the other state  
9 environmental agencies, local governments, conservation districts,  
10 regulated interest groups, affected parties, environmental groups,  
11 and other appropriate local, state, and federal government agencies.  
12 The technical advisory committee shall also include such members as  
13 may be designated by the Speaker of the House of Representatives and  
14 the President Pro Tempore of the Senate.

15           5. The total maximum daily load calculations and allocations  
16 for each surface water or surface water segment shall be promulgated  
17 by rule by the Environmental Quality Board. As part of the rule  
18 development process, at least one public meeting in the vicinity of  
19 the surface water or surface water segment for which the total  
20 maximum daily load is being developed shall be held. Notice of the  
21 public meeting shall be published not less than five (5) days nor  
22 more than fifteen (15) days before the public meeting in a newspaper  
23 of general circulation in the county or counties containing the  
24 surface water or surface water segments for which the total maximum  
25 daily load calculation and allocation are being developed.

26           I. 1. The Department of Environmental Quality shall be the  
27 lead agency in coordinating the implementation of the total maximum  
28 daily load allocation through water quality protection programs.

29 Such programs may include, but are not limited to:

- 30           a. issuing permits and other existing regulatory  
31 programs,  
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- b. nonregulatory and incentive-based programs, including best management practices, cost sharing, waste minimization, pollution prevention, and public education,
- c. pollutant trading or other equitable economically based agreements, and
- d. public works including capital facilities.

2. The Department, in cooperation with the other state environmental agencies, local governments, conservation districts, regulated interest groups, affected pollution sources, environmental groups, and other appropriate state agencies, and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the Department for nonagricultural nonpoint pollutant sources. These practices and measures may be promulgated by rule by the Environmental Quality Board, and may be implemented by those parties responsible for nonagricultural nonpoint pollutant sources and the Department.

3. Such rules shall also incorporate provisions for a notice of intent to implement the practices and a system to assure the implementation of the practices, including but not limited to recordkeeping requirements. Where interim measures, best management practices, or other measures have been promulgated by rule, the effectiveness of such practices in achieving the levels of pollution reduction established in allocations developed by the Department shall be verified by the Department. Implementation, in accordance with applicable rules, of practices that have been verified by the Department to be effective at representative sites shall provide a presumption of compliance with state water quality standards and release for those pollutants addressed by the practices. The Department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages

1 associated with the contamination of surface or ground water caused  
2 by those pollutants. If water quality problems are detected despite  
3 the appropriate implementation, operation and maintenance of best  
4 management practices and other measures according to rules  
5 promulgated pursuant to this section, the Department shall institute  
6 a reevaluation of the best management practice or other measures.

7 J. 1. The State Board of Agriculture may promulgate by rule  
8 suitable interim measures, conservation or whole farm plans  
9 containing best management practices, or other measures necessary to  
10 achieve the level of pollution reduction developed by the Department  
11 of Agriculture for agricultural pollutant sources. These practices  
12 and measures may be implemented by those parties responsible for  
13 agricultural pollutant sources and the Department of Environmental  
14 Quality, and the State Department of Agriculture shall assist with  
15 implementation. Such rules shall also incorporate provisions for a  
16 notice of intent to implement the practices and a system to assure  
17 the implementation of the practices, including but not limited to  
18 recordkeeping requirements.

19 2. Where interim measures, best management practices, or other  
20 measures are promulgated by rule, the effectiveness of such  
21 practices in achieving the levels of pollution reduction established  
22 in allocations developed by the Department of Environmental Quality  
23 shall be verified by the Department of Environmental Quality.  
24 Implementation, in accordance with applicable rules, of practices  
25 that have been verified by the Department of Environmental Quality  
26 to be effective at representative sites shall provide a presumption  
27 of compliance with state water quality standards and release for  
28 those pollutants addressed by the practices. The Department is not  
29 authorized to institute proceedings against the owner of the source  
30 of pollution to recover costs or damages associated with the  
31 contamination of surface or ground water caused by those pollutants.

1           3. In the process of promulgating rules for interim measures,  
2 best management practices, or other measures, the State Department  
3 of Agriculture shall consult with the Department of Environmental  
4 Quality, representatives from affected farming groups, and  
5 Environmental group representatives.

6           4. If water quality problems are detected despite the  
7 appropriate implementation, operation and maintenance of best  
8 management practices and other measures according to rules  
9 promulgated pursuant to this section, the State Department of  
10 Agriculture shall institute a reevaluation of the best management  
11 practice or other measure.

12           K. The provisions of the Oklahoma Watershed Restoration Act  
13 shall not preclude the Department of Environmental Quality or other  
14 state agency from requiring compliance with water quality standards  
15 or with current best management practice requirements set forth in  
16 any applicable regulatory program authorized by law for the purpose  
17 of protecting water quality. Additionally, the provisions of the  
18 Oklahoma Watershed Restoration Act are applicable only to the extent  
19 that they do not conflict with any rules promulgated by the  
20 Environmental Quality Board that are necessary to maintain a  
21 federally delegated or approved program.

22           L. The Environmental Quality Board is authorized to promulgate  
23 rules for:

- 24           1. Delisting any body of water from the list;
- 25           2. Administration of funds to implement the total maximum daily  
26 load program; and
- 27           3. Procedures for pollutant trading among the pollutant sources  
28 to a body of water, including a mechanism for the issuance and  
29 tracking of pollutant credits. Such procedures may be implemented  
30 through permits or other authorizations and must be legally binding.  
31 No rule implementing a pollutant trading program shall become  
32 effective prior to review and ratification by the Legislature.

1 M. The provisions of this section are intended to supplement  
2 existing law and nothing in this section shall be construed as  
3 altering any applicable state water quality standards or as  
4 restricting the authority otherwise granted to the Department of  
5 Environmental Quality. The exclusive means of state implementation  
6 of Section 303(d) of the Clean Water Act shall be in accordance with  
7 the identification, assessment, calculation and allocation, and  
8 implementation provisions promulgated by the Department of  
9 Environmental Quality and the Oklahoma Water Resources Board.

10 N. Nothing in this section shall be construed as limiting the  
11 applicability or consideration of any mixing zone, variance,  
12 exemption, site-specific alternative criteria, or other moderating  
13 provision.

14 O. The Department of Environmental Quality shall not implement,  
15 without prior legislative approval, any additional regulatory  
16 authority pursuant to the Clean Water Act if such implementation  
17 would result in water quality discharge regulation of activities not  
18 currently subject to regulation.

19 SECTION 5. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1-5-103 of Title 27A, unless  
21 there is created a duplication in numbering, reads as follows:

22 The Department of Environmental Quality, with the other state  
23 environmental agencies, local governments, conservation districts,  
24 regulated interest groups, affected pollution sources, environmental  
25 groups, and other appropriate state agencies shall evaluate the  
26 effectiveness of the implementation of total maximum daily loads for  
27 a period of five (5) years from the effective date of this act. The  
28 Department shall document that effectiveness, using all data and  
29 information at its disposal, in a report to the Governor, the  
30 Speaker of the House of Representatives, and the President Pro  
31 Tempore of the Senate, by January 1 of each year. The report shall  
32 provide specific recommendations for statutory changes necessary to

1 implement total maximum daily loads more effectively, including but  
2 not limited to the development or expansion of pollution prevention  
3 and pollutant trading opportunities, and best management practices.

4 SECTION 6. This act shall become effective November 1, 2000.

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